

In the Immigration Appellate Authority

Appeal Number: IM/20101/2004
IM/20352/2004
IM/20701/2004

THE IMMIGRATION ACTS

Heard at Taylor House
On 24 January 2005

Determination Promulgated
01 FEB 2005
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Before

CHARLES VAUDIN d'IMECOURT

Adjudicator

Between

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■■■ IHAO ■■■
■■■■ ZH ■■■■

Appellant

and

ENTRY CLEARANCE OFFICER - CITY

Respondent

Representation:

→ For the Appellant: Dr Alan May (Solicitor) ←
For the Respondent: Mr G Earle (HOPO)

DETERMINATION AND REASONS

1. The appellants in this case are all citizens of the Peoples Republic of China and are all females. The first appellant was born on 15 July 1981; the second appellant was born on 14 May 1972 and the third appellant was born on 3 March 1970. They each appeal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002, against the decision of the Entry Clearance Officer (ECO) made at the British Embassy in Beijing, China, on 23 July 2004 for the first appellant and 26 July 2004 for the second and third appellants, to refuse their applications dated 23 July 2004 for

the first appellant and 26 July 2004 for the second and third appellants, for entry clearance to the United Kingdom as students, in order to follow a course of studies at the [REDACTED] College, [REDACTED] in [REDACTED] for a period of one year leading to an NVQ 3 Diploma in Early Years Care and Education; on the same grounds for each of the three appellants, namely, under paragraph 57(ii) and 57(iv) and 57(vi) of Rule HC 395 (as amended); on the basis that the ECO was not satisfied that the appellants would be able and intended to follow the course as proposed by them; and that they intended to leave the United Kingdom on completion of their studies; and that they would be able to meet the cost of their course, maintenance and accommodation without recourse to public funds.

2. None of the appellants in this case were interviewed. The first appellant's application was submitted through the current student assessment system whereby applications are assessed on documentation supplied by the applicants and a decision in her case was reached based on these documents. The decision regarding the second and third appellants were submitted through the group scheme and a decision was reached in each of their cases based on the documentation supplied with their applications.

The ECOs Reasons for Refusal

3. In each of the above appellant's case the ECO gave reasons in very similar terms for refusing their applications. He looked at their applications in the round and felt that it was not clear how their application could be of benefit to them or enhance their future prospects which led him to the view that he could not be satisfied that the cost of these studies would be proportionate to their current economic circumstances or to the advantages that they might derive from their course of study. He noted that they would be self-funding their course of studies and was of the view that this would impose an additional financial burden on them and that based on the financial evidence that they had provided he thought he could not be satisfied that the increased financial outlay would be commensurate with their current economic circumstances or that the funds would actually be available to them in the United Kingdom. Therefore, he said that on a balance of probabilities he was of the view that they would not be able to meet the costs of their course, their maintenance or their accommodation without recourse to public funds. Based on the same facts he was not satisfied that they intended to study in the United Kingdom as a result. He was of the view that the evidence that they had submitted of their finances was unsatisfactory and he was therefore not satisfied that they could meet the cost of their maintenance and accommodation in the United Kingdom without recourse to public funds. In the light of those findings he was not satisfied that the appellants intended to leave the United Kingdom on completion of their studies.
4. Each appellant's case was reviewed upon them appealing and for like reasons the ECO felt that he would not change his opinion. Their applications were therefore dismissed.

Grounds of Appeal

5. By notice of appeal dated 7 August 2004, to which were attached the first appellant's handwritten grounds of appeal she seeks to appeal the above decision. In her

grounds of appeal she states that she intends to leave the United Kingdom at the end of her studies. She says that she is a young girl who wishes to have a good position in her employment and that if she studies abroad she would be able to better her position in China. She says that she has provided a letter from her workplace which shows that she would get a better pay on her return. She says that she is the only child in her family and would not wish to remain in the United Kingdom at the end of her course because she cannot withdraw from her family. She says that she has already paid 100,000 RMB towards the fee of the course and says that her family has the money and wish her to learn in the United Kingdom. She says that she has no intention of remaining in the United Kingdom illegally. By notice of appeal dated 28 July 2004 the second appellant appealed the above decision. In her grounds of appeal she pointed out that she was a married woman and a mother, that she was a teacher at a school where she was on a good local income and said that she would be effectively in a better position after her studies in the United Kingdom. She said that she would return to China after her course because her whole family was in China and she was a teacher there and she would not be minded to remain in the United Kingdom illegally. Her reason for going to the United Kingdom in order to study was that she wanted a good education and she said that she had already paid a substantial advance towards her cost of studies. In addition she says she had provided enough saving history meaning, she had provided satisfactory evidence of her means.

6. The third appellant also appealed, by notice dated 8 August 2004 to which were attached her handwritten grounds, in which she stated she had no intentions of remaining in the United Kingdom at the end of her course and said that she had been abroad on many occasions before, for example, to Japan where her husband worked and had returned to China. She said that she was a teacher at a nursery school in China and that because she needed more work experience she had decided to go and study English. She said that she would not remain in the United Kingdom at the end of her course because her work offered her a good job and a potential to increase her salary. She said that although she could understand that the cost of those studies amounted to a lot of money she nevertheless was not poor and could afford it and that she had provided evidence of her savings. She said that her family was also rich and could see no reason why she should not study in the United Kingdom. She believed that she would have a good chance of a better job after an education in the United Kingdom.

The Hearing

7. These appeals were set down for hearing on 24 January 2005. Each of the appellants was represented by the same solicitor and it was their choice that their cases should be linked and looked at together. In my view, these were extremely well-prepared cases, well-argued and well-presented on behalf of these appellants. Each appellant had made clear witness statements in which they gave compelling evidence setting out the reasons why they wished to come to study in the United Kingdom and had provided clear documentary evidence of their means, which involved in each instance savings over a lengthy period of time with a clear history of the source of the income and clear evidence that they had paid substantial deposits towards the cost of the course and maintenance of themselves in the United Kingdom. Each appellant was able to show that she had savings and that 100,000

RMB (approximately £6,666) had been paid to the [REDACTED] College as a substantial deposit towards the cost of their course, maintenance and accommodation. The first appellant, [REDACTED] Yang, stated that she lived with her parents which has permitted her to save income which she received as a teacher working in her present school. Because she lived with her parents she had no travelling expenses and no living expenses to pay for. She had saved up money in her accounts through several months and provided copies of it to the ECO. The second appellant, [REDACTED] Lhao said in her statement that she had a 7 year old child and that she is married and is now able to leave her child in the care of her parents and husband in order to pursue her studies in the United Kingdom. She too gave a clear history of her savings and accounts. The third appellant, [REDACTED] Zhang also states that she is married with one child approaching the age of 9. She was now in a position to free herself in order to pursue a course of studies. She says that she has travelled with her husband in the past going to Japan where her husband had been working. She too gave evidence that she had substantial savings gained through a number of months if not years of saving. She too had paid 100,000 RMB towards the cost of her course in the United Kingdom.

8. Three witnesses were called on behalf of the appellants. The first witness was called [REDACTED] who said that she had been working for the [REDACTED] College since 1994. She had made a witness statement in which she sets out the history of the college and the history of these applications. Although I found her evidence contradictory in some respects, more specifically, regarding the penultimate paragraph of the letter from the [REDACTED] College dated 7 May 2004 in which it would appear on the face of the document that the students were being encouraged to come to the United Kingdom on what appeared to be the basis that they would be assisted by the college in obtaining employment for them, this was just adequately explained away by Mrs [REDACTED] in her oral evidence that this was not the intention that she wished to create and that none of these students were being recruited on the basis that they would work in the United Kingdom at the end of their studies. She indicated that she regretted the contents of that paragraph and could see that it was open to misinterpretation and gave an undertaking that she would remove the paragraph in future letters. It was clear from her evidence that [REDACTED] College was an old established school with a well organised curriculum specifically designed for students coming from China who were in the education system already.
9. The next witness to give evidence in support of the appeals was Mr [REDACTED] who gave evidence saying that he was responsible for the language course and for finding families on behalf of the applicants. I found him to be an impressive and truthful witness. He has made a statement dated 1 November 2004 which can be found in the bundle of documents in this case. I came to the view that this was undoubtedly a well-organised course tailored for the purposes for which it had been created.
10. The next witness to be called was Miss [REDACTED] Zhang. She too had made a witness statement dated 12 January 2005. Of the three, Miss Zhang was the most impressive witness. She had clearly devoted a great deal of attention to her witness statement and had produced clear evidence supporting the appellants' cases providing clear examples of the benefits that such a course would be to the appellants in coming to the United Kingdom upon their return to China. She was able

to trace the appellants means through their various accounts and was able to show on behalf of each appellant that they had the means to pay for the cost of their course and their maintenance in the United Kingdom and that the monies coming from their accounts was genuinely theirs and could be traced through to source. I had no doubt that she was a truthful witness and had been of great assistance to the court in coming to its final decision in this case.

11. Each of the appellants have provided glowing references from their employees which show that each of them have already been in the education system in their country as teachers. The first appellant has provided a certificate indicating that she will be retaining her post upon return in China and that her employers are prepared to continue her salary until she returns to a higher post following her education in the United Kingdom. The second appellant has provided a certification of excellence in her work from her present employers. And the third appellant has provided a certificate indicating that she will continue to work for the nursery upon return to China where she will be receiving a higher salary upon return.
12. In addition, on behalf of the appellants, Miss [REDACTED] Zhang has produced a large bundle of objective evidence which show that those who qualify abroad have a far greater potential in the employment market upon return to China.

Burden and Standard of Proof

13. It is for each of these appellants to satisfy me on a balance of probabilities that she qualifies under each of the provisions of paragraph 57 of Rule HC 395 (as amended) in order to obtain entry clearance in this case.

Findings of Fact and Reasons

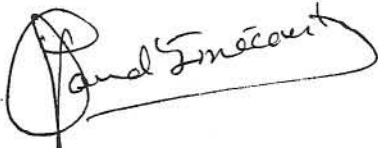
14. I have looked at the evidence in this case collectively and singularly. As I have indicated before, I was highly impressed by the manner in which this case was put together and presented. I was also highly impressed by the evidence given in support of these appeals by Miss [REDACTED] Zhang who had presented clear and cogent evidence on behalf of each of these appellants that they had the means to pay for their course and their maintenance and accommodation in the United Kingdom. She had also presented clear evidence of the benefit that would accrue to each of these appellants upon return to China following their course of studies in the United Kingdom. Looking at the evidence of each of these appellants in the round I was satisfied on a balance of probabilities that these were genuine applicants who were seeking to enter the United Kingdom in order to study for an NVQ Diploma and looking at the background of each of these appellants, including the fact that two of them were married with children living in China, I was satisfied on a balance of probabilities that they would each return to China at the end of the course of studies in the United Kingdom. To say in this case that these appellants would not return would amount to pure speculation and nothing else. I was satisfied in each case that the appellant had proved on a balance of probabilities that they had satisfied each of the provisions of paragraph 57 of Rule HC 395.
15. I note that it is for the appellants to satisfy me on a balance of probabilities that they qualify under each of the provisions of paragraph 57 of Rule HC 395 (as amended) in

order to succeed in this appeal. On the evidence before me in each of these cases I was satisfied that each of the appellants has discharged the burden on her. Therefore each of these appeals will succeed.

DECISION

Each of these appeals is allowed.

Signed

A handwritten signature in black ink, appearing to read "Charles Vaudin d'Imécourt". The signature is written in a cursive style with a large initial 'C' and a long horizontal flourish at the end.

Date 25 January 2005

Charles Vaudin d'Imécourt
Adjudicator