Upper Tier Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/18560/2013

THE IMMIGRATION ACTS

Heard at Manchester	**Determination Promulgated**
On 28 April 2015	**On 30 April 2015**

Before

Deputy Upper Tribunal Judge Pickup
Between

Bin Xue
[No anonymity direction made]

Appellant

and

The Entry Clearance Officer Beijing

Respondent

Representation:

For the appellant: Mr C Timson, instructed by Sandbrook Solicitors
For the respondent: Mr A McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, bin Xue, asserted date of birth 1.10.95, is a citizen of China.

2. This is his appeal against the determination of First-tier Tribunal Judge Shimmin promulgated 20.11.14, dismissing his appeal against the decision of the Entry Clearance Officer to refuse him entry clearance to the United Kingdom as the son of his sponsor Qing Yun He, a British citizen, pursuant to paragraph 297 of the Immigration Rules. The Judge heard the appeal on 27.10.14.

3. First-tier Tribunal Judge Chohan granted permission to appeal on 16.2.15.

4. Thus the matter came before me on 28.4.15 as an appeal in the Upper Tribunal.

Error of Law

5. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Shimmin should be set aside.

6. Judge Shimmin dismissed the appeal because he was not satisfied that:

   (a) The appellant was under the age of 18 at date of application;

   (b) That he was not leading an independent life;

   (c) That his mother had sole responsibility for him;

   (d) That there were serious and compelling family or other considerations making the appellant's exclusion from the UK undesirable;

   (e) In the light of those findings the judge did not find it necessary to consider the other issues raised in the refusal decision, including maintenance and accommodation;

   (f) That the decision of the Entry Clearance Officer did not breach the appellant's and/or the sponsor's article 8 ECHR rights to respect for private and family life.

7. I have carefully considered the three grounds of appeal in the application for permission to appeal:

   (a) Ground 1 challenges the conclusion that the appellant is over the age of 18 on the basis that the judge failed to take account of the appellant's Chinese passport which shows that he was under the age of 18 at the date of application.

   (b) Ground 2 challenges the conclusion that the appellant was living an independent life;

   (c) Ground 3 challenges the article 8 part of the decision, asserting that the judge misdirected himself as to the correct test.

8. I note that the grounds do not challenge the findings in relation to sole responsibility under 297(e) at §30 of the decision, or in relation to compelling circumstances under 297(f) at §31. Mr Timson argued that those were not part of the reasons for refusal by the Entry Clearance Officer, but that is not accurate as it is clear from the refusal decision that the Entry Clearance Officer found that the appellant failed to demonstrate that he met both of those issues. In any event, they are essential 'ingredients' for success under paragraph 297 and the judge was entitled to make findings in relation to them. In the circumstances, regardless of any alleged errors of

law, those parts of the decision must stand. It follows that whether or not there were errors of law in relation to the age of the appellant and the question of an independent life, the appeal could not succeed under paragraph 297 of the Immigration Rules. The alleged errors of law in respect of failing to specifically consider that the passport held the appellant age are therefore immaterial to the outcome of the appeal.

9. Mr Timson submitted that that failure infected the other credibility findings and that had the judge taken into account that the passport proved his age those other credibility findings might have been decided differently. That is a weak argument on the facts of this case where the evidence very clearly demonstrated credibility issues with the appellant's case. As Mr McVeety pointed out, on the sponsor's claimed age she would have had to be 11 years of age at the time of giving birth to the appellant, perhaps why the Entry Clearance Officer took the unusual step of sending out investigators to the appellant's village to ascertain what his grandfather said, which was almost entirely inconsistent with the appellant's case. This was in effect an application which was doomed to failure from the outset. The evidence against the appellant is so overwhelming when considered as a whole that it cannot be said that the decision of the First-tier Tribunal was irrational or perverse, or that any other Tribunal even taking into account the passport claim of age could or would have come to any different decision.

10. In any event, I do not find any error of law in the findings of the judge as to the appellant's age. At §18 the judge explained that he had carefully considered all the evidence, whether or not specifically mentioned in the decision. Even if the judge had forgotten to take account of the passport it was but only one factor to consider in the light of the absence of any documentation generated at the time of the appellant's birth together with the general findings on credibility, which led the judge to conclude that the appellant had failed to discharge the burden on him to demonstrate that he was still under 18 at the date of decision.

11. In relation to article 8, the grounds assert that the judge confused an application considered under Appendix FM and an application under another part of the immigration rules. It is not clear what is meant by this assertion in §17 of the application for permission to appeal. At §37 the judge concluded that the appellant could not meet the requirements of the Rules in respect of private and family life, which was a reference to Appendix FM and paragraph 276ADE. No submission was made to me that he could so, and indeed Mr Timson did not address article 8 at all in his submissions.

12. The First-tier Tribunal judge considered whether there was any need to go to consider article 8 outside the Rules, because of compelling circumstances insufficiently recognised under the Rules but concluded that there were no such circumstances. The approach has moved on somewhat since the date of the hearing, but in the recent case of Singh v SSHD [2015] EWCA Civ 74, the Court of Appeal endorsed the Isuazu/Nagre approach that there is no purpose in considering article 8 outside the Rules if there is no good arguable case for granting leave outside the

Rules by reference to article 8 and the Rules in respect of article 8 have addressed the family and private life issues.

13. In any event, in going on to make an article 8 assessment the judge noted that the appellant's mother chose to leave the appellant in China many years ago. They have remained in contact by various means and that level of contact can continue. Having found that the appellant is an adult at the date of decision, the judge concluded that there was no dependency between mother and appellant beyond normal emotional ties and thus that there was no breach of article 8 ECHR. It is quite clear from the unchallenged evidence of the grandfather that the appellant was leading an independent life, whether or not he had reached the age of 18. There was no basis on which the Tribunal could reasonably have concluded that the relationship between mother and son was such that the decision of the Entry Clearance Officer to refuse entry clearance amounted to such a grave interference with family life so as to engage article 8.

14. In the circumstances, even if article 8 ECHR had been argued in Mr Timson's submissions, which it was not, there was no real prospect of success under article 8 on the facts of this case as found by the First-tier Tribunal, irrespective of the issue as to age.

Conclusion & Decision:

15. For the reasons set out above, I find that the making of the decision of the First-tier Tribunal did not involve the making of any material error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

Signed

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

Fee Award **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The appeal has been dismissed and thus there can be no fee award.

Signed

Deputy Upper Tribunal Judge Pickup