



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

Appeal Number: OA/20255/2013

**THE IMMIGRATION ACTS**

**Heard at Birmingham Employment  
Centre  
On 18 August 2015**

**Decision Promulgated  
On 26 August 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE McCARTHY**

**Between  
GUANHAO CHEN  
(NO ANONYMITY ORDER)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER (ECO), BEIJING**

Respondent

**Representation:**

For the Appellant: Ms E Rutherford, instructed by Line & Co Solicitors  
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. At the end of the hearing I informed both parties that I did not find legal error in First-tier Tribunal Judge A W Khan's decision and reasons statement that was promulgated on 29 September 2015. I reserved my reasons, which I now give.
2. The appellant was born on 26 October 1999 and is a citizen of China. On 7 October 2013, the ECO refused to grant the appellant entry clearance because he was not satisfied the appellant met the requirements of paragraph 297 of the immigration rules. The appellant has applied to join his father who was and is settled in the UK but the ECO was not satisfied

that the appellant's father had sole responsibility for his upbringing or that there were serious and compelling family or other considerations which made the appellant's exclusion undesirable. In other words, the ECO was not satisfied that paragraphs 297(i)(e) or (f) were met.

3. In his decision and reasons statement, Judge Khan concluded that the evidence failed to show that at the date of decision it was more likely than not that the appellant's father had sole responsibility for his upbringing or that there were serious and compelling factors that made his exclusion undesirable. Judge Khan set out his reasons in paragraphs 12(a) to (h) of his decision and reasons statement.
4. Five grounds of appeal are mounted (the grounds having been settled by Mr Adam Pipe of Counsel on 12 December 2014). They seek to challenge the findings made by Judge Khan in paragraphs 12(a) to (f) of his decision and reasons statement. As the grounds are a matter of record, there is no need to rehearse them in detail. In summary, they argue that Judge Khan misdirected himself, failed to give adequate reasons, made contradictory findings and failed to consider material evidence.
5. Ms Rutherford relied on all the grounds except the last, conceding that it was not possible to sustain an argument that Judge Khan had failed to consider material evidence in paragraph 12(f) of his decision because it was clear from his findings that he had accepted that Chinese law gave the appellant's mother visitation rights upon her divorce. Ms Rutherford highlighted the following from the four remaining grounds. Judge Khan had failed to deal fairly with the documentary evidence, drawing inferences from what the documents did not say rather than what they contained. As such, he failed to take a holistic approach to the evidence. She submitted that at paragraph 12(f) Judge Khan said that there was no evidence from the appellant's mother that she had abandoned the appellant, which contradicted his finding at paragraph 12(b) where he had recorded that the appellant's mother had provided a letter to this effect.
6. Mr Mills responded to each ground. He submitted that when the findings in paragraph 12 were read as a whole, they covered all the issues that had to be determined and the reasoning as a whole was adequate. It could not be overlooked that just two years before the appeal was heard in the First-tier Tribunal, the appellant had applied with his mother for entry clearance to join his father, her husband. In such circumstances, it was not plausible that the appellant's mother had abrogated all responsibility for him. The evidence from the appellant's mother and aunt was very limited and it was open to the judge in these circumstances to find that it was not sufficient to discharge the burden of proof.
7. Mr Mills submitted that it was open to Judge Khan to have regard to the weakness of the documents. Judge Khan's observations about what was not contained in the documents were merely his expression of how the documents were deficient. As to the allegation that there were contradictory findings about whether the mother provided any evidence about her abandonment of the appellant, this was a semantic argument. It was clear that Judge Khan was aware of the mother's letter and had found it

wanting. His comments in paragraph 12(f) had to be read, therefore, to mean there was no other evidence.

8. Having heard the submissions and having examined Judge Khan's decision and reasons statement and the evidence that was presented in the appeal he heard, I am not satisfied that the grounds of appeal identify any legal error. In paragraphs 1 to 11, Judge Khan clearly sets out the evidence presented in the appeal together with the cases for and against the appellant. In those paragraphs he reminds himself correctly of the relevant law and legal tests that applied. Reading paragraphs 12 to 15 as a whole, it is evident that Judge Khan engaged with all the evidence and arguments to come to a reasoned decision.
9. The grounds appear to take exception to Judge Khan's turns of phrase in paragraph 12(a) and (b). In the former he says, "It is simply unbelievable to claim that [the appellant's mother] did not want the burden of looking after her son because she did not want her future marriage prospects to be affected." In the latter, he said, "I am simply not prepared to accept this statement as it stands on its own. No reason was given as to why she did not wish to have any responsibility over her son and there is no evidence that her ex-husband was responsible for his maintenance and welfare." I acknowledge that the turns of phrase could indicate that Judge Khan was merely stating his opinion of the evidence rather than analysing it. But such a conclusion is only possible if these phrases are taken out of context. In context each is supported by clear reasoning; the evidence relied upon was not enough to discharge the burden of proof that lay on the appellant. Judge Khan was presented with bald statements which he was entitled to give minimal weight given the known history of the family from the earlier entry clearance application.
10. With regard to the third ground, I do not find that the appellant has shown that Judge Khan acted unfairly in drawing inferences from what the documents from the appellant's mother and aunt did not contain. In so doing, Judge Khan was merely giving reasons as to why he found the documents to be weak evidence. He was entitled - in fact he was required - to make findings as to the strength of the evidence. To show that the weight given to the documents was not correct in law, the appellant would have to argue that the Judge's reasons were perverse and because the submissions come nowhere near that level I find there is no legal error.
11. As to the allegation of contradictory findings, I am satisfied that by the time Judge Khan came to his findings at paragraph 12(f) he had already indicated that he rejected the letter from the appellant's mother. If that is kept in mind, then he was right to say he had no evidence. It may be that Judge Khan could have written this in a different way but I find that the argument mounted by the appellant is one of semantics and not one that identifies a legal error.
12. As the grounds are not made out, I conclude there is no legal error in Judge Khan's decision and it stands.

## **Decision**

The decision and reasons statement of Judge A W Khan does not contain a legal error and stands.

Signed

Date

Judge McCarthy  
Deputy Judge of the Upper Tribunal