IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005412
First-tier Tribunal No:
PA/55363/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 18 March 2024

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

QHD
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr P Jorro, instructed by Reiss Edwards Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Interpretation : Ms J Hai in Mandarin

Heard at Field House on 12 March 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the claimant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the claimant, likely to lead members of the public to identify the claimant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The appellant is a citizen of China born in 1972. She arrived in the UK in April 2014 with a visit visa, overstayed and then claimed asylum on 28th November 2019. Her protection and human rights claim was refused on 28th November 2019. Her appeal against the decision was allowed on human rights grounds by First-tier Tribunal Judge JG Raymond in a determination promulgated on the 27th February 2023.

2. Permission to appeal was granted and, for the reasons set out at in my decision at Annex A, I found that the First-tier Tribunal had erred in law and set aside the decision allowing the appeal on the Article 8 ECHR human rights grounds.

3. I preserved the decision dismissing the protection appeal and all of the findings relating to that matter. I found that the remaking would be limited to the Article 8 ECHR appeal and preserved the factual findings at paragraphs 73 to 76 of the decision, and summarised the key ones as follows:

- The appellant came to the UK as an economic migrant.
- The appellant and TLK are in a genuine and subsisting relationship akin to marriage, which started in 2015, and have cohabited since 2016.
- TLK has stage 3 prostate cancer.
- The appellant is also TLK's carer assisting with medication, cooking and care needs.
- TLK does not speak Chinese and could not run his business from China.
- The appellant would not be a burden on the taxpayer if permitted to remain.
- The appellant speaks limited English.

4. The matter comes back before me to remake the appeal. The appellant and her partner attended and gave oral evidence, the appellant through the Mandarin interpreter.

Evidence & Submissions – Remaking

5. The additional evidence of the appellant in her witness statement and oral evidence, in short summary is as follows. She continues to be in a relationship with her partner, TLK, and they were married on 16th September 2023. She introduced TLK to her parents via a video call on a mobile phone some time ago. She speaks to them about three times a week. They did not come to her wedding as they could not fly as they are old and her mother is not in good health. Her sister and brother-in-law came to the wedding however. She met her husband's older brother, younger sister and sister's daughter when they came to visit them in London. She is

supported financially and emotionally by TLK. He was granted indefinite leave to remain on 14th February 2023, and has applied for naturalisation as a British citizen. He is a solicitor and has his own, successful, solicitors firm. TLK has prostate cancer and has been very unwell for a long period of time. He was diagnosed about five years ago before lockdown. He had radiotherapy during the Covid period of lockdowns. He came off his most recent medication gradually and finished approximately a year ago. He has review appointments however, and had a colonoscopy a month ago. She supports him in his day to day life and he would not be able to care and support himself alone. TLK has only travelled to the USA on two occasions since they got together, she believes because he is worried about her, the last time being some 5 or 6 years ago. The appellant passed an English grade 2 (Level A1) spoken English exam with merit in April 2022. She does not suffer from mental health currently, as she feels settled and is now married to TLK, although she does suffer from insomnia which she treats with Chinese herbs.

6. Mr TLK provides a witness statement in which he confirms the same information about their relationship and marriage, his cancer and work. In oral evidence he added that his received his cancer diagnosis in 2019, and has been on a series of treatments since that time. His doctors had told him that half of men in his position would be dead within five years, and their aim in providing treatment was to keep him alive beyond this point. He was given medication to shrink the prostate between 2019 and 2020; he then had 20 sessions of radiotherapy until January 2021; he was then hormone therapy until May 2023. At this point his medical team decided he should have a break in the treatment to see if his cancer markers would plateau or increase given the serious side effects he was experiencing from the medication, including brain fog and confusion. He continues to suffer from side effects from all of the past treatment (radiotherapy and drugs), and needs the support of the appellant. He says that the medication is temporarily paused rather than discontinued, and he believes that when he attends in April 2024 it is likely that he will be put back on medication due to rising PSA markers. He refers in his statement to a letter form Dr S Howlett, oncologist at UCL, dated 7th February 2024 in which she states that TLK has metastatic prostate cancer and is low in energy and benefits from the appellant supporting him and acting as his carer. TLK explained that the appellant monitors his health, cooks him health food, encourages him to go outside and to do exercise such as walking which he is advised is beneficial to his cancer treatment, and provides emotional support and inspiration to him as a person who he sees as having suffered many greater troubles than he has to deal with due to his ill health.

7. TLK explains that he continues to work for his law firm in the mornings when he has more energy, and 95% of the time he does his work from home so that he can use the toilet frequently and take naps when needed, and because he does not have sufficient energy to commute via the tube. He has not left the UK since April 2018. He has not asked his doctors if he could travel, as he has no inclination to do so as his life is here, but he presumes it would be possible so long as he returned for his appointments and any treatment. He said hello to his in-laws some time ago on a video mobile phone call using the Chinese WeChat app. He just waved at them as they don't speak English but he understands that they are happy he is with the appellant. His relatives did not attend his recent wedding, but his brother and brother's daughter met the appellant last December, and the appellant's sister and brother-in-law came to their wedding. He assumed that the appellant had no issues with her immigration status when they first got together as she kept her problems with this to herself, but when he discovered that she had no status in 2018 he insisted that she must regularise her stay, which happened in 2019.

8. Mr Melvin relied upon the reasons for refusal letter and his skeleton argument. The respondent accepts that the appellant and TLK are now married, that TLK has indefinite leave to remain and that the appellant has a grade 2 entry level ESOL speaking and listening English certificate. It is accepted that the couple have lived together since 2016 and that TLK has metastatic prostate cancer with ongoing oncology reviews. Mr Melvin submitted that the respondent's position is that TLK's treatment finished in 2021, with hormone therapy drugs being prescribed until April 2023.

9. Mr Melvin argues that the appellant cannot succeed under the Immigration Rules by reference to paragraph EX1 of Appendix FM because there would not be insurmountable obstacles to family life taking place in China. There was no evidence that TLK could not have his medical treatment in China, nor that he could not live in China with the appellant and work online, as the appellant calls her family on a video call three times a week. He could return to the UK for periodic medical appointments if he so wished. The appellant has no current mental health problems and TLK is not currently on medication for his cancer.

10. Mr Melvin argued that if the appeal is considered outside of the Immigration Rules under Article 8 ECHR the appellant's removal is entirely proportionate. Only little weight can be given to the family life between the appellant and TLK because it was formed whilst the appellant was unlawfully present and pursuing a non-credible asylum claim. Whilst the evidence of the appellant and TLK before the Upper Tribunal might be generally credible the respondent did not accept that TLK had not thought to ask the appellant about her immigration status for a number of years after starting a relationship. It would be open to the appellant to apply for entry

clearance to join TLK should she so wish or the couple could remain together in China where there is no evidence it would not be possible for the appellant and TLK to live; and it is submitted TLK could work and there is no evidence he could not get relevant cancer treatment. It is not accepted that the appellant currently provides necessary care for TLK or that he is currently in treatment, or that there is any corroborative evidence of the likelihood of treatment resuming in April 2024, although it is accepted that there will be a review at that time. The appellant is not currently claiming to have any mental health problems.

11. Mr Jorro submits that the appellant can succeed in this appeal firstly because she can meet the requirements of the Immigration Rules, at Appendix FM paragraph EX1, as the appellant and TLK have a genuine and subsisting relationship as partners, TLK has indefinite leave to remain, and there would be insurmountable obstacles (very significant difficulties which would cause very serious hardship) to family life taking place outside of the UK for the reasons set out below. The appellant also has sufficient English at level 1 with merit to meet the requirements at E-LTRP 4.1(b), although this would only be a relevant requirement if she were applying for entry clearance as a spouse.

12. Mr Jorro submitted that I should find the witnesses both credible as their evidence was consistent with each other and with their written statements. Further TLK's evidence about his on-going treatment is totally consistent with his having metastatic cancer which has spread, and which is a condition from which he cannot recover although he may have periods of remission. He has a serious life threatening condition, his evidence being that he was told 50% of patients in his position die within five years, and it is not reasonable to expect him to give up the relationship he has with the team at University College Hospital at the age of 68 years, particularly given their success over the past over four years, and try to obtain treatment in China, a country where he does not know the language. Reliance is placed on the documents relating to TLK's treatment by University College Hospital oncology team, which are at page 66 onwards of the appellant's bundle before the First-tier Tribunal as well as the recent letter in the updating bundle. It is argued that insurmountable obstacles is a practical test and the particular circumstances of this case clearly meet this test.

13. If the appeal is looked at outside of the Immigration rules it would be a disproportionate interference with the appellant and TLK's family life to remove the appellant. The appellant's English ability and financial support from TLK make these neutral matters. It is accepted that s.117B(4) of the Nationality, Immigration and Asylum Act 2002 means that little weight should normally be given to the family life ties between the appellant and TLK, but is argued, applying Rhuppiah v SSHD [2018] UKSC 58, that this is

fact specific provision, and the additional caring responsibilities the appellant has in the context of TLK's serious, life threatening ill health, and the fact that TLK runs a successful law firm employing four people mean that in this case there are circumstances where some significant weight is due, particularly when combined with the abuse that it was accepted by the First-tier Tribunal that the appellant suffered in China, being made to have seven forced abortions because of her former husband's desire to have a son and the Chinese state's then extant one child policy. In these circumstances it would also not be right to expect her to return to obtain entry clearance on the basis that this would be granted given the accepted relationship and TLK's earnings because the Chikwamba principle, as reiterated in Alam v SSHD [2023] EWCA Civ 30, means a refusal based on a narrow procedural grounds would be a disproportionate interference with family life.

Conclusions – Remaking

14. I have considered the evidence of the appellant and TLK and find that their evidence is credible. The evidence that they gave was consistent with each other and between their oral evidence and written statements, and the documentary evidence. Mr Melvin did not submit otherwise. It was also notable that the appellant gave her evidence about times when events happened with reference to events such as the Covid 19 pandemic rather than dates, but this tallied with TLK's evidence given with reference to the years, which I found to be telling of the evidence being from true memory and not rehearsed as it was given in a way which suited their individual way of remembering past events. Mr Melvin objected to the fact that TLK gave additional detail about medical matters orally, particularly about his likely future treatment, which was not corroborated by documentary evidence, however I find TLK to be a very measured intelligent man who understandably takes a very precise interest in his cancer treatment and I find that he has a good understanding of the meaning of the test results and has probably discussed these matters previously with his doctors, and therefore find that the additional evidence he gave was truthful and well informed.

15. The first issue to determine is whether the appellant is able, or not, to success in this appeal by showing that she can meet the requirements of the family life Immigration Rules at Appendix FM. The only element that it is contested by the respondent as not being met is the requirements at EX1: namely that there would be insurmountable obstacles (very significant difficulties which would cause very serious hardship) to family life taking place outside of the UK.

16. As Mr Jorro has submitted to meet the insurmountable obstacles test, following the guidance in GM (Sri Lanka) v SSHD [2019] EWCA Civ 1630, which in turn relied upon on Agyarko, what is required is

very serious hardship or very significant difficulties in continuing family life outside of the UK. It is an individualised assessment. The crux of this case is whether it would inflict very serious hardship on TLK and give rise to very significant difficulties in continuing family life in China if the appellant and TLK had to relocate to that country.

17. From TLK's oral evidence and the documentation it is clear that he has metastatic prostate cancer which has spread to his lymph nodes and bones, and therefore that he can never be cancer free. Half of men with TLK's condition will be dead within five years of diagnosis. He has undergone drug treatment to shrink the tumour, radiotherapy, and been given the drugs Enzalutamide and Zoladex, a hormone therapy drug regime, which on top of the radiotherapy has cause TLK very significant side effects including memory and concentration problems and interrupted sleep. As a result he has had a break from these drugs since May 2023, to see if cancer markers plateau or increase, and if he can, at least temporarily, avoid worsening his problems with side- affects caused by the treatment to date. I accept TLK's oral evidence that sadly cancer markers have gone up and that is likely that he will need to resume the hormone treatment regime. I find that TLK benefits greatly from the care given by the appellant in terms of cooking healthy food, encouraging walking (as exercise is beneficial to his health), cleaning their home, and in providing psychological support as a person who is not only his wife but who has experienced cancer herself and other traumas in the form of the forced abortions in China. It is the current view of the UCH oncology team that the appellant is "an integral part in the management of his prostate cancer as well as his day to day living", and I give weight to that expert opinion.

18. TLK has been treated by UCH since December 2019, so a period of over four years. It is clear from the letters in the bundle which was before the First-tier Tribunal that TLK has a relationship of trust with the UCH medical team and that he actively engages with his treatment, making choices as to the route that is taken with the specialist oncologist doctors at this world renowned hospital. I find that TLK cannot speak Mandarin, and that it would inflict very serious hardship on him to be expected to give up his to date successful treatment, in that he has nearly reached the aimed for five year survival period, at this hospital with doctors he has developed relationships for treatment from doctors he could not directly understand and communicate with in China, a country which would be entirely alien to him where he has never lived. Whilst the appellant speaks basic English she clearly does not speak it to anywhere near a level where she could do competent, accurate medical translation to help facilitate a new such relationship with a Chinese hospital, and it is clear that her family in China speak no English at all.

19. In addition TLK runs a small law firm in the UK with a business partner. It is a preserved finding from the decision of the First-tier Tribunal that he could not run his business from China. I find that even though he works from home most of the time it would be extremely difficulty to try to continue to run his law firm from China, as he does, on occasion, attend the London office and running a law firm is far more complex than making a social video call. In this context it is important to note that this is a man already suffering from concentration and brain fog issues due to his cancer treatment, which would make the adaptions needed for working from abroad all the more difficult. I agree with the submission of Mr Jorro that at his age, 67 years, and given his medical problems which include issues concentrating that it would be highly unlikely that TLK could learn sufficient Mandarin to obtain other employment, or indeed develop any sort of a private life in China, particularly given his ability only to work mornings and need to be at home. I find therefore that having family life in China would also remove TLK's ability to work and have a private life which would in turn be an additional very harsh consequence of family life being relocated in China.

20. I find that it would also have a negative psychological impact on the appellant to have to return to the country where she was forced to have multiple abortions, particularly as it is clear that both the appellant and TLK very strongly regard London as their home, as illustrated by the fact that he has not travelled anywhere for the past 6 years and has not even enquired if it would be alright to fly even though he has family in the USA who are sufficiently close and concerned to have visited him in the UK.

21. Considering all of the evidence in the round I find that it can properly be said that there would be insurmountable obstacles to family life taking place in China, due to TLK's on-going life-long cancer treatment and monitoring that he is receiving from UCH in London, and the harshness and very significant difficulty and distress it would cause him to try to reconfigure this in China; the difficulties this would cause him with respect to continuing his life long work as a lawyer and running his own law firm or indeed doing any other work or developing any aspect of a private life; and the fact that the couple would be going to a country where TLK could not speak the language and where the appellant could not provide full and complete translation into English and where the appellant has suffered the trauma of multiple forced abortions in line with the then one child policy of the Chinese state.

22. In these circumstances I find that the family life Immigration Rules are met under Appendix FM, and so there is no public interest in the removal of the appellant, and as a result her removal would be a disproportionate interference with her right to respect for family life with TLK.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

2. I set aside the decision of the First-tier Tribunal.

3. I remake the appeal by allowing it on Article 8 ECHR human rights grounds.

Fiona Lindsley

Judge of the Upper Tribunal
Immigration and Asylum Chamber

12th March 2024

Annex A: Error of Law Decision

DECISION AND REASONS

Introduction

1. The claimant is a citizen of China born in 1972. She arrived in the UK in April 2014 with a visit visa, overstayed and then claimed asylum on 28th November 2019. Her protection and human rights claim was refused on 28th November 2019. Her appeal against the decision was allowed on human rights grounds by First-tier Tribunal Judge JG Raymond in a determination promulgated on the 27th February 2023.

2. Permission to appeal was granted by Upper Tribunal Judge Owens on 2nd January 2024 on the basis that it was arguable that the First-tier judge had erred in law in failing to balance the public interest in maintaining immigration control when carrying out the Article 8 ECHR proportionality exercise; and further that it was also arguable that the First-tier Tribunal misapplied the Chikwamba principle following Alam & Anor v SSHD [2023] EWCA Civ 30 by finding that the application was refused on a narrow procedural ground only and that there was the real likelihood that the claimant's application to return to the UK as a partner would succeed, when the evidence before the judge was that the claimant's English was poor and her partner at the date of the appeal hearing was a US citizen who did not have settled status in the UK.

3. The matter came before me to determine whether the First-tier Tribunal had erred in law, and whether any error was material and thus whether the decision should be set aside.

Submissions – Error of Law

4. In the grounds of appeal and in oral submissions from Mr Melvin it is argued for the Secretary of State in short summary as follows. It is said that the First-tier Tribunal erred in law by failing to undertake an Article 8 ECHR proportionality exercise when considering the appeal outside of the Immigration Rules which balanced the public interest factors as set out at s.117B of the Nationality, Immigration and Asylum Act 2002, which is an error of law in accordance with Dube (ss117A – 117D) [2015] UKUT 90. The statutory obligation to give little weight to the claimant's relationship with a qualifying partner when her family life was established at a time when she was in the UK unlawfully, as set out at s.117B(4) of the 2002 Act was particularly pertinent and not

applied as it should have been. It is argued that this is a case where the First-tier Tribunal ignored the statute, which is clearly a material error of law.

5. Further, it is argued, for the Secretary of State that Alam & Anor v SSHD [2023] EWCA Civ 30 is not properly followed when allowing the appeal on Article 8 ECHR grounds because factors which weigh against the claimant such as her lack of English and illegal presence when establishing her family life have not been considered when applying the Chikwamba principle, and this was not a case where the refusal was originally on a narrow procedural basis.

6. Mr Melvin indicated that if an error were found that his view was that the decision should be set aside in its entirety and remitted for remaking in the First-tier Tribunal. He argued that no findings should be preserved due to the legal errors made by the First-tier Tribunal, and also because the decision was now a year old. If the decision were to be remade in the Upper Tribunal Mr Melvin asked for an adjournment as he wished to make written submissions.

7. In a Rule 24 notice and in oral submissions it is argued by Mr Jorro, in short summary as follows. It is accepted that there is no reference to s.117B of the 2002 Act but it is argued that this does not amount to a material error of law as this would be to put form over substance.

8. It is observed that the refusal letter had not accepted that the claimant had a partner relationship/ family life with TLK whereas the First-tier Tribunal found that they are in a genuine and subsisting relationship akin to marriage from 2015, and have cohabited since 2016. The First-tier Tribunal found that it was a near certainty that TLK would be granted indefinite leave to remain in the near future, which has turned out to be correct. There is a finding that TLK has stage 3 prostate cancer and that the claimant acts as his carer, being an integral part of managing his cancer care. It is found that TLK cannot live in China given his medical condition, and so if TLK had indefinite leave to remain it was likely that the claimant could meet the Immigration Rules at EX1, and that even a temporary separation whilst the claimant made an entry clearance application would have a serious adverse effect on TLK's medical condition. These factors were the ones that led the First-tier Tribunal to conclude that there would be unjustifiably harsh consequences for the claimant and TLK, amounting to a disproportionate breach of Article 8 ECHR, were the claimant to be removed. It is noted that none of these findings is challenged in the Secretary of State's grounds of appeal.

9. It is argued that the conclusion that removal would be unjustifiably harsh was open to the First-tier Tribunal, and it was the supporting findings which showed there was a sufficiently strong Article 8

ECHR claim to succeed. It was clear that the First-tier Tribunal made this decision cognisant that the claimant had been unlawfully in the UK as it is stated at paragraph 73 that she has unlawful immigration status and came to the UK as an economic migrant. It is also clear that the s.117B 2002 Act factors relating to the public interest were in the First-tier Tribunal Judge's mind as reference is made to the claimant's limited English and to her financial support from TLK being such that she would not be reliant on taxpayers, as these matters are noted at paragraph 79 of the decision. It is argued that the First-tier Tribunal has concluded that the family life in this case is sufficiently strong so that it overrides the "generalised normative guidance" in s.117B(4) of the 2002 Act to give little weight to her relationship with her partner and private life ties as these were formed whilst she was unlawfully in the UK, as is permitted by Rhuppiah v SSHD [2018] UKSC 58.

10. It is argued that Chikwamba and Alam were not ultimately relevant to the determination of the appeal.

11. Mr Jorro submitted that if a material error of law were found in the decision the findings of fact should be preserved as they were not challenged in the grounds. The claimant was open to the remaking taking place immediately or at a later date, but he was happy to accommodate Mr Melvin's wish for the hearing to be adjourned to a later date.

12. At the end of the submissions I informed the parties that I found that the First-tier Tribunal had erred in law for a failure to reason how the appeal was allowed given s.117B(4) of the 2002 Act. I set out my reasons for my decision below. I informed the parties that the remaking would take place in the Upper Tribunal as the extent of fact finding would not be great as the findings of the First-tier Tribunal, not challenged in the grounds, would be preserved meaning that all that was needed was any relevant updating evidence and findings on that evidence.

Conclusions – Error of Law

13. The First-tier Tribunal does not find that the claimant has made out her protection claim based on domestic abuse from her first husband and being unwittingly trafficked to the UK for prostitution. It is found that instead she came to the UK as an economic migrant at paragraph 73 of the decision. It is concluded with respect to the protection claim, at paragraph 72 of the decision, that she would be returning to China without a fear of persecution from her ex-husband or any traffickers and in the context that she would have adequate access to mental health care.

14. It was accepted by Mr Jorro that the First-tier Tribunal did not find that the family life Immigration Rules at Appendix FM were met,

and that the appeal was allowed on the basis of a wider consideration of Article 8 ECHR.

15. At paragraph 73 of the decision the First-tier Tribunal concludes that the claimant is in a genuine and subsisting relationship akin to marriage with her partner in the UK, TLK, which was commenced in 2015. It is concluded that there is a near certainty that TLK will obtain indefinite leave to remain based on his being in the UK as a lawyer in an international law practice, a finding repeated at paragraph 77, and that it is was likely that the claimant would then qualify to remain by application of EX1 of Appendix FM of the Immigration Rules. At paragraph 75 it is found that TLK is suffering from stage 3/ metastatic prostate cancer, and is a 67 year old man who does not speak Chinese and who could not run his business from China, and at paragraph 76 of the decision that he could not reasonably be expected to leave the UK whilst his medical treatment is ongoing. At paragraph 76 it is found that the claimant also helps TLK as a carer due to memory loss due to his cancer treatment, and ensures that he eats and takes his medication. It is on the basis of these facts, as Mr Jorro has noted, the First-tier Tribunal decides at paragraph 77 that it would be a "grave and disproportionate interference" with the Article 8 ECHR rights of the claimant and TLK to remove her to China.

16. At paragraph 79 of the decision it is found that the claimant has limited English and would not be burden on taxpayers. I find that this is reference to the s.117B(2) & (3) 2002 Act factors that the Tribunal must have regard to: namely the ability to speak English and financial independence. I find that these are weighed correctly in the balance, although even if they are met they can only ever be neutral matters.

17. I find however that the First-tier Tribunal has failed to weigh in the balance that the claimant's private life ties and those with her qualifying partner, TLK, should only be given little weight in accordance with s.117B(4) of the 2002 Act as they were established at a time when she was in the UK unlawfully. Mr Jorro has correctly noted that following the decision of the Supreme Court in Rhuppiah little weight is not no weight, and that such an appeal might nevertheless succeed. I agreed that this is possible however I find that it was an error of law for the First-tier Tribunal not to have applied s.117B(4) of the 2002 Act and reasoned its decision in accordance with this provision showing that regard was had to it when reaching the conclusion that the removal of the claimant was disproportionate. I also find that the First-tier Tribunal failed to show that regard had been had to the public interest in the maintenance of immigration control, as required by s.117B(1) of the 2002 Act, when concluding that the claimant succeeded in her appeal despite being unable to meet the requirements of the Immigration Rules at the date of hearing.

18. I find that it is unclear what is meant by the reference to Chikwamba and Alam at paragraph 77 of the decision and there is no need to address this matter as I find that the First-tier Tribunal materially erred in relation to the Article 8 ECHR proportionality exercise as outlined above, and that it cannot be said that the outcome of the appeal would inevitably have been the same if s.117B of the 2002 Act had been applied in full as it should have been. I therefore set aside the decision allowing the appeal.

19. I preserve the decision dismissing the protection appeal and all of the findings relating to that matter. The remaking will be limited to the Article 8 ECHR appeal. In this respect I find that the factual findings at paragraphs 73 to 76 of the decision can be preserved, and summarise the ones I believe will be saliant as follows:

- The claimant came to the UK as an economic migrant.
- The claimant and TLK are in a genuine and subsisting relationship akin to marriage which started in 2015 and have cohabited since 2016.
- TLK has stage 3 prostate cancer.
- The claimant is also TLK's carer assisting with medication, cooking and care needs.
- TLK does not speak Chinese and could not run his business from China.
- The claimant would not be a burden on the taxpayer if permitted to remain.
- The claimant speaks limited English.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

2. I set aside the decision of the First-tier Tribunal.

3. I adjourned the remaking of the appeal to 12th March 2024.

Directions:

1. Any party who wishes to submit updating evidence must file it with the Upper Tribunal and serve if on the other party by 1st March 2024

Fiona Lindsley

Judge of the Upper Tribunal
Immigration and Asylum Chamber