IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001987

First-tier Tribunal No: HU/51633/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 06 February 2025

Before

UPPER TRIBUNAL JUDGE LODATO
DEPUTY UPPER TRIBUNAL JUDGE FRANTZIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ZAN LI
(NO ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Mr Diwnwyz, Senior Presenting Officer
For the Respondent: Mr Holt, counsel instructed by Berwick Solicitors

Heard at Phoenix House (Bradford) on 20 January 2025

DECISION AND REASONS

Introduction

1. We have decided not to maintain the anonymity order originally made in these proceedings by the First-tier Tribunal. At the outset of the error of law hearing, we invited the parties to make submissions as to what might justify taking the exceptional step of anonymising the appellant, a step which would naturally go against the fundamental principle of open justice. Neither side was able to point to any feature of the case which could justify depriving the public of their right to know the identity of a party to these public judicial proceedings. We were satisfied that the fundamental principle of open justice was not outweighed by any other factors and decided against making an anonymity order.

2. The Secretary of State appeals with permission against the decision, dated 20 April 2022, of First-tier Tribunal Judge Turner ('the judge') to allow the appeal on human rights grounds.

3. To avoid confusion, and for the remainder of this decision, I will refer to the appellant in these appellate proceedings, the Secretary of State for the Home Department, as the respondent and the respondent in the Upper Tribunal, Ms Li, as the appellant, as they were before the First-tier Tribunal.

Background

4. The appellant's immigration history is not in dispute between the parties. The appellant's case was that it would breach her Article 3 and Article 8 human rights if she were not permitted to remain in the UK where she claimed that she would continue to reside with her British long-term partner. She argued that if she were returned to China, she would encounter very significant obstacles to integration and would encounter conditions which would breach her Article 3 human rights because there was a real risk that she would commit suicide and would be unable to access the necessary treatment for her mental health conditions.

Appeal to the First-tier Tribunal

5. The appellant appealed against the refusal, dated 21 April 2021, of her claim. The appeal was heard by the judge on 19 April 2022 before allowing the appeal on human rights grounds in a decision promulgated on 20 April 2022. Given the grounds of appeal relate to discrete parts of the decision, I will address the relevant parts in the discussion section below.

Appeal to the Upper Tribunal

6. The respondent applied for permission to appeal in reliance on the following grounds:

- Ground 1 – the structure of the decision is unlawful on the basis that the judge allowed the appeal on human rights grounds despite finding that family life was not engaged and, in the alternative, that the interference with family life was not disproportionate.
- Ground 2 – the judge unlawfully failed to resolve a dispute between the parties because she did not decide whether the appellant's removal would amount to a breach of her Article 3 human rights.
- Grounds 3 & 4 – the judge erred in law in how she approached the applicable legal test and the fact-finding analysis which went to the assessment of whether there were very significant obstacles to integration on return to China.

7. Following the refusal of permission to appeal in the First-tier Tribunal, the respondent renewed the application to the Upper Tribunal. In a decision dated 11 October 2022, Upper Tribunal Judge Frances granted permission for all grounds to be argued. The following observations were made in granting permission:

> *The judge considered Article 8 and concluded the appeal should not be allowed outside the immigration rules. He then went on to find there were very significant obstacles to integration under paragraph 276ADE of the Immigration Rules.*
>
> *It is arguable the judge misdirected himself in law and his findings are contradictory, irrational and inadequately reasoned. All the grounds are arguable.*

8. At the error of law hearing, we heard oral submissions from both parties. We address any submissions of significance in the discussion section below.

Discussion

9. The structural concern outlined within ground one is that the judge considered the Article 8 *family life* claim first, in the context of her findings, from [51] of the decision. This followed Mr Holt's (appellant's counsel in the First-tier Tribunal as he was before us) concession that the appellant could not meet the definition of a partner for the purposes of Appendix FM of the Immigration Rules. He therefore encouraged the judge to deal with this part of the human rights claim first, and separately. The judge adopted this approach, reached factual findings on the nature and strength of the relationship and the relevant background which included the appellant's criminality and the deprivation of her acquired British citizenship. The judge then turned to a Razgar-framed (R (Razgar) v SSHD [2004] 2. A.C. 368) analysis in which she reached a series of findings adverse to the appellant. The appellant and her partner were found not to share a qualifying family life for the purposes of Article 8 at [60]. However, between paragraphs [63] and [71], the judge considered the proportionality of the refusal decision if she was wrong as to whether Article 8 was engaged. In a detailed, balanced and careful assessment of the competing public interest and private factors going to family life, the judge resolved this balancing exercise against the appellant.

10. The judge's analysis, between paragraphs [51] and [71] of the decision, was a complete answer to the argument that the refusal decision amounted to a disproportionate breach of the appellant's family life under Article 8. However, this self-contained analysis was in all respects couched in terms of the relationship the appellant shared with her British partner and did not stray into the appellant's *private life* claim. Following the consideration of the family life claim outside of the Immigration Rules, the judge immediately turned her attention to the private life claim encapsulated by the requirement within paragraph 276ADE(1)(vi) of the Immigration Rules for the appellant to establish that she would face very significant obstacles to integration on return to China. Upon finding facts in the appellant's favour which were then relied upon to find that the legal tests were satisfied, the judge proceeded to allow the appeal on Article 8 human rights grounds without undertaking a Razgar-structured approach in order to conclude that the decision to refuse leave to remain on private life grounds was disproportionate.

11. It is fair to say that Mr Diwnwyz did not pursue this ground (or the remaining three grounds) with vigour at the hearing. He accepted that the judge adopted an unorthodox structure to her decision because she had followed the approach suggested to her by Mr Holt to grapple with the family life claim first as a separate analytical exercise. He further recognised that there were no flaws in the legal self-direction or the factual substance of the analysis touching on the existence of very significant obstacles to integration. He therefore did not seek to persuade us that the overall outcome would have been any different if the judge had taken the additional steps of considering the private life through the lens of the Razgar-framework. This was because upon reaching the conclusion that the application ought to have succeeded under the relevant provision of the Immigration Rules, TZ (Pakistan) v SSHD [2018] EWCA Civ 1109 applied in the sense that the refusal became a manifestly disproportionate interference with her Article 8 private life rights.

12. We have no hesitation in concluding that the judge should have woven the findings she reached in the context of paragraph 276ADE into a conventional Article 8 analysis guided by the sequence of questions provided in Razgar. It was only upon such a structured approach that the Article 8 human rights appeal could have been lawfully allowed. However, the respondent must not only show that there was an error of law in the challenged decision, but the error must also be material in the sense that a different outcome might have obtained. In accepting that the refusal would have inevitably amounted to a disproportionate interference once it was found that the very significant obstacles test was satisfied, the respondent was also accepting that any error was not material. It follows that this ground of appeal has not been made out. At paragraph 8 of the written grounds of appeal, it was remarked that "[i]t may be that this criticism is one of form over substance […]". We agree.

13. The conclusions we have reached on ground one function to have a decisive impact on the materiality of ground two. After the judge reached the conclusion that the appeal succeeded on the strength of the private life claim, she immediately noted, at [80], that she was not minded to address the Article 3 human rights claim. It is not difficult to see why this approach was taken. Once it had been decided that the appellant's Article 8 private life rights would be breached on return to China, there was no longer any risk, much less a real risk, of her being returned to face conditions which might breach her Article 3 human rights. As Mr Diwnwyz properly accepted, the prospect of return to China became an entirely abstract proposition once the appeal had succeeded on Article 8 grounds. There was little to be gained by the academic exercise of assessing the Article 3 claim in these circumstances. We can discern no error of law in not resolving the merits of this dimension of the appeal.

14. Grounds three and four can be taken together as they are challenges to the legal and factual approach taken by the judge to the assessment of the existence of very significant obstacles to integration. Mr Diwnwyz did not press these grounds and characterised one of the factual challenges, that the judge should have considered alternative possible forms of employment against her previous work as a chef, as amounting to little more than a "speck of dust in a dustpan" which could not have made any difference to the overall outcome. He further observed that the challenges to the findings of fact under this heading could be easily characterised as disagreements. When he replied to the appellant's submissions, he described what he had heard as "irresistible". We are inclined to agree that the factual challenges mounted against the decision under grounds three and four are without any substance and are nothing more than disagreements going to evidential weight. There was nothing to support the overly broad submission made at paragraph 13 of the written grounds that the judge "misunderstood the nature of the high threshold" especially when seen against the self-direction at [73] which faithfully distilled the test from the leading authority of SSHD v Kamara [2016] EWCA Civ 813.

15. We are not satisfied that any of the grounds of appeal reveal material errors of law in the decision. Accordingly, we dismiss the appeal.

Notice of Decision

16. The decision of Judge Turner did not involve material errors of law. It follows that we dismiss the appeal and her decision stands undisturbed.

Paul Lodato

Judge of the Upper Tribunal
Immigration and Asylum Chamber

31 January 2025