



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/53586/2013

THE IMMIGRATION ACTS

Heard at Field House
On 20th March 2015

Decision & Reasons Promulgated
On 31st March 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

MS LILING LI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Lam of James Tsang & Co
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of China whose date of birth is recorded as 23rd February 1985. She entered the United Kingdom in February 2007 as the spouse of the holder of a work permit. However the marriage ran into difficulties and she separated from her husband. In March 2008 she met Mr Lam Mui Li and a relationship developed.

In October 2010 she made application to the Secretary of State to vary her leave as the unmarried partner of Mr Li. Meanwhile on 3rd November 2010 the decree absolute in respect of her marriage was issued.

2. On 8th November 2012 leave granted to the Appellant was to expire. On 22nd October 2012, she made an in time application for indefinite leave to remain having regard to paragraph 295G of HC 395 as amended. On 10th April 2013 and 26th September 2013 the Appellant and Mr Li attended interviews with the Secretary of State. On 11 December 2013, a decision was made to refuse the application.
3. Not content with that decision, the Appellant appealed to the First-tier Tribunal. On 31st July 2014, her appeal was heard by Judge of the First-tier Tribunal Stott. He dismissed the appeal on the basis that the Appellant was not the married partner of the individual in respect of whom she had been granted leave to enter so as to join.
4. Not content with that decision, by Notice dated 6th August 2014 the Appellant made application for permission to appeal to the Upper Tribunal. On 12th January 2015 Judge of the First-tier Tribunal A K Simpson granted permission. In doing so she summarised the essence of the ground upon which application was made and I can do no better than repeat what is set out at paragraph 3 of the grant:

"It is clear from the judge's reasoning in [7] and [8] that he had overlooked the fact that on 8th November 2010 the Appellant was granted a two year extension of stay as the unmarried partner of her present partner, vis-à-vis his comment that

'...the Appellant entered this country as the dependent of another individual. She therefore is no longer the unmarried partner of the person she was granted permission to join initially... Therefore she cannot satisfy the provisions of paragraph 296G'.

However, it is arguable that paragraph 295G(ii) incorporates an alternative interpretation i.e. either the unmarried partner of the person she was admitted to join OR the unmarried partner of the person she was granted an extension of stay to join."

5. The error of law in this case arises from an error of fact. The Appellant was granted an extension of leave not because of the relationship that she had with her ex-husband but in respect of the relationship formed whilst in the United Kingdom, with Mr Li.
6. The Secretary of State by notice filed under Rule 24 does not oppose the application for permission to appeal but Mr Melvin goes further and in fact does not contest the Appellant's assertion that there was a material error of law. Of course it is a matter for me but clearly there was a material error of law. The error of fact has infected the entire decision.
7. It is open to me in circumstances such as this to remake the decision of the First-tier Tribunal. Given the findings that have otherwise been made in this case with respect to the nature of the relationship which exists between the Appellant and her present

partner and given that the Secretary of State was content in any event to grant leave on the basis of that relationship, it seems to me that it is a straightforward matter of finding that the requirements of the Rules were in fact met and that the only answer to this appeal in remaking it is to make it in favour of the Appellant.

Notice of Decision

The appeal to the Upper Tribunal is allowed. The decision of the First-tier Tribunal is set aside and remade such that the appeal to the First-tier Tribunal is allowed.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Zucker

TO THE RESPONDENT
FEE AWARD

Additionally I make a full fee award in the sum of £140.

Signed

Date

Deputy Upper Tribunal Judge Zucker