



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

Appeal Number: HU/08491/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7 February 2019**

**Decision & Reasons  
Promulgated  
On 19 February 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE LATTER**

**Between**

**XUEQI [Z]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: In person.

For the Respondent: Mr E Tufan, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the appellant against the decision of the First-tier Tribunal dated 8 November 2018 dismissing her appeal against the respondent's decision made on 22 March 2018 refusing her further leave to remain on the basis of her family life with her partner.

## Background.

2. The appellant is a citizen of China born on 7 December 1990. Her immigration history can briefly be summarised as follows. She first entered the UK on 13 October 2013 with a Tier 4 visa valid until 30 September 2014. She returned to China and subsequently applied for and was granted further Tier 4 visas. Her most recent entry into the UK was on 1 March 2016. On 13 June 2017 her leave to remain was curtailed to expire on 16 December 2017 and on 14 September 2017 she applied for further leave to remain on family life grounds.
3. The appellant claimed that she was in a relationship with her partner, who has two daughters, born on 12 August 2007 and 18 May 2009 respectively. The respondent was not satisfied that she could meet the requirements of the Rules: she did not fall within the definition of "partner" as she had not been living with her partner for two years at the date of application and she could not meet the private life provisions in para 276ADE(1). The respondent also found that there were no exceptional circumstances justifying a grant of leave outside the Rules.
4. At the hearing before the First-tier Tribunal, the judge heard oral evidence from both the appellant and her partner. At [20] he said that he did not accept that there was a relationship between them but, if he was wrong about that and they had family life in the UK, the respondent's decision would have consequences of such gravity potentially to engage the operation of article 8.
5. He took into account the fact that the appellant and her partner had been through an Islamic ceremony of marriage on 9 July 2017, when they moved in together and had married on 18 April 2018 [36]. When considering the provisions of s. 117B(6) of the Nationality, Immigration and Asylum Act 2002, he said that there were no qualifying children [30]. He considered the factors weighing in favour of immigration control and those in favour of family and private life at [40]-[41]. He concluded that public interest outweighed the interference with private and family life and that the respondent's decision was proportionate.

## The Grounds of Appeal and Submissions.

6. In the grounds of appeal, it is argued that the judge erred in a variety of ways. When granting permission to appeal the First-tier Tribunal judge said:

"The judge was clearly aware that the appellant was married to her partner at the date of hearing but does not appear to have considered the application of article 8 at that date. The appellant's original grounds make reference to the fact that there are two British children, who live with the appellant and her husband, but their interests have not been considered or taken into account at all by the judge. At [30] of his decision, the judge

states that there are no qualifying children, which would appear to be incorrect. At [20] of his decision, the judge indicates that he does not accept the relationship between the appellant and her partner, although its subsistence did not appear to have been challenged by the respondent. At [42], the judge acknowledges that the appellant and her husband have lived together in the UK and can do so again in China, thereby indicating contradictory findings. He does not appear to have considered the question of insurmountable obstacles."

7. At the hearing before me the appellant was unrepresented. Before hearing from her, I asked Mr Tufan whether he sought to maintain the decision in the light of the grounds of appeal and the basis on which permission to appeal had been granted. He indicated very fairly that he was prepared to concede that the judge had erred in law in the ways identified in the grant of permission.
8. I am satisfied that this concession is properly made and that the judge has erred in law such that the decision should be set aside. In written submissions from the appellant's solicitor, the Upper Tribunal is invited to remake the decision by allowing the appeal but as there needs to be a full rehearing with a full review of the facts, this is an appropriate case for a remittal to the First-tier Tribunal.

Decision.

9. The First-tier Tribunal erred in law. The decision is set aside and is remitted to the First-tier Tribunal for a full rehearing by a different judge.

Signed: H J E Latter  
February 2019

Dated: 12

Deputy Upper Tribunal Judge Latter