IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004276
UI-2023-004278

First-tier Tribunal No:
HU/59167/2022 HU/59169/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 11 April 2024

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

MEMEI LIN & MINGSHU CHEN
(no anonymity order requested or made)

Appellants

and

Secretary of State for the Home Department

Respondent

For the Appellant: Mr A Boyd, of Alexander Boyd, solicitors, Glasgow
For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

Heard at Edinburgh on 20 March 2024

DECISION AND REASONS

1. FtT Judge Prudham dismissed the appellant's appeal by a decision dated 7 September 2023.

2. The tribunal found against the appellants for a number of reasons, but one important point was whether their younger child in China was, as they claimed, an adopted child.

3. At [30] the Judge said:

> I found the whole narrative around the adopted daughter to be inconsistent and implausible. I accept that the appellants have two children in China. However, I do not accept that the youngest child is adopted. It follows that I

> find the 1st appellant returned to China in 2007/08. I do not therefore consider that he has lived continuously in the UK for 20 years.

4. The appellants would not necessarily have succeeded if they had proved the first appellant's claimed continuity of residence, but it was a significant issue.

5. The appellants sought permission to appeal to the UT, on grounds headed 1, 2, and 3 A – D.

6. On 29 September 2023, Judge Hollings-Tennant granted permission only on ground 3A:

> Ground 3A asserts that the Judge erred in law by making irrational findings with no evidential basis. Whilst his findings are not arguably irrational given the inconsistencies in evidence … there is some merit in the assertion that such discrepancies … ought to have been put to the appellants in the interest of fairness. It is also not entirely clear to me whether the Judge considered the appellants' evidence as to the informal nature of the adoption as an explanation for the lack of official paperwork or the extent to which the "one child policy" was of relevance before concluding the first appellant returned to China. It also seems clear the Judge missed evidence relating to the appellants' previous legal representatives, as noted in ground 3C, though it is not entirely clear how this, in itself, takes their case much further.

7. It is convenient to deal immediately with the last point in the grant, referring to ground 3C. The Judge erred at [32] in saying that he was not told who previous legal representatives were. That information was in the statements and other papers before him. However, the slip shows no error in the much more significant observations that no complaint had been made about prior representatives, and they had not been given the opportunity to comment on allegations made about them.

8. The appellants have provided a skeleton argument, which, to some extent, seeks to rely on grounds on which permission was not granted, and on which no further application was made to the UT. The argument includes this:

> The Judge's finding that the appellants' adopted daughter is their biological daughter was made entirely on a contrived supposition that the 1st appellant somehow might have travelled to China in 2007/08, conceived the child and made another epic and illegal journey to the UK to continue his residence here.

9. Mr Boyd focused the point as one of being taken by surprise by the Judge developing his own theory that the first appellant had returned to China. He also sought to found upon the alleged period of absence, even if it did take place, not being shown to be of such length as to interrupt 20 years continuous residence.

10. At first sight of the decision and the grounds I thought there might be force in the "no fair notice" challenge. The Judge's findings around return

to Chian are not necessarily decisive, but they are a strong feature of his decision.

11. Mr Mullen, however, drew attention to the respondent's decision (which, unfortunately, has neither page nor paragraph numbers) at pp 37-38/603 of the bundle provided by the appellants to the UT, where it says:

> You have stated the child's name is Yong Ting Chen and [she] was born on 14 August 2008. On page 6 and 7 of your application form you stated you would provide evidence of Yong Ting Chen's adoption and/or birth certificate. No evidence has been provided that would conclusively show that you and your partner have officially adopted Yong Ting Chen and that [she] is not in fact you and your partner Meimei Lin's biological child. You have therefore lived in the UK for 12 years 01 months and it is not accepted you have lived continuously in the UK for at least 20 years.

12. That passage puts the appellants squarely on notice. There was no surprise.

13. On 18 March 2024, very late in proceedings, the appellants sent to the UT a copy adoption certificate, bearing to be sealed on 14 March 2009, with a translation from Chinese into English, certified on 14 April 2024. The appellants are named as adoptive parents, both at the same address in Fujian, China. This is not accompanied by any application for its admission into evidence; might give rise to many questions; and the respondent has had little chance to consider it. Mr Boyd, correctly, did not seek to argue that it had any relevance at the "error of law" stage, so it does not affect this outcome.

14. The argument about the first appellant's absence from the UK, if it did happen, not being proved to be of such duration as to transgress the 20 year requirement is a rather misleading one. It was not incumbent on the respondent to show the exact dates of any absence, which would be plainly impossible. It was for the appellant to make his case, which had been refused also on suitability grounds, a large part of which was to show his general credibility, and to make out his explanations for non-attendance at interviews, and for use of different names. The question of return to China was interwoven with those matters.

15. The appellants show no procedural unfairness. Apart from that point, their case has been advanced as strenuously as it could be, both in the FtT and in the UT, but the grounds in the UT are no more than insistence and disagreement on the facts. They do not show that the FtT's analysis of the evidence before it involved the making of any error on a point of law. The appeal to the UT is dismissed. The decision of the FtT stands.

Hugh Macleman

Judge of the Upper Tribunal, Immigration and Asylum Chamber

25 March 2024