



IAC-AH-KEW-V1

**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: IA/04803/2015

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 2 September 2015**

**Decision & Reasons Promulgated  
On 16 December 2015**

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**LITING HUANG  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mrs R Pettersen, Home Office Presenting Officer

For the Respondent: Mr Jagadesham, instructed by Waterstone Solicitors

**DECISION AND REASONS**

1. The respondent, Liting Huang, was born on 26 January 1990 and is a female citizen of China. She entered the United Kingdom as a student in 2009. On 31 October 2014, she applied for leave to remain on the basis of her family life with her same sex partner. That application was refused on 21 January 2015 and the respondent appealed to the First-tier Tribunal (Judge Myers) which, in a decision promulgated on 29 April 2013, allowed the appeal under the Immigration Rules. The Secretary of State now appeals, with permission, to the Upper Tribunal. I shall hereafter refer to

the appellant as the respondent and the respondent as the appellant (as they appeared respectively before the First-tier Tribunal).

2. Judge Myers heard evidence from the appellant and from her partner, [XG] (hereafter Ms G). The parties agree that the appeal under the Immigration Rules turned upon the question of “insurmountable obstacles” as provided for under Appendix FM, R-LTRP1.1(iii) (that is, the application of EX1). The judge found that there were insurmountable obstacles preventing the return of the appellant to China and that EX1 applied to the appellant, and it was for that reason this appeal was allowed. The Secretary of State give makes two challenges to that decision. First, it is asserted that the judge effectively reversed the burden of proof (which should have been on the appellant) allowing the appeal on the basis that there was “no evidence that as a British citizen [the appellant’s civil partner] would have any entitlement to reside in China and if this appeal is unsuccessful she would have to renounce her British citizenship if she returned” [15]. The Secretary of State acknowledges that dual nationality is not recognised in China. She also challenged the decision of the judge for failing to consider whether there was any evidence “from the appellant that she would not be able to reside with her partner on either a renewable partnership visa or a working visa.”
3. I do not find that that ground has merit. The question of Ms G returning to China having renounced her British citizenship was never put before the First-tier Tribunal. It is an argument that the Secretary of State has only raised now, on appeal to the Upper Tribunal. At [15], Judge Myers noted that,

“Ms G would thus have an invidious decision to make if this appeal is dismissed; there is no evidence that as a British citizen she would have any entitlement to reside in China and if this appeal is unsuccessful she would have to renounce her British citizenship if returned or live apart from her partner. She has lived in the UK since 2003 and has made her life here and I accept her evidence that if the appeal fails she would not return to China.”
4. The judge concluded, “I find the situation facing Ms G goes beyond mere disruption and inconvenience and does amount to insurmountable obstacles. Accordingly, I allow the appeal.” The real question here is whether the judge was entitled, on the basis of the evidence before her, to reach that conclusion. I find that she was so entitled. At [13], the judge noted that it was

“... accepted by the respondent that [Ms G] had to leave China in distressing circumstances after the death of her parents while she was still a child and it is understandable that it would be traumatic for her to have to live in a country which persecuted her parents.”
5. The judge considered that that fact combined with the stark choice facing Ms G of splitting from her partner (with whom both parties accepted she had a genuine relationship) or renouncing her British citizenship ultimately led to a conclusion that these matters amounted to “insurmountable obstacles” preventing the appellant’s return to China. That was not a

conclusion, on the evidence, which was in any way perverse but, rather, an outcome available to the judge which and she had supported by cogent and clear reasoning. I find that the question of the alleged reversal of the burden of proof does not arise and there was no reason for the appellant to adduce evidence regarding the availability of partnership or working visas in China given that at no stage during the First-tier Tribunal proceedings was such a scenario ever suggested.

6. The second ground attacks the judge's conclusion that the renouncing of Ms G's British citizenship would amount to an insurmountable obstacle preventing the appellant's return to China. The judge noted [14] that "foreign nationals who once held Chinese nationality may apply for restoration of nationality if they have a legitimate reason ..." In the light of that observation, the Secretary of State argues that Ms G could regain her Chinese nationality and that she and the appellant could live together in China. However, that scenario is entirely speculative; what is certain is that Ms G would lose her British nationality upon return to China if she were to regain Chinese nationality whilst she would not be certain, as a British national, to exercise any right to reside in China. Whether she would be able to show that she had a "legitimate reason" for the restoration of her Chinese nationality would be a matter beyond her control. Against that background, I find that the judge did not err in law by concluding that the loss of Ms G's British nationality combined with her return to a country which she had left in distressing circumstances established that there existed insurmountable obstacles. The Upper Tribunal should hesitate before interfering with the findings of the First-tier Tribunal where those findings have been reached following a proper examination of all the evidence and where there are justified and clear and adequate reasons. In the circumstances, the Secretary of State's appeal is dismissed.

### **Notice of Decision**

This appeal is dismissed.

No anonymity direction is made.

Signed

Date 10 November 2015

Upper Tribunal Judge Clive Lane