



Upper Tribunal  
(Immigration and Asylum Chamber)

PA/06646/2020

THE IMMIGRATION ACTS

Heard at George House, Edinburgh  
by *Skype for Business*  
on 22 July 2020

Decision & Reasons Promulgated  
On 10 August 2020

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

**BO QU**

Appellant

and

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

*For the Appellant:* Mr B Criggie, of Latta & Co, Solicitors

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

DETERMINATION AND REASONS

1. The appellant is a citizen of China, born on 21 January 1964. She appealed to the FtT against the respondent's decision dated 4 July 2019. FtT Judge David C Clapham SSC dismissed her appeal by a decision promulgated on 13 November 2019.
2. The appellant appealed to the UT. She did not challenge the FtT's findings on protection grounds. She argued that there was error on article 8 of the ECHR.

3. By a decision dated 15 May 2020, UT Judge Keith set aside the decision of the FtT. At [12] he found error through lack of analysis of the nature and quality of family life among the appellant, her adult son, and her daughter-in-law. At [13] he found on private life that the FtT's analysis on integration in China was insufficiently explained. At [15], having regard to the limited scope of the issues remaining and of the fact-finding necessary, the case was retained in the UT for remaking of the decision.
4. A transfer order was made to enable decision-making to be completed by another UT Judge.
5. Parties had no objection to a remote hearing. Representatives attended remotely. No member of the public attended, either remotely or in person. There were a few "glitches" to resolve, and brief loss of connection, but representatives raised no significant concerns over the eventual quality of communications. I was satisfied that the technology had enabled a full and fair hearing.
6. Mr Criggie advised that the appellant elected not to attend or give oral evidence. The interpreter was discharged.
7. I am obliged to both representatives for their clear and concise submissions.
8. The main matters advanced for the appellant were these:
  - (i) At the time of the FtT hearing the appellant was in immigration detention. The current position is that she has been admitted to bail and resides with her son and daughter-in-law. She is fairly elderly, and depends on her family financially, with no recourse to benefits.
  - (ii) The appellant spent most of her 16 years in the UK "under the radar", on the margins of society. The conclusion to be drawn was not that she is resilient and resourceful, but rather that she is vulnerable and in need of her family connections.
  - (iii) The appellant is now in a much more desirable situation, in a family unit, and no burden on the state.
  - (iv) The appellant has no close relatives in China. No similar situation is available to her there. She faces difficulties in obtaining identification and any form of assistance.
  - (v) An additional factor in her favour is the medical report, with a diagnosis of depression and anxiety, and showing the value of family support.
  - (vi) The appellant's son and daughter-in-law are well established in the UK.
  - (vii) The UT should find that family life exists, within the scope of article 8, and that the appellant faces very significant obstacles to integration in China.
  - (viii) The appeal should be allowed on either or both of family life and private life grounds.

9. The main points for the SSHD were:
- (i) The FtT's finding that the appellant advanced an untrue protection claim remained in place, a factor adverse to her general credibility, and to her human rights claim.
  - (ii) The value to be attached to the appellant's witness statement was further lessened by her choice not to give evidence, and not to be tested by cross-examination.
  - (iii) Despite the appellant's evidence to the contrary, it was more likely than not that she supported herself by working unlawfully in the UK, and she might still be doing so.
  - (iv) Family life had not continued throughout the time after the appellant's son became an adult, but ceased around 2009, as they lived separately and had no contact for several years.
  - (v) The evidence did not show financial dependency on relatives, or financial independence from the state.
  - (vi) Family life which ceased to exist between adult relatives might resume through change of circumstances. There was no reason to doubt that the appellant presently lives with her son and daughter-in-law. However, there was nothing to show ties of such strength as to justify a finding of family life within the scope of article 8.
  - (vii) If family life did exist within the meaning of article 8, there was no feature showing it to be disproportionate to remove the appellant to China.
  - (viii) If family life had resumed, that happened while parties knew that the appellant had no right to be here, so it should be given little weight.
  - (ix) There was no evidence that the appellant speaks English.
  - (x) The appellant was a long term overstayer who had worked unlawfully.
  - (xi) The balance of relevant matters in terms of family life was heavily against the appellant.
  - (xii) On private life, and integration, the appellant is a citizen of China; she speaks Mandarin; she is familiar with the culture; she would have to re-adjust, but there is nothing to show she would not be able to do so; nothing to show she might be destitute; and nothing to stop her son supporting her from the UK.
  - (xiii) The psychological report was not by a medical doctor, and did not contain a specific diagnosis. It did not disclose that the appellant had sought any medical intervention. It was based on a brief interview. It accepted assertions about difficulties for the appellant which the FtT had found not to be true. The report should be given little weight.
  - (xiv) Even taking the report at highest, there was nothing in it, or in the rest of the evidence, amounting to very significant obstacles to integration.
  - (xv) The appeal should be dismissed.

10. Mr Criggie replied on these points:
  - (i) The adverse credibility findings on the protection claim were not a reason to reject the evidence about family and private life, where the appellant was supported by the evidence of her son and her daughter-in-law.
  - (ii) The author of the report was a consultant psychologist, well qualified to form a view after a 60 minute appointment.
11. I reserved my decision.
12. I accept, for present purposes, that the appellant has lived with her son and daughter-in-law since her release from detention, and that she does not presently receive state benefits.
13. The appeal does not involve any real conflict on the primary facts. Credibility is not to the fore.
14. I accept that the author of the report was well qualified to give an opinion. The appellant did attribute her resentments in life largely to the claim which was found not to be credible; however, for present purposes, I do not take that as undermining the author's finding of anxiety and depression.
15. On other points above, I broadly prefer the submissions for the SSHD, for the reasons given; and I find that the balancing of considerations required by part 5A of the 2002 Act is adverse to the appellant.
16. Section 117A, so far as relevant, states:
  - (1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts –
    - (a) breaches a person's right to respect for private and family life under Article 8, and
    - (b) as a result would be unlawful under section 6 of the Human Rights Act 1998.
  - (2) In considering the public interest question, the court or tribunal must (in particular) have regard –
    - (a) in all cases, to the considerations listed in section 117B ...
  - (3) In subsection (2), 'the public interest question' means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2).
17. Section 117B states:
  - (1) The maintenance of effective immigration controls is in the public interest.
  - (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in

the United Kingdom are able to speak English, because persons who can speak English –

- (a) are less of a burden on taxpayers, and
- (b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons –

- (a) are not a burden on taxpayers, and
- (b) are better able to integrate into society.

(4) Little weight should be given to –

- (a) a private life ...

that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

18. The appellant has family life in the broad sense of the word with her son and his wife, but family life in the core sense, of the nature protected by article 8, ended years ago, during his early adulthood.
19. The appellant has not provided evidence to support a finding of dependency, emotional or financial, or of links which are otherwise out of the ordinary between a mother and her adult son.
20. Even if a finding of family life had been made, there is no feature of that which would render the appellant's removal disproportionate.
21. The appellant is a Chinese citizen. There is no reason to think she would be in any difficulty in documenting herself with the Chinese authorities, if she chose to do so. As the respondent accepts, she would have to readjust, but there is no reason to think that would be difficult. She has specified nothing which might rationally be found to be a very significant obstacle to integration.
22. The appellant's immigration history is poor.
23. The appellant does not speak English.
24. The appellant may not currently receive public funds, but there is no evidence that her son has the wealth or the inclination to keep her indefinitely from being a burden on the taxpayer. It is likely that in the medium to longer term she would consume rather than contribute to public resources.
25. The appellant's private life has been established while her status has been precarious, and, for most of the time, unlawful.

26. The appellant's private life carries little weight.
27. The balance of considerations is heavily to the effect that the interference with the appellant's right to respect for private and family life is justified under Article 8(2).
28. The decision of the FtT has been set aside. The decision substituted is that the appeal, as brought to the FtT, is dismissed.
29. No anonymity direction has been requested or made.
30. The date of this decision is to be taken as the date it is issued to parties.



UT Judge Macleman

Date: 3 August 2020

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#### NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.