Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: OA/01990/2011
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THE IMMIGRATION ACTS

Heard at Glasgow	**Promulgated**
On 6 March 2014	**On 18 July 2014**

Before

MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE MACLEMAN

Between

YUFANG HUANG
REN LI

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr A Caskie, instructed by Katani & Co Solicitors
For the Respondent: Ms C Gough, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The sponsor is a national of China. He has an unedifying immigration history, but he has indefinite leave to remain in the United Kingdom, confirmed following a successful appeal to the First-tier Tribunal. The appellants are his wife and son, the latter now aged 20. The appellants' appeal to this Tribunal against the determination of Judge J C Grant-Hutchinson in the First-tier Tribunal dismissing their appeals against the decisions of the respondent on 22 November 2010 refusing them entry clearance with a view to settlement as the wife and minor child of the sponsor.

2. As will be apparent from the date of the decision under challenge, these appeals have a long history. As it happened, the appeals against the Entry Clearance Officer's decision coincided with an investigation by the Secretary of State into the status of the sponsor. At the date fixed for the hearing before the First-tier Tribunal, the sponsor had been recently detained, and so did not appear. There was no very clear explanation for his absence. The judge proceeded to determine the appeals, and dismiss them. On 18 July 2011 he was served with Notice of a Decision under s 10 of the Immigration and Asylum Act 1999, which had the effect of invalidating his leave. He had an in-country right of appeal which he exercised, successfully as we have said: on 20 December 2011 the First-tier Tribunal sent out its decision allowing his appeal. No immediate action was taken by those representing him or the appellants. The next event of note is an application, long out of time, for permission to appeal against the First-tier Tribunal's determination. That application was granted by a First-tier Tribunal Judge: although it is far from clear on what basis he decided to extend time. The Upper Tribunal remitted the appeals to the First-tier Tribunal and they were heard by Judge Grant-Hutchinson on 3 July 2013. At that stage the issues between the parties were firstly, whether the marriage was subsisting and the parties intended to live together, and secondly, whether there would be adequate maintenance for the appellants, without recourse to public funds, if they were admitted to the United Kingdom. Judge Grant-Hutchinson found in the appellants' favour on the first point, but dismissed the appeal because she was not satisfied as to maintenance. Her conclusions on that issue are the subject of the appeal to this Tribunal.

3. We are concerned with events as they were at the date of the decision on 22 November 2010. The second appellant was well under 18. The judge correctly referred to the levels of income support which would payable to a family consisting of the sponsor and the appellants if they were entitled to claim benefits. She then calculated the sponsor's income net of housing costs, and found that, on the basis of the documents produced to her, it was over £240 a week short of what would be required to maintain his family adequately. It had been suggested to her that the most important of the documents produced to her, that is to say, the sponsor's tenancy agreement, misstated the rent as weekly, when monthly rent was intended: she did the calculation on that basis too, and found that there would still not be sufficient money: the shortfall was over £36 per week, and that was without taking into account any Council Tax liability, because the judge had no information about whether the rent included Council Tax or not.

4. The judge therefore concluded that the appeal must be dismissed for failure to meet the maintenance requirements of the rules.

5. Earlier in her determination, the judge had described the issue of maintenance as arising unexpectedly in the hearing before her. The judge who granted permission to appeal against Judge Grant-Hutchinson's decision remarked that it was not easy to see why that was the case, because maintenance had been in issue in the original

Notice of Decision. We agree. The parties had had some years' notice of the issue. In any event, the appellants' representative was given time to reassess the position, and confirmed the sponsor's instruction to proceed with the appeal on the basis of the material available.

6. The grounds of the appeal attempt to exploit the judge's acceptance that the matter was unexpected, by asserting that "since the appeal the sponsor has advised that his wife had employment in 2010 in China", which had not been taken into account. The grounds also assert that the judge failed to take into account the sponsor's savings, amounting to some £2,412 in total, and the proceeds of the sale of a house, evidenced by the first appellant's bank account book. All the documentation relevant to the savings was, it is said, before the First-tier Tribunal.

7. The judge who granted permission to appeal remarked that it is unlikely that the sponsor's savings could in the end make very much difference, and the first appellant's alleged employment in China in 2010 does not seem to affect the matter at all; but the issue of the proceeds of the sale of the house might do so, and on that basis she granted permission.

8. At the hearing before us, without objection from Ms Gough or the Tribunal, Mr Caskie relied on all the financial strands of the grounds. He did his very best with them, but in our judgment he entirely failed to show any proper basis upon which it could be said that the First-tier Tribunal Judge erred in law or that, in any event, the appeal ought to have been allowed on the maintenance issue.

9. Mr Caskie's first difficulty is that it does not appear that the sources of income now said to be determinative of the issue were ever referred to in the course of the proceedings before the First-tier Tribunal or indeed at any previous time. There is nothing in the nature of the amount of savings, or the other suggested sources of finance, which could be regarded as pointing unambiguously to their availability or use for the maintenance of the family, and in these circumstances we find it very difficult indeed to see what error the First-tier Tribunal Judge is said to have made.

10. But, if we had been satisfied that she erred in failing to take into account the material that was before her in the sense now urged, it does not help very much. Even given the further time of preparation for the appeal before us, many of the figures are still vague. The issue of Council Tax is still uncertain. The cost of the air tickets (which would have to come out of the savings) is still unknown. The issue of whether the lease contains an error in its important terms is still unresolved.

11. So far as the savings are concerned, if we deducted the amount Mr Caskie suggested - £800 – for the air tickets, there would be a little over £1600 left, which, on the best interpretation of the facts would make up the shortfall for rather under a year: that is to say, if there were no other charges on it, no liability to pay Council Tax and if the rent is in truth payable monthly. The savings do not, therefore, assist the appellants to show that they would be adequately maintained even for the duration of the initial

validity of the visa which they seek. We should record in addition that Ms Gough said that there appeared to have been previous earnings, on which tax may be payable. That is too generalised an assertion for us to be able to take into account as influencing our decision, but it is a factor which might possibly assist in showing that the decision is unlikely to be unjust.

12. So far as the funds arising from the sale of the house are concerned, it is certainly true that evidence of them was before the judge. Page 197 of the bundle shows a credit of 1,310,000 RMB on 22 March 2011, and this is said that that is the proceeds of the sale of the house. Before that payment, the first appellant's savings were very modest indeed. There is also a document apparently dated 19 November 2010, recording a payment of a sum of £21,500 to the sponsor's Bank of China's account. We mention that for completeness: the appellants do not appear to rely on it, and the sponsor's recent witness statement does not mention it. That statement repeats the evidence of the sponsor's wages and his savings, and says that the family home was sold in March 2011 and that the proceeds of sale are indeed the 1,310,000 RMB, described as equivalent to about £13,578.80.

13. The sale of the house was well after the date of the decision: indeed it is specifically stated by the sponsor to have been in response to the decision. It was clearly not envisaged on the date of the decision, on which date the appellants must have hoped that their applications would be granted, rather than being refused. There is no evidence that on the date of the decision it was properly foreseeable that the house would be sold or indeed that if sold it would readily reach any particular amount of money. More to the point, however, is that it is accepted that the sponsor and the first appellant have other family members remaining in China. There is no evidence, and there has never been any evidence, of the extent to which their needs have to be met out of proceeds of the sale of the house. Mr Caskie's submission on that issue was simply that "there was no evidence that the money would not be sensibly divided" between relevant family members. As a submission that the house ought to have been regarded at the date of the decision as an asset capable of furnishing any specific amount of money sufficient to enable the appellant's to meet the requirements of the Rules, that is, in our judgment, hopeless.

14. In summary, therefore, the position is that we are not persuaded that the judge made an error of law; but even if she had done and we were looking at the evidence ourselves with the benefit of Mr Caskie's submissions, our judgement is that by a very substantial margin the appellants would not have made their case. These appeals are accordingly dismissed.

C M G OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 11 July 2014