Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/15698/2019 (V)

THE IMMIGRATION ACTS

Heard at Field House via Skype for Business
On 27 October 2020

Decision & Reasons Promulgated
On 17 November 2020

Before

MR CMG OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE SMITH

Between

MISS JACQUELYN KANG MARTINEZ

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Toora, instructed by Sabz Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

BACKGROUND

1. The Appellant appeals against the decision of First-tier Tribunal Sangha promulgated on 22 August 2019 dismissing her appeal made on human rights grounds ("the Decision").

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2. The Appellant is a British National (Overseas) Citizen ("BN(O)") formerly resident in Hong Kong. She came to the UK in 2007 then aged sixteen years with her brother and her parents. Her father is a Filipino national and her mother is a British citizen. The Appellant initially had leave to enter as the dependent of her mother valid until 25 September 2009. She made an in-time application for further leave on 24 September 2009 but that was refused. A further application was also subsequently refused. The Appellant has overstayed since that time. She made another application on 25 April 2019 which led to the Respondent's decision dated 6 August 2019 which is under challenge in this appeal.

3. At the heart of the Appellant's application to remain in the UK and her case on appeal is her assertion that she is no longer entitled to permanent residency in Hong Kong and would not be permitted to return there. She says that there would be very significant obstacles to her integration in Hong Kong and that she is entitled to succeed applying paragraph 276ADE(1)(vi) of the Immigration Rules ("the Rules") or alternatively outside the Rules. The Judge rejected that case. It was also said on the Appellant's behalf that she has no family left in Hong Kong but her case in that regard was rejected by Judge Sangha who found on the evidence that the Appellant still has both sets of grandparents living in Hong Kong ([16] of the Decision). The Appellant's own evidence was that she remains in contact with her grandparents and would be able to live with them if returned.

4. The Appellant challenges the Decision on two grounds. First, she says that the Judge ought to have adjourned the hearing before him to permit her "to obtain expert legal opinion from the authorities in Hong Kong and the Philippines in relation to [her] current and [sic] ability to obtain nationality and immigration status in those countries" ([4] of the grounds). She says that, as a result of the Judge's refusal to adjourn, she has been denied a fair hearing. Second, she says that the Judge "has erred by failing to make any proper findings or properly considering paragraph 177B [sic] of the Nationality, Immigration and Asylum Act 2002" ([10] of the grounds). It is said that the Judge failed to appreciate the reasons why the Appellant overstayed, failed to give adequate weight to the Appellant's private life and family ties in the UK and wrongly found that the Appellant is not financially independent.

5. Permission to appeal was granted by First-tier Tribunal Judge Feeney on 5 May 2020 in the following terms so far as relevant:

> "... 2. The Judge considered the appellant's adjournment request but concluded that because the appellant had had ample time to instruct an expert the request would be refused. The judge did not appear to consider the principles set out in <u>Nwaigwe</u> and in particular whether the appellant could have a fair hearing without the adjournment. It may be that the answer to this question is that the appellant could still have a fair hearing, but the question was not asked the judge arguably erred in not considering the issue.
>
> 3. I am less persuaded by the appellant's submission that the judge failed to take into account the section 117B factors. The Judge clearly did, and the

factors cited by the appellant such as ability to speak English and be financially independent are neutral factors in any event.

4. Notwithstanding this I grant permission on all grounds."

6. The hearing before us was conducted remotely via Skype for Business with the agreement of both parties. There were no technical difficulties. We had before us the Appellant's bundle of documents before the First-tier Tribunal to which we refer as [AB/xx] and the supplementary bundle also for that hearing to which we do not need to refer. There was no further evidence produced by the Appellant nor any application under Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 to adduce any.

7. The issue before us was whether the Decision contains an error of law. Having heard Mr Toora's submission, we concluded that it did not and indicated that we would provide our reasons for that conclusion in writing which we now turn to do.

DISCUSSION AND CONCLUSIONS

First Ground

8. This ground was the main focus of Mr Toora's oral submissions and indeed is the main plank of the written grounds.

9. The basis of the adjournment request is set out at [4] of the Decision as follows:

> "At the start of the proceedings Mr Toora on behalf of the Appellant applied for an adjournment. He indicated that the Appellant had lived in Hong Kong but had lost her right of residence there and referred me to page 69 of the Appellant's main bundle. He submitted that it was necessary to obtain a legal opinion as to whether in law the Appellant could go back to live in Hong Kong."

10. The adjournment request was opposed by the Respondent. Having noted that, the Judge refused the adjournment in the following terms:

> "[4] … I refused Mr Toora's adjournment request. I informed Mr Toora that the Appellant had had ample time to obtain a legal opinion bearing in mind that the Home Office refusal letter was dated 6 September 2019 and therefore the Appellant had had enough time to take legal advice and the Appellant's solicitors were aware of the issue since he had referred me to the extract at page 69 of his main bundle."

11. In order to consider the fairness of the hearing thereafter (which we accept is the issue for us), it is necessary to set the reasons which lay behind the adjournment request in their factual context.

12. As is evident from what is said above about the adjournment request, the reason why it was said that an adjournment was necessary was in order to obtain a legal opinion concerning the Appellant's right to return to and live in Hong Kong. That issue was first raised in the covering letter to the Home Office written by the Appellant's solicitors on 29 April 2019 as follows ([AB/40]:

"**Please note that the applicant is British national (overseas), she is not Hong Kong Special Administrative Region as per the link below she needs to be a Chinese citizen and she is not Chinese or of Chinese descent. The Hong Kong Special Administrative Region Passport is a passport issued only to the permanent residents of Hong Kong who also hold Chinese citizenship. Please refer to the following links for more detail.**

Hong Kong Special Administrative Region passport – Wikipedia

https://en.wikipedia.org/wiki/Hong_Kong_Special_Administrative_Region_passport

In addition, please also note that the applicant does not have a residence for any country. She was born in Hong Kong; she has lost her residence in Hong Kong as foreign national born in Hong Kong cannot be out of the country for more than 3 years."

[emphasis as per original document]

13. The Respondent dealt with this aspect of the Appellant's case as follows ([AB/4-5]):

"You have stated that as you are a British National (Overseas) and not a Hong Kong National you have lost your residence in Hong Kong as you have been outside of Hong Kong for over three years.

We have reached this decision because you claim that you wish to remain in the UK to work; however, you can return to Hong Kong and legally gain employment there. The qualifications and work experience you have gained in the UK will assist you in finding employment.

Although you state that you are not a Citizen of Hong Kong, there is no evidence to show that you would be unable to reside in Hong Kong, despite your British National (Overseas) status."

14. As the Judge noted at [4] of the Decision, the need for a legal opinion to establish the Appellant's right to reside in Hong Kong was said by the Appellant to stem from a document which is at [AB/69]. We therefore turn to see what that document is. It is a document taken from the internet, apparently from the Hong Kong Government website. Its date is not apparent from the document. It is headed "Loss of Hong Kong Permanent Resident Status". The table which appears in the document is prefaced by the following introduction:

"A permanent resident of the Hong Kong Special Administrative Region (HKSAR) who is not of Chinese nationality will lose the status of a permanent resident under the following circumstances"

[our emphasis]

The document then contains a table which we replicate below:

	Category of persons who acquired permanent resident status by virtue of being	**Circumstances under which the person will lose the status of a permanent resident**
(1)	A person not of Chinese nationality who has entered Hong Kong with a valid travel document, has	• If a person has been absent from Hong Kong for a continuous period of not less than 36 months since

	ordinarily resided in Hong Kong for a continuous period of not less than 7 years and has taken Hong Kong as his/her place of permanent residence before or after the establishment of the HKSAR.	he/she ceased to have ordinarily resided in Hong Kong.
(2)	A person under 21 years of age born in Hong Kong to a parent who is a permanent resident of the HKSAR in category (1) above before or after the establishment of the HKSAR if at the time of his/her birth or at any later time before he/she attains 21 years of age, one parent has the right of abode in Hong Kong.	• If a person has been absent from Hong Kong for a continuous period of not less than 36 months since he/she ceased to have ordinarily resided in Hong Kong; or • On attaining the age of 21 years, a person will cease to be a permanent resident of the HKSAR. He/she will then have to qualify on his/her own merits in accordance with the requirements stipulated in category (1) above. If a person meets all of the requirement, he/she can apply for permanent resident status.

15. We make a number of preliminary observations about that document, as canvassed with Mr Toora during his submissions. First, as Mr Toora was constrained to accept, the document is merely an extract and is not set in context. Second, as Mr Toora also accepted, the document deals only with permanent residence and the loss of that status. It says nothing about a person's right to enter Hong Kong or live there. In discussion with Mr Toora we drew the analogy with the UK immigration system. It could not be said that an individual coming to the UK, for example, to work or study would need indefinite leave to remain in order to do so or would be entitled to insist on that status on arrival. He or she would have to spend a period legally in the UK in order to qualify. We recognise of course that the position may be different in Hong Kong. That is not for us to determine. The point is that the evidence on which the Appellant relies as showing that she would not be able to enter Hong Kong and live and work there does not even begin to establish that case. As we also pointed out to Mr Toora, on the face of the document itself, it suggests at least that a person in the position of this Appellant would need to re-establish a right to permanent residence not because she has been outside Hong Kong for three years but because she has now turned 21 years. However, the document also suggests that she may be able to qualify for that right after a continuous period of time spent in Hong Kong under the first category.

16. The other document to which Mr Toora made reference during his submissions is the Appellant's own statement where, at [3] she says this:

> "I confirm I was born in Hong Kong and am a holder of a British National (Overseas) passport. I do not hold a Hong Kong Special Administrative Region Passport and nor do I hold permanent residence rights in Hong Kong. I have now resided outside of

> Hong Kong for more than 12 years and have therefore lost residency rights as a result of being out of the country for a period exceeding 3 years."

As Mr Toora accepted, the Appellant is not an expert in Hong Kong immigration and nationality laws. It appears from what is there said that the Appellant is drawing upon what is said in the document at [AB/69] which we have set out above. We also make the observation that the Appellant's own case appears to proceed on a further confusion between nationality and a right to enter and reside. Simply because the Appellant is not entitled to be issued a passport showing her to be a citizen of the Hong Kong Special Administrative Region does not mean that she is not entitled to enter the territory. Indeed, we note in passing that, when the Appellant's BN(O) passport was lost by the Home Office, in 2009, her father and brother returned to Hong Kong in order to obtain a replacement from the British consulate there.

17. Finally, before returning to the refusal of the adjournment request, we set out how Judge Sangha resolved the issue concerning the Appellant's entitlement to return to Hong Kong. Having set out the content of the document at [AB/69] at [15] of the Decision, the Judge made the following findings:

> "16. The evidence before me is that the Appellant's mother was born in Hong Kong but her father was born in the Philippines. The Appellant herself was born in Hong Kong. The Appellant gave evidence before me to indicate that both sets of her grandparents are also living in Hong Kong. She indicated that her maternal grandfather was a British citizen and that her maternal grandmother was an Indian citizen and that her paternal grandparents were both Filipino nationals but both sets of grandparents are and have been living in Hong Kong since before the Appellant was born and living there continuously. The Appellant also indicated, particularly in answers to questions from me, that she would be able to live with her grandparents in Hong Kong if she had to return there and that she has contact with her grandparents by telephone and WhatsApp.
>
> 17. Mr Toora on behalf of the Appellant submits that there would be very significant obstacles to the Appellant integrating into Hong Kong if she were to return there. His position is that when the Appellant arrived here she was a permanent resident of Hong Kong but in view of the indication in the extract at page 69 of the Appellant's main bundle she had now lost her permanent resident status in Hong Kong because she had been absent from the country for more than 36 months and as a British National (Overseas) citizen nor did she have an automatic right of abode in the UK. Mr Toora indicated that the Appellant was now over the age of 21 and would therefore have to apply for permanent resident status in Hong Kong on her own merits and that it may not be granted and that that was the hurdle and submitted that that was an 'insurmountable obstacle'.
>
> 18. However, in my assessment of the evidence, both sets of the Appellant's grandparents have been continuously resident in Hong Kong since the Appellant was born. The Appellant's mother was born in Hong Kong. The Appellant herself was born in Hong Kong. In my assessment no evidence has been put before me to show that the Appellant would not be able to travel back to Hong Kong for any reason. If the Appellant were to return to Hong Kong with her British National (Overseas) passport there is no evidence before me that she

> would not be allowed entry into Hong Kong bearing in mind that she previously lived there and indeed both sets of her grandparents continue to live there. In view of the fact that she is now over the age of 21, what the extract at page 69 states is that she would have to qualify on her own merits in accordance with the requirements would be able to apply for permanent resident status. The extract does not say that the Appellant would not be able to return to Hong Kong and stay there. The extract simply sets out the basis on which the Appellant would on her own merits apply for permanent resident status. In the light of those circumstances I find that the Appellant has not shown that there would be very significant obstacles to her integration into Hong Kong."

18. Much of what is said in that passage is consistent with our own observations as above. Mr Toora confirmed that he was unable to argue that the Judge's findings at [18] contain any legal error. He did at one point appear to suggest that the issue for the Judge was whether the Appellant could "freely" return to Hong Kong but, as the Judge noted, that was not the issue. The issue was whether there was an impediment to return which would constitute a "very significant obstacle" to the Appellant's integration in that country.

19. The Appellant's grounds do not challenge the Judge's findings on this issue save as to lack of reasoning based on what is said to have been the evidence at [AB/69]. The Appellant's principal argument is not that the Judge has reached a finding which is not open to him but that the Judge should have permitted an adjournment in order to allow the Appellant to clarify the legal position in Hong Kong. We therefore return to that issue.

20. The Appellant's grounds take issue with the Judge's refusal of the adjournment request on two bases. First, it is said that the Judge failed to give adequate reasons for the refusal. Second, it is said that the Judge deprived the Appellant of a fair hearing because it was not possible to have one without the legal opinion which she sought to obtain. In consequence, the Appellant says, the Judge has not acted in the interests of justice.

21. We can deal with the first of those challenges very shortly. The Judge gave as his reason for refusing the request that the Appellant had ample time to obtain the evidence she sought now to adduce. As we have already noted, the position on return was an issue which her own solicitors had raised in April 2019. They were therefore aware that they needed to establish the assertion made. As a firm of solicitors, one would expect that they would be well aware that, in order to prove a point of foreign law, the Tribunal would require evidence from a suitable expert. There is no explanation for their failure to gather such evidence. Although we accept that the Appellant is not legally qualified, she is now aware that her representatives did not garner the evidence which they should have in order to establish her case on this point. Mr Toora indicated in his submissions that he had advised of that need on the morning of the hearing and that is, of course, the basis on which the adjournment request was put forward. Mr Toora confirmed that the Appellant had made no complaint about her solicitors and indeed she continues to instruct them.

22. Turning then to the second basis of challenge to the refusal to adjourn, the Appellant relies on "Presidential Guidance Note No 1 of 2014: The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014" ("the Guidance Note") and the guidance given in Nwaigwe (adjournment; fairness) [2014] UKUT 418 ("Nwaigwe").

23. The relevant part of the Guidance Note reads as follows:

> "**Adjournments**
>
> 6. Rule 4(3) gives the power to adjourn or postpone a hearing. This power must be exercised in accordance with the overriding objective and having regard to any other relevant considerations. The decision of the Upper Tribunal in Nwaigwe (adjournment; fairness) [2014] UKUT 00418 (IAC) emphasises the importance of the test of fairness and the question of whether a party will be deprived of a fair hearing if an adjournment is refused.
>
> 7. Each application to adjourn must be considered on its own merits, examining all the factors brought to the Tribunal's attention. When reaching a decision on such an application, the Tribunal may also have regard to information already held and its own special expertise (see rule 2(2)(d)).
>
> 8. Factors weighing in favour of adjourning an appeal, even at a late stage in proceedings, include.
>
> > (a) Sudden illness or other compelling reason preventing a party or a witness attending a hearing. Normally such a reason should be supported by medical or other relevant evidence, unless there has been insufficient time to obtain such evidence. However, where there is no likelihood that the party will be able to attend a hearing within a reasonable period, a hearing may proceed in absence where the tribunal considers that this is in the interests of justice in terms of rule 28.
> >
> > (b) Late changes to the grounds of appeal or the reasons for refusal which change the nature of the case. The terms of rules 19(7), 23(2)(b) and 24(2) should be taken into account, as appropriate, when considering changes to the grounds or reasons.
> >
> > (c) Where further time is needed because of a delay in obtaining evidence which is outside the party's control, for example, where an expert witness fails to provide a report within the period expected.
>
> 9. The following factors, where relevant, may weigh against the granting of an adjournment.
>
> > (a) The application to adjourn is not made at the earliest opportunity.
> >
> > (b) The application is speculative, such as, for example, a request for time for lodging further evidence where there is no reasonable basis to presume that such evidence exists or could be produced within a reasonable period.

(c) The application does not show that anything material would be achieved by the delay, for example, where an appellant wants more time to instruct a legal representative but there is no evidence that funds or legal aid is available.

(d) The application does not explain how the reason for seeking an adjournment is material to the case, for example, where there is a desire to seek further evidence but this evidence does not appear to be material to the issues to be decided.

(e) The application seeks more time to prepare the appeal when adequate time has already been given. In such circumstances, the Tribunal may take into consideration a failure to comply with directions. However, a failure to comply with directions will not be sufficient of itself to refuse an adjournment."

24. The guidance given in the headnote and for which Nwaigwe is reported reads as follows:

> "If a Tribunal refuses to accede to an adjournment request, such decision could, in principle, be erroneous in law in several respects: these include a failure to take into account all material considerations; permitting immaterial considerations to intrude; denying the party concerned a fair hearing; failing to apply the correct test; and acting irrationally. In practice, in most cases the question will be whether the refusal deprived the affected party of his right to a fair hearing. Where an adjournment refusal is challenged on fairness grounds, it is important to recognise that the question for the Upper Tribunal is not whether the FtT acted reasonably. Rather, the test to be applied is that of fairness: was there any deprivation of the affected party's right to a fair hearing? See SH (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 1284."

25. We accept of course the proposition that hearings must be conducted fairly and that the essential question is whether the affected party was deprived of a right to a fair hearing. We draw attention however to the other guiding principle set out in the Guidance Note – that of the overriding objective which includes the obligation to avoid delay in the administration of justice, so far as compatible with the proper consideration of the issues. The exercise of the power to adjourn has to be done fairly but also consistently with the interests of justice. In other words, simply because a party asserts that he or she would like the opportunity to adduce further evidence the need for which was not previously appreciated does not give rise to an obligation to adjourn. So much is clear from the examples given at [9] of the Guidance Note.

26. We also accept that it would have been preferable if Judge Sangha had provided reasons why the hearing should not be adjourned in terms of the fairness to the Appellant who sought that adjournment. However, as is made clear by the guidance in Nwaigwe, our job when assessing a challenge to the Judge's refusal to adjourn is to ask ourselves the question whether the affected party has been deprived of the

right to a fair hearing and not whether the First-tier Tribunal has acted reasonably when refusing the adjournment.

27. Returning to the basis on which the adjournment was sought, the Appellant's position was that she could not prove her case as to return to Hong Kong without a legal opinion demonstrating that she was correct in her assertion that the authorities there would not permit her to return to live. However, the Appellant was relying on a misconception as to the position. As we have already pointed out, the extract on which she relied and which she sought to bolster by expert evidence does not show what she seems to think it does. It merely shows that the Appellant has probably lost her permanent resident status. As Judge Sangha pointed out at [18] of the Decision there was simply no evidence that the Appellant would not be allowed to return to live and work in Hong Kong.

28. The only other evidence in support of the Appellant's wish to obtain expert evidence was her own witness statement. However, the Appellant is not a lawyer. Her own lawyers are clearly not expert in Hong Kong immigration law. At best, therefore the Appellant was speculating on the possibility that there might be some law in Hong Kong which would prevent her, as a person born and brought up to the age of sixteen years in that country to parents lawfully living there at the time, from returning.

29. It was also relevant, as Judge Sangha pointed out, that the Appellant had sought to rely on this issue from the outset. She had at least six months to obtain the evidence to make out her case; probably longer since her solicitors should properly have investigated the position prior to making the assertion in April 2019.

30. Judge Sangha was therefore faced with a last-minute adjournment request on the morning of the hearing to delay the resolution of the Appellant's case based on a speculative assertion that there might be evidence which would support an aspect of the Appellant's case which she had raised from the start but had done nothing to try to prove.

31. Moreover, the evidence which the Appellant had produced to date did not assist her. As Judge Sangha pointed out, the Appellant appears (wrongly) to have thought that the document at [AB/69] showed that she could not return. But it did not, as Judge Sangha pointed out at [18] of the Decision.

32. For those reasons, there was simply no evidential basis put forward by the Appellant to support her assertion that there was a need for expert opinion on this issue. Her assertion that such evidence was necessary fairly to dispose of the case was speculative. We observe that the reasons weighing against the adjournment are precisely those set out at [9(a)] to [9(d)] of the Guidance Note. The Appellant's desire for an adjournment had to be weighed against the overriding objective not to delay hearings unnecessarily. When that is done, we are firmly of the conclusion that the refusal to adjourn did not deprive the Appellant of a fair hearing. It was not in

the interests of justice to adjourn. Whilst Judge Sangha's reasoning might have been fuller, we, as he, would have refused to adjourn the hearing.

Second ground

33. We can take this ground more shortly. Whilst Mr Toora did not abandon the ground, he made only very limited submissions about it. In essence, the Appellant's case in this regard is that the Judge failed properly to consider the factors in Section 117B Nationality, Immigration and Asylum Act 2002 ("Section 117B") when carrying out the balancing exercise which had to be conducted outside the Rules to assess the proportionality of the interference with the Appellant's private life.

34. The Judge carried out that balancing exercise at [20] of the Decision as follows:

> "The Appellant fails to meet any of the Immigration Rules and therefore this appeal could in any event only succeed under Article 8 of the ECHR. I accept that the Appellant will have established a private life in the UK in the time that she has been here since 2007. The decision interferes with that private life. In assessing proportionality I adopt the balance sheet approach commended by Lord Thomas at paragraph 83 of Hesham Ali v SSHD [2016] UKSC 60. I take into account that the Appellant does not meet the requirements of the Immigration Rules for leave to remain. This weighs against her in assessing proportionality. I take into account that the Appellant's private life can continue in Hong Kong. That reduces the effect of the interference. I take into account those matters which I must have regard by Section 117B of the Nationality, Immigration and Asylum Act 2002. The Appellant does not speak English and that does not weigh against her and is of neutral effect. The Appellant is not financially independent and she asserts that she is financially dependent upon her parents. It would appear that the Appellant has been a burden on the UK taxpayer if only because she has had access to education in this country which she was not entitled to bearing in mind that she was an overstayer since 2009. The fact that the Appellant is not financially independent also weighs against her in assessing proportionality. Any private life which the Appellant has established in the UK has been established at a time when her immigration status was precarious and for most of the time unlawful especially bearing in mind that she became an overstayer since 2009. I am required to place little weight on her private life for that reason. The maintenance of effective immigration control is in the public interest. The Appellant has been residing in the UK unlawfully as an overstayer since 2009 and this weighs heavily against her in assessing proportionality. Taking all these matters into account I find that the public interest in the removal of the Appellant from the UK far outweighs any interference with her private life. Whilst I accept that the Appellant has a private life in the UK which is interfered with by the decision under appeal I find that the interference is legitimate. I find that such interference is necessary in a democratic society both for the economic wellbeing of the country and for the protection of the rights and freedoms of others and that the interference is proportionate to these legitimate public ends on the facts of this appeal. The Appellant does not succeed under Article 8 ECHR and her appeal is dismissed."

35. We begin with the challenge as set out in the grounds. First, the Appellant asserts that the Judge has failed to consider the reasons why the Appellant overstayed.

There is nothing to this point. The Judge set out the Appellant's immigration history and her case about what had gone wrong in 2009 when her brother and father were given further leave to remain but she was not (see [8] and [9] of the Decision). The failure of her applications in 2009 however has no bearing on the issue of the Appellant's overstaying between the rejection of those applications in 2009 and her next attempt to regularise her status in April 2019 (as the Judge noted at [14] of the Decision). The Judge was therefore entitled (indeed bound by Section 117B) to have regard to that period of overstaying and to give little weight to the Appellant's private life formed in that period. Even whilst her lawfully, the Appellant's status was always precarious, and her private life would similarly command only limited weight.

36. It is not clear what is meant in the grounds by the assertion that the Appellant's period of residence was "for a sufficiently long period" of eight years. That is not sufficient even as a period of lawful residence to qualify to remain. The Appellant does not fall within any of the categories of paragraph 276ADE of the Rules based on her length of stay. There is no challenge to the Judge's finding that the Appellant does not meet the Rules.

37. It is said that the Appellant's ability to speak English and be financially independent ought to count in her favour. That is of course contrary to binding case-law (Rhuppiah v Secretary of State for the Home Department [2018] UKSC 58 – "Rhuppiah"); those factors are at best neutral.

38. When we asked Mr Toora to explain in what way the Judge had erred in his assessment at [20] of the Decision, the only submission made was that the Judge ought not to have found that the Appellant was not financially independent. Whilst we accept that the Judge would have erred if he based his finding in that regard on the Appellant's dependence on her family (see [55] of the judgment in Rhuppiah), we do not read the Judge's finding in that way. The finding is based on the Appellant's recourse to State funding based on her access to a university education to which the she was not entitled as an overstayer. The Judge was entitled to take that into account. We also observe that, even if we (or the Judge) are wrong in that analysis, it could not potentially make any difference as the factor would be at best neutral and would not undermine the main aspect of the public interest relied upon by the Judge based on the Appellant's unlawful stay in the UK.

39. The final part of the challenge under this heading is to the Judge's assessment of the "quality of the private life that the Appellant has established". It cannot sensibly be argued that the Judge failed to consider the Appellant's integration in the UK and family ties here. Her evidence in that regard is set out at [9] of the Decision. However, it was also relevant that the Appellant has family in Hong Kong with whom she remains in contact and could live on return. She lived in Hong Kong until the age of sixteen.

40. The Appellant has therefore failed to show that the Judge has erred in his assessment of the proportionality of the decision to remove the Appellant to Hong Kong. The

grounds merely disagree with the weight attributed to the various factors which is a matter for the Judge and with the outcome.

Conclusion

41. For the foregoing reasons, the Appellant has failed to make out her challenge to the Decision. The Decision does not contain any error of law.

DECISION

We are satisfied that the decision of First-tier Tribunal Judge Sangha promulgated on 22 November 2019 does not disclose an error of law. We therefore uphold that decision.

Signed: *L K Smith* Dated: 11 November 2020
Upper Tribunal Judge Smith