



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/23299/2018

THE IMMIGRATION ACTS

Heard at Field House
On 15 May 2019

Decision & Reasons Promulgated
On 14 January 2020

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

MISS HUALING WANG
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Barnfield of Counsel, instructed by Pickup Scott Solicitors

For the Respondent: Ms A Everett, Home Office Presenting Officer

AMENDED DECISION AND REASONS

1. This decision has been amended pursuant to rule 43 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended). The decision promulgated on 10 December 2019 was sent to the parties in error. An oral decision was given at the end of the hearing on 15 May 2019. I am satisfied, pursuant to paragraph 43(2)(d) that there has been a procedural irregularity, and therefore, applying paragraph 43(1)(a), that it is in the interests of justice to set aside the decision of 10 December 2019 and to remake the decision.

2. The appellant is a citizen of China born on 13 August 1979. The appellant appealed against the decision of the respondent of 2 November 2018 to refuse her leave to remain in the United Kingdom as a partner of a British citizen.
3. First-tier Tribunal Judge Grimmatt dismissed the appellant's appeal in a decision dated 28 January 2019 both under the Immigration Rules and Article 8 of the European Convention on Human Rights.
4. Permission to appeal was granted by Deputy Upper Tribunal Judge Black in a decision dated 16 April 2019 stating that the First-tier Tribunal may have arguably erred by stating that the burden is upon the appellant, which is not correct in far as S-LTR.1.6 is concerned, and furthermore, the judge does not appear to have directed herself as to the correct test for assessing dishonesty.
5. The First-tier Tribunal Judge found the following which I summarise. The appellant did not meet the suitability requirements of the Immigration Rules because although she indicated in the application form that she had no convictions, she was convicted and imprisoned for ten weeks in June 2007 for failing to produce an immigration document. On 25 September 2012, the appellant was arrested and cautioned on suspicion of running a brothel. The judge did not believe the appellant's explanation that she was not aware of the caution or having received one.
6. The judge noted that in the personal history section of the application form, the appellant was asked if she had ever been convicted of any criminal offences in the United Kingdom or any other country and she stated, "no". She was asked if she had ever been subject to a caution and the appellant indicated, "no". The judge was satisfied that the appellant had not been honest in the application form that she submitted to the respondent and therefore she does not meet the suitability requirements of the immigration rules in light of her previous immigration history and she does not meet the eligibility requirements as she has had never had leave to remain in the United Kingdom.
7. In respect of Article 8 of the European Convention on Human Rights, the judge accepted that there will be a separation from the appellant's partner's son if the appellant leaves the United Kingdom and stated that it is for the appellant's partner to decide whether he wishes to accompany the appellant to China or whether he wishes to remain in the United Kingdom in order to maintain his regular face-to-face contact with his son in the United Kingdom. At paragraph 19, the judge stated that there are no exceptional circumstances, considering that the appellant came to the United Kingdom without leave and has been imprisoned and cautioned in the United Kingdom.
8. The grounds of appeal which were argued before me by Mr Barnfield raise five points, the first point being that the judge did not have the evidence which it was incumbent on the respondent to produce, which is a caution. There is merit in this

particular ground because no evidence of a caution was produced by the respondent. The appellant's explanation was that she had never been cautioned to her knowledge.

9. However, the appellant also did not refer to her conviction in the application form that she submitted to the respondent. The respondent refused her application under S-LTR.1.6, which is a mandatory ground for refusal. Therefore, the other grounds of appeal have no merit because the appellant did not mention her conviction in her application form and no credible explanation was given by the appellant, for that omission. I find that there is no material error of law made by the judge, in respect of dismissing the appellant's appeal under the Immigration Rules.
10. In respect of Article 8, I find there is a material error of law in the proportionality assessment carried out by the judge. The judge did not give adequate reasoning for her decision or give consideration to the family life of all the members of the appellant's family which will be impacted by her removal. For the judge to say that the appellant's partner, who is a British citizen, can either stay or leave is not a proportionate analysis.
11. I therefore set aside the decision of the First-tier Tribunal in respect of the Article 8 decision and remit it to the First-tier Tribunal for evidence to be led on the family life of the appellant and her partner and her partner's son. The appeal be placed before any other judge other than Judge Grimmett.

Notice of Decision

The appeal is remitted to the First-tier Tribunal

No anonymity direction is made.

Signed

Dated this 7th day of January 2020

Deputy Upper Tribunal Judge Chana

TO THE RESPONDENT **FEE AWARD**

I make no fee award

Deputy Upper Tribunal Judge Chana