



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

Appeal Number: IA083092015
IA083362015

THE IMMIGRATION ACTS

**Heard at Field House
On 25 May 2016**

**Decision & Reasons Promulgated
On 26 May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

**Mr SI MING WANG
Ms HANGQIAO BAI
(Anonymity Direction Not Made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr D Mold, Counsel

For the Respondent: Mr Duffy, Senior Presenting Officer

DECISION AND REASONS

1. This matter comes before me pursuant to permission having been granted by Designated Judge of the First-tier Tribunal Murray dated 19 April 2016. The appeal relates to a decision by First-tier Tribunal Judge Thew promulgated on 30 October 2015 relating to leave to remain.
2. The Appellant's grounds of appeal seeking permission to appeal had contended that the Judge's decision was flawed because:

- (1) The Judge failed to consider the matters raised in respect of Ms Bai in respect of grounds made pursuant to section 120 Nationality Immigration and Asylum Act 2002;
 - (2) The Judge had erred in assessing whether the Respondent had failed to consider exercising her discretion or if she had fettered her discretion by not requesting additional documents before rejecting Mr Wang's application.
3. At the hearing before Mr Mold said that there was an agreed position between the parties. More specifically it was agreed that Ms Bai's appeal ought to be allowed and remitted to the Secretary of State to consider the 10 year long residence rules application. Mr Mold said that in so far as the second ground of appeal was concerned, namely that relating to Mr Wang in respect of evidential flexibility or discretion arising from missing evidence, that fell to be dismissed.
 4. Mr Duffy said that Ms Bai appeared to meet the 10 year long residence requirement, and subject to checks in respect of any gaps and other issues that may well succeed. He said that the Judge made a material error of law in not considering the s120 notice grounds as they were properly raised. He agreed Mr Wang's appeal be dismissed.
 5. Therefore having considered the joint position of the parties and noting that the Judge had not considered the s120 NIAA 2002 matters which were raised in the additional grounds submitted on behalf of Ms Bai, then it is clear that there was a material error of law. Ms Bai's appeal therefore succeeds to the extent that the Secretary of State will consider her long residence application.
 6. As for Mr Wang's appeal, the sole ground of appeal has, in effect, been abandoned. I therefore dismiss his appeal.

Notice of Decision

1. The decision of the First-tier Tribunal Judge in respect of Mr Wang's appeal did not involve the making an error of law. Therefore the decision dismissing his appeal is upheld.
2. The decision of the First-tier Tribunal Judge in respect of Ms Bai's appeal did involve the making of a material error of law and is therefore set aside. Therefore the Long Residence application raised by Ms Bai in her section 120 NIAA 2002 additional grounds will be considered by the Secretary of State.

No anonymity direction is made.

Signed

Date: 25 May 2016

Deputy Upper Tribunal Judge Mahmood