



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/17384/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 21 November 2018**

**Decision & Reasons
Promulgated
On 12 December 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR CHANGCAI WANG
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms N Willocks-Briscoe, Home Office Presenting Officer
For the Respondent: Mr C Lam, Counsel

DECISION AND REASONS

1. This is the Secretary of State's appeal from the decision of First-tier Tribunal Judge Shore promulgated on 12 September 2018. The applicant is a citizen of China born on 20 July 1985.
2. The judge dealt with the applicant's poor immigration history and went through the documentation. At paragraphs 44 and following the judge set out the arguments that had been raised and made necessary findings. The findings are to be found at paragraph 52 and following. The issues for the judge to consider were the statutory public interest

criteria, particularly section 117B, in relation to a child where that child's best interests had been determined to lie in remaining in this country.

3. The judge made reference to Home Office guidance dated 22 February 2018 extracts of which I have had placed before. The judge's material conclusions are at paragraph 61 and following:

"61. The respondent's view appears to be that it is not reasonable to expect a British child to leave the UK with a parent or primary carer but it is clear that the Home office are considering whether the child will actually leave the UK. If the child would not or would not be likely to continue to live in the UK with another parent or primary carer then the Home Office consider EX.1(a) is likely to apply. It might however be appropriate to refuse to grant leave to a parent/primary carer where their conduct gives rise to public interest considerations of such weight as to justify their removal when the child could remain in the UK with another parent/primary carer who has leave. The circumstances given as an example are significant or persistent criminal offences falling below the deportation threshold or a very poor immigration history having repeatedly and deliberately breached the Rules.

62. The Upper Tribunal in **SF and Others (Guidance post-2014 Act) Albania [2017] UKUT 00120 (IAC)** held, considering the August 2015 Guidance, that even in the absence of a 'not in accordance with the law' ground of appeal the Tribunal ought to take the Secretary of State's guidance into account if it points clearly to a particular outcome in the instant case. Only in that way can consistency be obtained between those cases that do and those that do not come before the Tribunal.

63. I have considered the respondent's 2018 Guidance and find that it would not be reasonable to expect the child to locate to China. He is a British citizen and has the right to reside here even if he is still at pre-school age. I accept that if the appellant is removed the child's mother would take up the role of primary carer however the best interests of the child must be to remain in a family environment with both parents and this was not a matter considered in any detail by the decision-maker. The appellant has cheated on a TOEIC test and has overstayed but I do not find these matters to be a 'very poor immigration history having repeatedly and deliberately breached the Immigration Rules'. As suggested in the guidance in making this finding I follow the principle in **MT and ET (child's best interests; ex tempore pilot) Nigeria [2018] UKUT 00088**. His history is poor but not very poor in my finding. The appellant meets the requirements of Section 117B(6) and his appeal is therefore allowed."

4. The principal arguments advanced on behalf of the Secretary of State are that the judge erred in law in reading too narrowly and restrictively the Home Office's own guidance. It is said is that the judge has taken what are merely examples in the guidance and elevated them to the status of exhaustive statements. It is further said that the judge has not applied the balance correctly because in this instance the

