



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/01174/2015

THE IMMIGRATION ACTS

Heard at Field House
On 5 May 2017

Decision Promulgated
On 9 May 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MEIXIN DING
(ANONYMITY ORDER NOT MADE)

Respondent

Representation:

For the Appellant: Mr I Jarvis (Senior Presenting Officer)
For the Respondent: Mr G Davison (counsel)

DECISION AND REASONS

1. This is the appeal of the Secretary of State against the decision of the First-tier Tribunal allowing the appeal of Meixin Ding, a citizen of China born 5 May 1997, against the decision (of 29 May 2015) to refuse her application for entry clearance.
2. The application was for the Appellant to join her mother, the Sponsor, Guangmei Ni, who is present in the UK with leave to remain until 24 April 2017 (at the date of the hearing below, then a date in the future). Ms Ni is married to Leong Cheen Soon, a Malaysian citizen with indefinite leave to remain in the UK. The application set out that the Sponsor earned £23,053, and the Appellant's mother earned £10,735.

3. The application was refused because the Entry Clearance Officer considered that notarial certificates were so easily obtained as to be considered unreliable absent an actual death certificate. It was not accepted that the mother had sole responsibility for her case or that there were serious or compelling reasons rendering the child's exclusion undesirable. The relevant earnings threshold was £24,800 annually and the evidence available as to proof of earnings was unsatisfactory. The Entry Clearance Manager upheld those reasons on review.
4. The Appellant's younger brother, Meiheng Ding, applied for entry clearance subsequently, the third of his three applications being granted after two had been refused. He joined his mother and stepfather here on 9 December 2015. The fresh application route was barred to the Appellant as she was now over eighteen.
5. The First-tier Tribunal summarised the evidence before it as follows. The Appellant's mother was a Chinese national who had joined her husband on the basis of a spouse visa in August 2014. She, her husband and her youngest child, her son, now lived together. She had had parental responsibility for the Appellant since the latter's biological father died in October 2005. She was the only carer for the two children since their father's death. There were other children from her previous marriage but those half-siblings had never cared about the Appellant; her children from that relationship did not keep in touch with their relatives. Her only contact with them had been when seeking the biological father's death certificate. She had been the sole source of financial support to them since the father died; her new husband now helped her in supporting them.
6. The Appellant and her brother were very close to one another, and the former had become very worried about the latter's well-being when she had to move away began from home to pursue her degree studies in September 2015. Now she was stranded alone in China, whilst her brother in the UK showed visible signs of grief and anxiety at having effectively abandoned her there. The mother had visited the Appellant in April and December 2015 for periods of around a week.
7. The Appellant's stepfather gave evidence, stating that the family had been surprised when the biological father's death had been questioned given the same documentary evidence had previously been accepted by the entry clearance post. He ran his own business on a self-employed basis, and his wife worked for him; he paid her wages into the bank account. The Appellant was a full-time student who relied wholly on the money sent from the United Kingdom to support herself.
8. The First-tier Tribunal reminded itself that this was an appeal to which the statutory considerations identified in section 117A-D of the Nationality Immigration and Asylum Act 2002 applied. It accepted the evidence given before it as cogent and credible, and found that the biological father was indeed dead and that the financial requirements were met at the date of hearing, and probably met at the date of application. The Appellant was alone with her close family members now present in the UK. It was highly relevant that the Appellant's brother had been permitted to come to the UK; it was only her age that had prevented her from making a further

application herself. It was clear that their separation had left him feeling guilty and grief-stricken.

9. Having regard to these considerations and to the duty to secure the brother's best interests, the immigration decision to refuse entry clearance was disproportionate to the private and family life in play.
10. The Entry Clearance Officer applied for permission to appeal, which was granted.

Findings and reasons

11. At the hearing before me Mr Jarvis requested the Tribunal's permission to withdraw the appeal, as it had now become apparent that the Respondent would satisfy the requirements of the Rules if her case was properly analysed.
12. In all the circumstances I considered it appropriate to accede to this course of action, consistent as it is with the interests of justice. Unsurprisingly, Mr Davison had not objection for the Respondent.

Decision:

The appeal is recorded as withdrawn.

A handwritten signature in black ink, appearing to read 'MAS', with a long, sweeping underline that extends to the left and then curves back under the signature.

Signed:
Deputy Upper Tribunal Judge Symes

Date: 5 May 2017