



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/25747/2015**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 29 September 2017**

**Decision & Reasons
Promulgated
On 16 October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR YI HE

(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr S Walker, a Senior Home Office Presenting Officer
For the Respondent: Ms C Fielden of Counsel

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge A J M Baldwin. To avoid confusion I shall refer to the Secretary of State as such throughout and to Mr Yi He as the claimant.
2. The claimant is a citizen of China who was born on 20 August 1993. He made an application for entry clearance to settle in the United Kingdom with his parents in 2011. The Entry Clearance Officer refused to grant entry clearance on 2 November 2011. The claimant appealed against that decision to the First-tier Tribunal and in a decision promulgated on 31 August 2012 First-tier Tribunal Judge Adio allowed the claimant's appeal.

The claimant entered the United Kingdom on 3 March 2013. He was granted leave to remain in the United Kingdom to 13 March 2015. On 9 March 2015 he applied for further leave to remain in the United Kingdom. The Secretary of State refused the claimant's application on 6 July 2015. The claimant appealed against that decision to the First-tier Tribunal.

The hearing before the First-tier Tribunal

3. In a decision promulgated on 5 January 2017 First-tier Tribunal Judge A J M Baldwin allowed the appellant's appeal. The First-tier Tribunal found that the appellant's situation is in some respects exceptional, that the Secretary of State had accepted the judicial decision that allowed the claimant to join his father who had settled status in the UK and that the claimant has gone on to establish a private and family life in the UK in the expectation that this is where he would now live. The judge concluded that private and family life the claimant had been permitted to develop lawfully in the UK is such that it would be disproportionate and unreasonable to expect him to leave the UK.
4. The Secretary of State applied for permission to appeal against the First-tier Tribunal's decision and on 25 July 2017 First-tier Tribunal Judge Page granted permission to appeal.

The hearing before the Upper Tribunal

5. The grounds of appeal assert that the judge failed to properly assess the public interest in his assessment outside the Immigration Rules. Reliance is placed on the cases of **Mostafa [2015] UKUT 00112** and **Adjei [2015] UKUT**. It is asserted that the public interest outside the Immigration Rules must be assessed through the lens of the Immigration Rules - reliance being placed on the case of **SS Congo [2015] EWCA Civ 387**. Ground two asserts that the judge misdirected himself in law in finding that the claimant had an expectation that he would be permitted to remain in the United Kingdom. It is asserted that the claimant entered the UK at the age of 19 with limited leave to remain until 2015. It was submitted that no unambiguous promise was made to the claimant to give rise to a legitimate expectation of settlement. The appellant's 2012 appeal was allowed outside the Rules in circumstances pertaining to the date of decision in 2011 and that it would have been obvious that a further application for further leave would have to be made as an adult. Given that the appellant's mother still has no leave the claimant could not possibly hope to succeed under Rule 298. The third ground asserts that the judge has failed to apply the mandatory provisions in Section 117B, has failed to weigh the maintenance of immigration control and made no findings of financial independence. It is asserted that judge had failed to give little weight to a private life contracted when the status was precarious contrary to Section 117B(5). It is asserted that has these matters been properly assessed and taken together with the judge's negative findings with regard to English language at paragraph 22 the scales would have weighed against the claimant in the proportionality of assessment.

6. The claimant's representative handed up a skeleton argument at the beginning of the hearing. She also provided a copy of the decision of First-tier Tribunal Judge Adio who heard the claimant's appeal in 2012. After a short adjournment to permit Mr Walker to consider the documents the hearing recommenced.
7. Mr Walker indicated that having now seen the decision of Judge Adio in the claimant's case it was clear that the claimant was granted leave that did not follow the decision made by Judge Adio. Following that decision he accepted that the claimant ought to have been granted indefinite leave to remain because the appeal was allowed on the basis of the appellant's application for leave to settle as a minor in the United Kingdom with a parent who was settled here. He submitted that this raised the **Devaseelan** point and therefore the grounds of appeal submitted by the Secretary of State were now incorrect. He accepted that the First-tier Tribunal decision, having now seen the decision by Judge Adio, was correct. He accepted that following the decision of Judge Adio the claimant ought to have been granted indefinite leave to remain to settle in the United Kingdom and that it was an error to have granted him discretionary leave to remain. In light of those factors the First-tier Tribunal decision that the claimant had a legitimate expectation that he would be permitted to remain in the United Kingdom on the facts of this case that the claimant still lives with his parents and is dependent on his father cannot be considered to be in error.
8. There was no need for me to hear any further submissions from Ms Fielden. Given the Secretary of State's acceptance that in light of the decision of Judge Adio First-tier Tribunal Judge Baldwin did not err in reaching the conclusion that on the facts of this case (the starting point was the decision of Judge Adio) the claimant has been allowed to establish private and family life in the United Kingdom with a legitimate expectation that he would be allowed to remain here such that it would be disproportionate and unreasonable to expect him to return to China.
9. There was no error of law in the decision of the First-tier Tribunal. The appeal to the Upper Tribunal by the Secretary of State is dismissed. The decision of the First-tier Tribunal stands.

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.

Signed P M Ramshaw

Date 12 October 2017

Deputy Upper Tribunal Judge Ramshaw