



IAC-AH-KRL-V1

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

Appeal Number: AA/07327/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 8th February 2016**

**Decision & Reasons Promulgated
On 21st March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

**MRS YA YUN NI
(NO ANONYMITY DIRECTION)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None

For the Respondent: Ms S Sreeraman, Home Office Presenting Officer

DECISION AND REASONS

1. The application for permission to appeal was made by the Secretary of State but nonetheless I shall refer to the parties as they were described before the First-tier

Tribunal, that is Mrs Ya Yun Ni as the appellant and the Secretary of State as the respondent. The Secretary of State applies, with permission, against the decision of the First-tier Tribunal Judge who dismissed the appellant's appeal on asylum grounds and humanitarian protection grounds but allowed the appeal on human rights grounds under Article 8.

2. The appellant did not attend the hearing and representatives did not attend on her behalf on the basis that she had not put them in funds.
3. The Secretary of State asserts that there was a material misdirection of law in that the judge failed to consider the mandatory public interest considerations under Section 117B of the Nationality, Immigration and Asylum Act. 2002.
4. Designated First-tier Tribunal Judge Manuell granted permission to appeal who stated that the judge's mention of the statute at [21] of her decision was by way of summary of submissions and, arguably, was not revisited sufficiently at paragraph 38 in the conclusions.
5. The background to the appeal is that the appellant is a citizen of the People's Republic of China, born on 21st August 1975 and she entered the UK illegally on 15th February 2006 and was served with an IS151A on 12th September 2013. She claimed asylum on 1st October 2013 and then applied for leave to remain outside the Rules on 16th October 2013 which was rejected. She renewed her application for leave to remain outside the Rules and on 14th October 2013 this was also rejected. A further application for leave to remain outside the Rules was made on 7th March 2014 and refused and the appellant now appeals under Section 82 of the Nationality, Immigration and Asylum Act against the decision to refuse her protection on 9th April 2015.
6. The First-tier Tribunal Judge found that the appellant's husband who was operating a Chinese restaurant in the UK did not have protection based leave as he was granted ILR outside the Rules and his asylum claim was refused. The appellant has two children in China. The judge at paragraph 34 found that the appellant would not be at risk on return to China and that she did not have a well-founded fear of persecution for a Convention reason. For similar reasons she had no claim under humanitarian protection or protection under the European Convention in relation to Article 3.
7. The judge found [36] that the appellant could not comply with paragraph 276ADE(1) and proceeded then to consider the application outside the Rules. The judge turned, at paragraph 36 of her decision, immediately to Article 8 but failed, contrary to **SS Congo v SSHD** [2015] EWCA Civ 317 to consider any of the provisions under Appendix FM and did not engage with the financial requirements.
8. The judge at paragraph 38 states

“she would almost certainly be able to make a successful application for leave to enter as a spouse given that her husband’s income from his takeaway restaurant is more than sufficient to meet the income threshold in Appendix FM”.

The judge, however, did not grapple with the detailed requirements in relation to Appendix FM or the remainder of the requirements under Appendix FM.

9. Additionally, the judge went on to consider the question of proportionality but failed to address Section 117B of the Nationality, Immigration and Asylum Act. Consideration of those requirement are mandatory and failure to do so constitutes an error of law.
10. I therefore find there is a material error of law and owing to the lack of relevant findings the matter should be returned to the First-tier Tribunal.
11. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

Signed

Date 10th March 2016

Deputy Upper Tribunal Judge Rimington