Upper Tribunal
(Immigration and Asylum Chamber) **Appeal number: AA/06251/2014**

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On January 16, 2015	**On January 19, 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MS TSETSEGSUREN CHULUUNBAATAR
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Unrepresented
For the Respondent: Mr Walker (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The appellant, born January 5, 1980 is a citizen of Mongolia. She last entered the United Kingdom on September 26, 2009 as a Tier 4 student. On January 30, 2007 she applied for further leave to remain as a student and this was granted until February 29, 2008. Further extensions as a Tier 4 student were granted until June 7, 2014. On March 11, 2014 she attended at the asylum-screening unit and on March 25, 2014 she applied for asylum. The respondent refused her application on May 21, 2014 and on August 11, 2014 a decision to remove her to Mongolia was taken.

2. The appellant appealed to the First-tier Tribunal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 on August 28,

2014 and on October 1, 2014 Judge of the First Tier Tribunal Wyman (hereinafter referred to as the "FtTJ") heard her appeal and in determination promulgated on October 7, 2014 she refused the appellant's claims on asylum and human rights grounds.

3. The appellant lodged grounds of appeal on October 21, 2014 and on October 31, 2014 Judge of the First-tier Tribunal Ransley gave permission to appeal finding there were arguable reasons the FtTJ had erred in her approach to both the asylum and human rights claim.

4. The matter came before me on December 5, 2014 and on that date I found there had been a material error of law in that the FtTJ had failed to have regard to a bundle of evidence filed after the hearing but in accordance with her directions. However, I dismissed the other grounds of appeal and I issued directions that confirmed the adjourned hearing would be confined to article 8 issues.

5. Both the appellant and her partner were present in court on the above date and I agreed to deal with the matter by taking submissions from Mr Walker and the appellant herself.

6. Mr Walker accepted that the appellant and her partner were in a genuine and subsisting relationship and had been since 2011. They had one child who was born in May 2014. I have also had regard to the documents submitted by the appellant prior to this hearing in compliance with my directions.

7. Mr Walker agreed that removal would be to Mongolia because firstly that was where the removal directions were set and secondly the appellant's partner had lodged an asylum claim.

SUBMISSIONS

8. Mr Walker submitted the earlier findings that there was no risk in Mongolia for the appellant remained and this was simply an issue about family and private life. The appellant, partner and child were all healthy and lived together as a family. The child was too young to attend school and when old enough would be able to attend school in Mongolia where there is an education system. The child would learn Mongolian but would also be able to speak English because both his parents also spoke English. The appellant's application for asylum had been rejected and she had come here as a student with no expectation of being allowed to remain. She had knowingly entered into a relationship with her partner and become pregnant at a time when she knew he had no immigration status here. Whilst there was some discrimination this did not reach a level that merited intervention as evidenced by the FtTJ's upheld decision. It would not be disproportionate or unjustifiably harsh to require the family to leave the United Kingdom.

9. The appellant responded to these submissions and stated:

a. If she returned to Mongolia with her son and husband there would be problems for her husband because inter-racial marriages are frowned upon. If he remained here then they would be separated and her family life would be interfered with and her son would not have his father in his life.

b. If the child were raised in Mongolia he would have problems conversing with his father because his father spoke English and the schools only taught Mongolian. Although English would be spoken in the house this would only be basic for the appellant's son.

c. Her partner was Christian and attended church regularly. There is evidence that Christians are discriminated against and this would interfere with their private life.

d. She was unable to live in the capital, Ulan Bator, and in the rural areas her son would be unable to obtain proper medical treatment if he fell ill. She could not live in the capital because it only has a population of one million and there would be a chance that she would come into contact with her family who disapproved of her relationship.

e. She was still doing her CCA course and she wanted to complete it so she could find work here afterwards.

10. I reserved my decision.

ASSESSMENT OF EVIDENCE

11. I remind myself that this is an application outside of the Immigration Rules under article 8 ECHR. Mr Walker accepted the appeal fell to be considered outside of the Rules and I have approached this appeal having regard to the guidance in Razgar [2004] UKHL 00027 and I have also had regard to Section 55 of the Borders, Citizenship and Immigration Act 2009.

12. The best interests of the child is paramount and recently the Court of Appeal in EV (Phillipines) & Ors v SSHD [2014] EWCA Civ 874 stated:

> "35. A decision as to what is in the best interests of children will depend on a number of factors such as (a) their age; (b) the length of time that they have been here; (c) how long they have been in education; (c) what stage their education has reached; (d) to what extent they have become distanced from the country to which it is proposed that they return; (e) how renewable their connection with it may be; (f) to what extent they will have linguistic, medical or other difficulties in adapting to life in that country; and (g) the extent to which the course proposed will interfere with their family life or their rights (if they have any) as British citizens."

13. The child was born in May 2014 and was conceived at a time when the appellant knew her partner's immigration status was precarious and her own status was limited in nature because she was here on Tier 4 visa. There was an expectation she would return home after she completed her studies. She did not apply to extend her stay but instead sought asylum shortly before she gave birth.

14. In considering the "best interests of the child" I note:

    a. The child is now eight months old.
    b. The child was born here but is not a British citizen.
    c. The child has not been educated.
    d. The child has never been to Mongolia.
    e. The child is young and is able to adapt to his surroundings.
    f. The child does not speak but would learn both Mongolian and English either at school or within his family. Both his parents speak English and the appellant speaks Mongolian having lived most of her life there.
    g. The child has no health issues and there is no evidence that medical facilities are not available in Mongolia.
    h. The child would be with his family if they left the United Kingdom as a family unit.

15. I have also taken into account the appellant's immigration status and in particular that she has always been here legally albeit she came here for the sole purpose of study. She met her partner in 2010 and they began living together in August 2011 and they have child who was born on May 21, 2014. She was aware that her partner had overstayed after his student visa expired in 2012 and that until very recently he had not applied for asylum. His reason was he did not know about asylum albeit he accepted that he had been to the Tribunal when his application for an extension was refused.

16. The appellant asked me to have regard to a number of documents. One document (UK Government travel advice) referred to the fact that some Mongolian men do not like seeing Mongolian women in relationships with foreign men and if in such a relationship then discretion should be considered. A US State department advice document also made reference t o the fact that inter-racial couples are sometimes targeted for attack. Neither of these reports departs from the FtTJ's findings. There are problems but they do not reach a level of persecution or serious harm.

17. The appellant also provided an article on Mongolia's "millennium development goals". The report is concerned with single parents and children from poor families. Both the appellant and her partner are educated and there would appear to be no reason why one or both could not obtain work. There is nothing in this report that would suggest the child would not be educated or obtain health care, if necessary. The appellant described there was a lack of material on the Internet but that does not mean there is a problem.

In fact, the contrary is arguable because if there were problems then the Internet would be awash with such articles.

18. The appellant raised religion in her recent letter (January 5, 2015) and her submissions albeit this was not raised at the original hearing. I did not take any oral evidence on this subject but took into account the appellant's submission although her claim was unsupported by any evidence at all. There was no letter from the minister or any document in support. I attach no weight to this part of her claim but in any event I have had taken into account the report provided which states, "There is a small but growing population of Christians. According to the 2010 national census 2% of the population is Christian. A 2011 government study … indicates 4.7% are … Christian." The constitution protects religious freedom and explicitly recognises the separation of religion and the state. I am satisfied there is no merit to this aspect of the claim.

19. The appellant mentioned that she was in the middle of her studies for an ACCA qualification and that she wanted to finish her studies and obtain a job here. The appellant did not apply to extend her Tier 4 visa when it expired and I also have to have regard to the decision in Nasim and others (Article 8) [2014] UKUT 00025 (IAC). At paragraph [20] the Tribunal stated in that case-

> "We therefore agree with Mr Jarvis that [57] of Patel and Others is a significant exhortation from the Supreme Court to re-focus attention on the nature and purpose of Article 8 and, in particular, to recognise its limited utility to an individual where one has moved along the continuum, from that Article's core area of operation towards what might be described as its fuzzy penumbra. The limitation arises, both from what will at that point normally be the tangential effect on the individual of the proposed interference and from the fact that, unless there are particular reasons to reduce the public interest of enforcing immigration controls, that interest will consequently prevail in striking the proportionality balance (even assuming that stage is reached)."

20. The appellant had no personal expectation to be allowed to remain to further her studies or obtain work. She came as a student with limited leave to remain. The fact she wants to continue her studies and work here does not amount to private life.

21. The only private life established has been the appellant's studies. There may be other elements of private life but these were never advanced either before the FtTJ or myself. Their life appears to be together as a family. I do not find there is a private life that engages article 8.

22. There is family life between the family unit and I have considered the child's best interests and am satisfied the child should be with his mother and preferably his father. There is nothing in this child's life that persuaded me that he would be better off in the United

Kingdom. His mother is Mongolian and his father Nigerian. He is not a British citizen and has no personal entitlement to live here. The Immigration Rules were not met.

23. He can be educated in Mongolia and language would not be an issue in light of his age. The fact his father does not speak Mongolian would not be an issue because his parents speak English and he would be able to talk to him in English. His mother speaks Mongolian having lived there for most of her life.

24. There is no evidence the child would not be granted Mongolian nationality and nothing has been placed before me that suggests the father would be unable to accompany the appellant and his son to Mongolia.

25. I have had regard to all of the above matters and taking into account the child's best interests I am satisfied it would be proportionate to remove the appellant from the United Kingdom and consequently I refuse her appeal under article 8 ECHR and the Immigration Rules.

DECISION

26. The decision of the First-tier Tribunal disclosed an error. I find as follows:

    a. I uphold the decision to dismiss the asylum, humanitarian protection and articles 2 and 3 claims.
    b. I dismiss the appellant's claim under the Immigration Rules.
    c. I dismiss the appellant's article 8 human rights claim.

27. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No such order was made in the First-tier and I see no reason to make such an order now.

Signed: Dated:

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT

I revoke the earlier fee award as I have dismissed the appeal.

Signed: Dated:

Deputy Upper Tribunal Judge Alis