IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004251

First-tier Tribunal Nos: HU/53911/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 17 November 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

HUI YANG
(NO ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr C Lam, Counsel; instructed by MRKS Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

Heard at Field House on 2 November 2023

DECISION AND REASONS

1. The Appellant, a citizen of China, appeals against the decision of First-tier Tribunal Judge Turner ("the Judge") dated 30th August 2023 dismissing the Appellant's human rights appeal on several bases including his failure to meet Appendix Private Life concerning whether or not he had accrued 20 years' continuous residence in the United Kingdom.

2. The Appellant applied for permission to appeal on seven grounds. Permission to appeal was granted by First-tier Tribunal Judge Seelhoff on 2nd October 2023 in following the terms:

1. The application is in time.

2. The majority of grounds are challenges to credibility findings that were open to the judge to make and amount to simple disagreements with those findings rather than identifying errors of law. In other cases they go to matters that likely would have no impact on the overall outcome of the appeal (ground 1).

3. Ground 6 however challenges the approach to the evidence of a supporting witness Mr Deqin, a childhood friend of the Appellant who claimed to have met the Appellant in the UK in August 2001 and to have had regular contact with him since that time. The Judge dismissed his evidence on the basis that; "I also note that Mr Dequin claims to be a childhood friend and so not an independent nor objective witness."

4. The fact that a witness is neither independent, nor objective does not mean they are neither truthful nor reliable. It is arguable that without more than was noted it was not appropriate to dismiss Mr Dequin's evidence.

5. Permission to appeal is granted on all grounds.

3. After hearing submissions, I reserved my decision which I now give. I do find that the judge materially erred in law for the following reasons.

4. In respect of Ground 1, arguing that the judge should not have found at §39 that it was incredible that the Appellant could stay in touch with his wife and son despite being physically absent for 20 years, the reason given by the judge for finding against the Appellant reads as follows: "I find it highly unlikely that the Appellant's son has not made efforts to have contact with his father in person, if a relationship persists, as indicated by the Appellant. I must have regard to the fact that people do behave in different ways to how one may expect however I do find it difficult to comprehend this aspect of the claim". Although the judge correctly directed herself that people behave in different ways, her inability to understand how the Appellant could maintain contact with his wife and child was not material or relevant to the assessment of whether or not the Appellant could establish he had resided in the UK for twenty years. Put another way, whether or not the Appellant had maintained contact with his wife and son, would not impact upon whether or not he could establish that he had resided in the UK for twenty years and therefore the judge allowed an immaterial consideration to infect her assessment of whether or not the Appellant could establish his case on the evidence presented. In any event, the self-direction that people act in different ways meant that it did not matter whether or not it was difficult for the judge to comprehend their actions as this statement disregards the same self-direction that people can and do act in different ways to what a judge might do or comprehend, but this does not make their actions less plausible or credible unless they are deemed to be wholly implausible, impossible or irrational (see Keene, LJ's judgment in Y v. Secretary of State for the Home Department [2006] EWCA Civ 1223 at [25]-[26], for illustration).

5. Turning to Ground 2, and the complaint that the judge was not entitled to find against the Appellant owing to his comment that all of his friends and contacts were in UK whereas he had a wife and son in China. Upon examining the papers before the judge, it is plain that the Appellant's representative did mention in his application that he "has lost most of his contacts in China except with his direct

family. He has a wife in China…" but this makes the comment in his appeal statement that "all my friends and contacts are in the UK" somewhat hard to reconcile with the fact his wife remains in China which the Refusal Letter explicitly addressed. As an aside, the son was not mentioned on the application form but was only mentioned for the first time in oral testimony which is an anomaly that the judge did not directly address. Nonetheless, given that the judge does not appear to have been aware that the wife was mentioned on the application form, I am only just persuaded that it was not open to her to find that the statement in his witness statement impacted upon his credibility, without this previous disclosure being first considered and the inconsistency being put to the Appellant.

6. In respect of Ground 3, and the judge finding that the Appellant was evasive as to where he first stayed and whether or not his Uncle visited him in London, I do not find that there is any error in the judge's decision in this respect as Mr Clarke rightly pointed out that the judge's criticism extended to the Appellant being unable to identify who he stayed with in Chelmsford as opposed to merely being unable to give the name of the town. Additionally, the judge did not err in finding that there was an inconsistency between the Uncle's evidence and that of the Appellant as the decision records that the Appellant said his Uncle visited him in London for tea, whereas the Uncle said he never went to London at all but remained in touch remotely. This was a glaring inconsistency that it was open to the judge to note.

7. In relation to Ground 4, I note that the application form explicitly gave Fei Yang as an alias for Hui Yang and the Respondent raised in her review that there was no evidence connecting the two names as belonging to the same person. The Appellant had addressed this issue in his witness statement alleging (without any proof from a linguist, I note) that the names Fei and Hui are written the same in Cantonese and Mandarin respectively and that these both relate to him. I make no comment as to whether that evidence is sufficient to establish the point, but in any event, this was an issue that the judge plainly needed to address as there was a dispute between the parties as to whether the name was attributable to the Appellant or not and the judge failed to consider the Appellant's explanation before disposing of this issue against him.

8. Turning to Ground 5 and the argument that the judge found against the Appellant due to his working illegally and having a poor immigration history, I find that the judge erred in so doing as this finding is inconsistent with the route and purpose set out by the long residence concession and the need to regularise the status of those working here unlawfully so that they can pay taxes and contribute to the economy. Thus, those who have worked unlawfully are not prevented from meeting the rule as the Court of Appeal has acknowledged that these individuals need to work and support themselves (rather than imposing a burden on the state): see Aissaoui v. Secretary of State for the Home Department [2008] EWCA Civ 37 at [31]-[32] and ZH (Bangladesh) v. Secretary of State for the Home Department [2009] CWCA at [16]), for illustration.

9. Turning to Ground 6 and the argument that it was not open to the judge to disbelieve a witness because they were not independent or objective (i.e. they were an acquaintance of the appellant), I find that this argument demonstrates a further error of law given that, as Judge Seelhoff rightly observes in granting permission to appeal, the fact that a witness is neither independent, nor objective does not mean they are neither truthful nor reliable. Indeed, to preclude this

category of evidence which is quintessential of the evidence normally seen in this cohort of appeals would undermine the ability of an appellant to establish their presence which is invariably undocumented for the large part, particularly since the onset of the hostile environment from 2012 making it unlawful to hold a bank account or a driving licence or rent accommodation etc..

10. Finally, in relation to Ground 7, it is argued that the judge's finding that it was reasonable to assume if the Appellant could borrow £20,000 to travel to the UK in 2001 that he could fund travel back and forth to China thereafter. Mr Clarke sought to persuade me that it would not cost that sum of money to return to China once here, however that does not explain either how an Appellant could then afford to return unlawfully, nor how they were able to do so, nor why there is no evidence from the Respondent from the border pointing to their departure to China or return whether lawfully or unlawfully or on another identity. I find that this finding was not open to the judge to reach without first exploring the circumstantial evidence that was not provided to support her finding which was otherwise unreasoned.

11. In summary, as discussed above, I find that there are material errors of law in the decision (save for Ground 3), such that it must be set aside.

Notice of Decision

12. The Appellant's appeal is allowed.

13. The decision of the First-tier Tribunal involved the making of material errors of law.

14. The appeal is hereby remitted to IAC Taylor House to be heard *de novo* by any judge other than First-tier Tribunal Judge Turner.

Judge P.Saini

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

11 November 2023