



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

Appeal Number: HU/10707/2018

THE IMMIGRATION ACTS

**Heard at Field House
On July 31, 2019**

**Decision & Reasons Promulgated
On August 7, 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**KIN [W]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Appiah, Counsel (Direct Access)

For the Respondent: Mr Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a Chinese national who originally came to the United Kingdom on May 23, 2000 with leave to enter and remain until May 23, 2001. On October 30, 2014 he was granted leave to remain outside of the Immigration Rules until April 30, 2017 based on his relationship to his son.
2. On March 16, 2017 the appellant applied for further leave to remain on the basis of continuing family life with his son, but the respondent refused this application on April 24, 2018. The appellant appealed this decision under Section 82(1) of the Nationality, Immigration and Asylum Act 2002.

3. Judge of the First-tier Tribunal Nightingale dealt with his appeal on the papers and in a decision promulgated on April 24, 2019 the Judge found that the appellant did not satisfy the Immigration Rules (Section E-LTRPT.2.4. and Section EX.1. of Appendix FM of the Immigration Rules) and further found that at the date of hearing there was no family life existing between the appellant and his child and it would not be disproportionate to remove him.
4. The appellant appealed this decision and was granted permission by Judge of the First-tier Tribunal Andrew on June 12, 2019 who found there was an arguable error in law on the basis the FtT Judge had not considered Section 55 of the Borders, Citizenship and Immigration Act 2009. In granting permission, Judge of the First-tier Tribunal Andrew stated that the FtT Judge had made sustainable findings in relation to contact between the appellant and his son.

PRELIMINARY ISSUES

5. I raised with Ms Appiah whether Section 55 of the 2009 Act was something which this Tribunal needed to concern itself with, in light of the findings and comments made by both Judge of the First-tier Tribunal Andrew and the FtT Judge with regard to family life. The point being that if there was no family life in existence then Section 55 would not be a consideration that would have troubled the FtT Judge.
6. Ms Appiah conceded that Section 55 would only need to be considered where Article 8 applied and in light of the restricted grant of permission she accepted that based on the FtT Judge's finding, the reality was Section 55 was not a matter that would trouble this Tribunal in this case.

FINDING

7. Having considered the papers and most importantly the FtT Judge's decision, I have concluded there is no error in law.
8. The FtT Judge considered the issue of family life and whilst the decision was not the most detailed, he nevertheless gave adequate reasons for finding no family life.
9. Grounds of appeal had been submitted against the decision, but ultimately Judge of the First-tier Tribunal Andrew had found that the findings on contact and ultimately Article 8 were open to the FtT Judge and it cannot therefore be an argument that Section 55 was not considered.
10. In the circumstances there was no error of law and I therefore dismiss this appeal.

DECISION

11. There was no error of law. I uphold the decision.

12. No anonymity direction is made.

Signed

Date

2 August 2019

A handwritten signature in black ink, appearing to read 'SP Alis', with a horizontal line underneath.

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

There is no fee award made because the appeal was dismissed.

Signed

Date

2 August 2019

A handwritten signature in black ink, appearing to read 'SP Alis', with a horizontal line underneath.

Deputy Upper Tribunal Judge Alis