IMMIGRATION AND PROTECTION TRIBUNAL NEW ZEALAND **[2018] NZIPT 504053**

AT AUCKLAND

Appellant:	**EA (China)**
Before:	V J Shaw (Member)
Counsel for the Appellant:	A Harris
Date of Decision:	28 August 2018

DEPORTATION (NON-RESIDENT) DECISION

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[1] This is a humanitarian appeal by the appellant, a 60-year-old citizen of China, against his liability for deportation which arose when he became unlawfully in New Zealand.

THE ISSUE

[2] The appellant has married a Chinese-born New Zealand citizen. The primary issue on appeal is whether the potential separation of the couple gives rise to exceptional humanitarian circumstances.

[3] For the reasons that follow the Tribunal allows the appeal.

BACKGROUND

[4] The appellant has two sons. The older is aged 34 years and he became a New Zealand resident under the Skilled Migrant category in 2008. The younger is aged 13 years. He has been a student in New Zealand since February 2016 and currently lives with his mother who holds a guardianship visa. The appellant and the mother of the younger son divorced in 2013.

[5] The appellant first entered New Zealand on 23 February 2016 for a stay of one month. He held a multiple entry visitor visa valid for two years that allowed a one month stay on each arrival.

[6] He re-entered New Zealand again on 28 May 2016.

[7] On 8 June 2016, he married a Chinese-born New Zealand citizen. His wife is aged 79 years. She has been living in New Zealand since 1999 after she and her late husband obtained residence under the Family (Parent) category. Her husband died in 2007. She has two adult children living in New Zealand and one in Australia. She and the appellant had been introduced by the appellant's older son and they had communicated with each other via WeChat during the six weeks prior to the appellant's arrival in New Zealand when they met for the first time in person.

[8] On 24 June 2016, the appellant lodged an application for a partnership-based work visa based on his marriage. Immigration New Zealand granted him a one-year work visa on 20 December 2016.

[9] On 25 January 2017, the appellant lodged a residence application based on his partnership.

[10] On 12 June 2017, the appellant and his partner were interviewed by an immigration officer.

[11] On 17 July 2017, Immigration New Zealand wrote to the appellant identifying concerns about his partnership. These related to the duration of the relationship, including marrying in just under two weeks from first meeting, the limited evidence for a shared address and financial interdependence, a payment of $9,990 the appellant made to the wife prior to his coming to New Zealand, and the degree of commitment to a shared life given the wife's stated unwillingness to leave New Zealand. There were also concerns about the reputational and public aspects of the partnership as the appellant's younger son had not been told of the appellant's divorce or his recent marriage and he had not met the wife although they all lived in the same city. Nor had the appellant told his mother, brother or sister of his marriage or met any of his wife's family.

[12] Counsel responded on 15 August 2007 emphasising the maturity of the couple, that they "do not have the luxury of time" and knew they wanted to marry and live together before they met. The couple lived in the wife's Housing New Zealand house, the rental agreement for which was in the wife's name, and rent and utilities were not paid out of the couple's joint account as the wife preferred to

withdraw cash every week in order to budget. The payment of $9,990 the appellant sent to the wife was to cover the couple's wedding and living costs and was his contribution to the couple's relationship. It is not practical for the wife to live permanently in China as she is not entitled to social welfare or public medical insurance there and two of her three children live in New Zealand. However, the couple had arranged to travel to China together in early September 2017.

[13] It was also submitted that the appellant and his wife had now told the appellant's youngest son of their marriage and the son has visited their home. The wife has not seen her daughter living in the same region and her son in Australia for approximately seven or eight years and their relationships are tense. She also rarely sees her other son because he lives in Auckland. The appellant has not formally announced his marriage to his family as he wanted to introduce his wife to his whole family when the couple returned to China together. His older son had told the appellant's brother and sister about the relationship when he went back to China earlier that year. The appellant had not told his mother because she has heart problems and he had not told her about his divorce in February 2013.

[14] On 5 September 2017, the appellant and his wife travelled to China and they returned on 5 November 2017.

[15] On 12 December 2017, the appellant lodged an application for a further partnership work visa as his residence application was still not finalised. In connection with the work visa application, Immigration New Zealand wrote on 12 February 2018 identifying concerns over the genuine and stable nature of the partnership. The appellant was asked to provide: an explanation for the expedited pace of the relationship and decision to marry; financial statements and all receipts relating to the $10,000 he transferred to his wife; evidence of communication between himself and his wife, preferably from the start of the relationship; evidence of their joint leisure and social activities, the companionship aspects of their relationship and their currently living together at the same address; and an explanation for why the appellant had not introduced his younger son to his wife, although his son had been included in his residence application.

[16] A letter dated 12 February 2018 was also sent in relation to the residence application, seeking comment on much the same matters.

[17] On 3 April 2018, counsel responded addressing these concerns. The appellant and his wife were mature and had both been married previously. They married shortly after the appellant's arrival in New Zealand as they were sure they

wanted to be together. They were traditional and conservative in their thinking and did not consider it appropriate to live together while unmarried. The appellant transferred the equivalent of NZ$10,000 to the wife before he travelled to New Zealand as he knew there would be costs associated with his stay in New Zealand, including the couple's relationship living expenses to which he wished to contribute, and his immigration applications. An itemised list detailing what the money was spent on was also provided. The appellant did not initially tell his son that he and his wife were in a relationship as he and his ex-wife are traditional Chinese parents and they do not like to involve their children in adult issues. It was reiterated that the wife does not have a good relationship with her children and had not spoken to or seen her daughter for a number of years. The appellant had not told his family about his relationship as he preferred to introduce his wife in person to them. They had planned a trip to China before being interviewed by Immigration New Zealand. Housing New Zealand was aware that the appellant was residing at the property and Work and Income New Zealand were also aware of the relationship.

[18] On 23 April 2018, Immigration New Zealand declined the application for a partnership work visa as it was not satisfied that the appellant and his wife were living together in a genuine and stable relationship.

[19] Following the decline of his application for a work visa, the appellant's interim visa expired and he became unlawfully in New Zealand from 25 April 2018.

[20] On 27 April 2018 Immigration New Zealand wrote to advise the appellant that, as he currently did not hold a valid visa, the processing of his residence application was suspended.

THE APPELLANT'S CASE

[21] The grounds of appeal as set out in counsel's submissions can be summarised as follows:

(a) The appellant and his wife are in a genuine and stable relationship. Having been introduced by the appellant's older son and having chatted online for one to two months, the couple knew they wanted to marry and live together. They had the wisdom and life experience to know exactly what they wanted from a partner and from a relationship. They married as soon as possible after the appellant's arrival in New Zealand out of respect for the wife's religious beliefs and because they are traditional

and conservative in their thinking and did not consider it appropriate to live together while unmarried.

(b) The appellant transferred the equivalent of NZ$10,000 (there was a small bank fee deducted) to his wife prior to his arrival in New Zealand as he knew there would be costs associated with his stay here and he did not have a bank account of his own set up at the time. Documentary evidence for how the money was used was provided to Immigration New Zealand.

(c) While the relationship was formed in the knowledge that the appellant had no ongoing entitlement to stay in New Zealand, Immigration New Zealand was previously satisfied as to the genuineness of the relationship and granted the appellant a 12-month partnership-based work visa. As such, the couple did not thereafter turn their minds seriously to the possibility that the appellant would not be able to remain here.

(d) It is not a viable option for the wife to accompany the appellant to live in China should he be deported from New Zealand. She is a New Zealand citizen and she can no longer claim the rights of a Chinese citizen. She would not be entitled to a pension, social welfare or subsidised medical care. Relocation would be traumatic for her at her advanced age as she has been settled in New Zealand for many years and is accustomed to the way of life here. She has one niece in China apart from which her familial and social nexus to China is limited.

(e) The wife suffers from various medical conditions including hypertension, diabetes, neuralgia and osteoarthritis. The appellant plays a significant role in supporting his wife on a day-to-day basis and giving her the confidence, encouragement and support to remain active and lead a productive life. The couple engage in light exercise together and go out to do their shopping. The appellant also takes his wife to medical and other appointments. He assists with physically demanding household tasks. The appellant's companionship offsets the isolation, depression and anxiety his wife would otherwise experience as she has little to no contact with her children and no other family members in New Zealand. The wife depends on the appellant as her primary means of support. If the appellant is deported his wife's physical health is likely to suffer and her quality of life would be significantly reduced.

(f) Immigration New Zealand unfairly declined the appellant's work visa application prior to his residence application being finalised, which had the effect of depriving the appellant of his residence appeal rights and forcing him to meet the higher statutory test which forms the grounds of this humanitarian appeal. That a government department would act in such an unusually unfair manner constitutes exceptional circumstances.

(g) The appellant has a strong nexus to New Zealand as his elder son is a permanent resident and his younger son holds a student visa. It is in the best interests of the younger son that the appellant remains in New Zealand during his teenage years. The appellant has a strong relationship with his younger son who would greatly benefit from the guidance and support of his father during his teenage years.

(h) Deportation will lead to the separation of the couple and may effectively end the relationship.

[22] In support of the appeal, the Tribunal has been referred to the evidence corroborating the relationship that is on the Immigration New Zealand file.

[23] In addition, the following information has been received:

(a) Letters from the wife's general practitioner (25 October 2006, 7 July 2014, 17 May 2018, and 27 June 2018) confirming that the wife suffers from hypertension, diabetes, osteoarthritis of the knees and hands and trigeminal neuralgia, and a receipt from a pharmacy in respect of the wife's medications.

(b) Selected WeChat records with translations that show the days when the appellant and his wife spoke with each other orally in video calls.

(c) The appellant's profile that he placed on a matrimonial site in China in late 2015.

(d) A letter (24 July 2018) from the appellant's older son in which he explains that he first met the wife in 2013 at a Chinese Baptist Church and they became friendly. He learned that her husband had died. She impressed him as forthright, sincere and kind. In 2016 he was working in Shenzhen and his father was living with him. He accidently discovered that his father was seeking a relationship through a

Chinese matrimonial site so introduced him to the wife. He gave his father her WeChat and asked them to talk to and get to know each other. He hoped their relationship would go well. The son observes that he (the son) and the wife are both Christians.

(e) The wife's certificate in respect of an English language course she completed in November 2014 and a one-day computer course in June 2013.

(f) Medical notes in relation to the appellant's older son's consultations with his general practitioner during May–July 2018 suffering from depression, his attendance on 2 June 2018 at an Accident and Emergency clinic for anxiety and chest pain, and a list of his medications prescribed by his since 2013.

(g) Immigration New Zealand's letter of 27 April 2018 advising that processing of the appellant's residence application had been suspended.

ASSESSMENT

[24] The Tribunal has considered all the submissions and documents provided by the appellant. It has also considered his Immigration New Zealand file in relation to his temporary and resident visa applications.

Whether there are Exceptional Circumstances of a Humanitarian Nature

[25] The appellant arrived in New Zealand 27 months ago with the expectation of marrying a Chinese-born New Zealand citizen with whom he had been in contact via WeChat over the previous six weeks. The couple married 11 days later. Immigration New Zealand has declined the appellant's application for a work visa on the basis of his partnership, as it was not satisfied that the appellant and his wife were living together in a genuine and stable relationship. It is submitted that Immigration New Zealand's finding notwithstanding, the appellant and his wife are in a genuine and stable relationship and it would cause hardship for the wife to have to live separately from her husband or to have to live indefinitely in China with him where she cannot access a pension or subsidised health care.

Immigration New Zealand acted unfairly

[26] Before turning to the substantive issues on appeal, the Tribunal will dispose of the allegation that Immigration New Zealand acted unfairly in declining the appellant's application for a work visa on 23 April 2018, when the decision to decline his residence appeal was imminent. This decline had the effect of suspending the processing of the residence application so that the appellant could not exercise his right to lodge a residence appeal.

[27] The Immigration New Zealand records show that the officer assessing the residence application had made her recommendation to decline the residence application on 18 April 2018 and this was recorded in the electronic records on 19 April 2018. It seems that all that was necessary to finalise the residence decision was a second person check. A letter declining the residence application was also drafted (and has the date 23 April 2018). Counsel submits that declining the work visa application before the second person check was completed was unfair and contrary to normal practice and that it was done to intentionally to deprive the appellant of his residence appeal rights. Instead, he had to lodge this humanitarian appeal which, it is submitted, involves a higher statutory test.

[28] The appellant lodged his residence application on 25 January 2017 and potentially prejudicial issues arising from the interview on 12 June 2017 were put to him in a letter dated 17 July 2017. Counsel provided the last of the further information requested on 8 November 2017 (extra time had been allowed because of the appellant and his wife being in China). A final assessment was not able to be made prior to the appellant's work visa expiring on 20 December 2017. An application to extend the appellant's work visa was therefore necessary and was lodged on 12 December 2017. Thereafter, it appears that the officer assessing the work visa application took the lead with another letter (12 February 2018) setting out much the same concerns about the relationship that had been identified in the earlier letter of 17 July 2017 sent in relation to the residence application. A further letter also dated 12 February 2018 was sent in relation to the residence application, as a second potentially prejudicial letter, seeking comment about much the same matters.

[29] That there was liaison between the two officers determining the residence and work visa applications is apparent from the timing of their letters and the contact recorded in the electronic records. The two applications were also being finalised in around the same period. Whether the work visa decline was intentionally sent prior to the second person check of the residence decision is not clear. It may simply

have been anticipated that the residence application was to be declined at the same time, (as possibly suggested by the date on the draft residence decline letter). However, in these circumstances, when the two decisions were so clearly in tandem and the recommendation for the decline of the residence application had already been made some days prior to declining the work visa, some caution was called for given the separate appeal rights that flowed from each of the decline decisions. Here, the appellant's residence application has effectively been declined but he could not appeal that decision and challenge the reasoning employed. This could be characterised as unfairness.

[30] However, even if there has been an element of unfairness in the manner in which the two applications have been dealt with, the Tribunal does not find that this in itself is an exceptional humanitarian circumstance. This is because the Tribunal on a humanitarian appeal may not properly consider the merits of Immigration New Zealand's decisions to decline a temporary visa: see *L v Removal Review Authority* (HC Wellington, CIV-2005-485-1601, 3 March 2006) at [13] and [15]. This decision has been repeatedly affirmed by the High Court, most recently in *Li v Chief Executive of MBIE* [2017] NZHC 2977 at [13] and [19]. What the Tribunal must consider is whether the appellant has exceptional circumstances of a humanitarian nature.

Genuine and stable relationship

[31] The thrust of the appeal is that the appellant and his wife are living together in a genuine and stable relationship, so that if the appellant is deported this will have significant consequences not only for himself but also for his wife.

[32] The history of the relationship is documented in the evidence on the Immigration New Zealand files. There are some unusual features in that the couple made the decision to marry within 10 days of their first communicating with each other via WeChat and before they actually met in person. Both are also mature people, although at 79 years the wife is somewhat more mature than the appellant, who is aged 60 years.

[33] The appellant's son states in his letter on appeal that he had first met the wife in 2013 through the church they both attended and had been impressed by her open, kind personality. He learned that she was a widow. Later, when working in China, he had discovered that his father was trying to find a partner through a Chinese matrimonial site (evidence of this has been provided on appeal) and had thought to

introduce his father to the wife. He does not say if he knew her age. He may well not have done, as in her photographs she appears younger than her years.

[34] The very quick progression of the relationship has been explained by counsel as reflecting the couple's maturity and life experience so that they knew what they were looking for in a partner and relationship. Marriage before living together was also important to them, in keeping with their age and more traditional conservative outlook.

[35] The Tribunal has carefully considered the records of the couple's written communications over the six weeks prior to the appellant arriving in New Zealand. These do not include the initial video call when they spoke orally on 16 April 2016 and another such call again on 28 April 2016.

[36] It is apparent that the wife was concerned about the age difference between them and she raised it immediately, for which the appellant commended her for her honesty and frankness. She continued throughout the period of their communicating to express anxiety about her age and that she could be a burden to the appellant. She therefore exhorts him to think seriously about spending the rest of his life with her. He reassures her that her age does not matter to him and that he will love and care for her. She mentions that she "feels lonely all the time" and they both re-iterate their concern to have a companion as they are getting older who can take care of them. She expresses surprise that she could feel love despite her old age and that she now understands the meaning of "to love someone at first glance". She is anxious that the appellant comes quickly to New Zealand and that he should not wait until September 2016 when the lease on his place expired.

[37] The couple acknowledge that they feel under pressure because, as the appellant states, "re-marriage at our ages is likely to be doubted and criticised by 99% of people. But we should insist on our love as long as we love each other and believe our decision is right". The appellant says that he has not informed his family but will do so later on. The wife says she has not told her children as they will not agree. She had told her nephew who said she was reckless, so she did not think others would support her but "I don't care. I just want to live my own life". She also alludes to her sadness about her relations with one of her sons. Later she mentions to the appellant that she told her daughter-in-law that "I am like a burning sunset glow" but that her daughter-in-law did not understand. She bemoans that no one understands her feelings and she fears that the appellant's "love has come too late", having lost her youth. At a later point she also tells the appellant that she has now told her friends about him and they all want to see him.

[38] There is also discussion of domestic issues such as the new curtains for the wife's home that the appellant is having made in China, the different items of clothing the wife is buying for or recommending the appellant bring with him (underwear and two pairs of slippers), the special Chinese items they need for the wedding ceremony not available in New Zealand, and diet and other health tips. When the wife expresses concern at the cost of a wedding dress, the appellant tells her to buy it despite the price as "this is the last time we have a marriage. Your happiness is number one".

[39] The couple appear naive about immigration matters. Early on, the appellant tells the wife "It's OK if we live in China together. If you want to stay in New Zealand, I will accompany you. I will listen to you". It is some three weeks after they have been in contact and have decided that it would be easier to marry in New Zealand that the appellant mentions to the wife that his visa is for a one-month stay and that his son has told him that he can apply for a one-year visa after they have married. He asks if she could ask about this, otherwise he will have to stay for only one month. The wife says she will ask and then reports back that she visited Immigration New Zealand and his son was right. The appellant thanks her and says that it would be great not to have to apply for visas again and again. That this was their initial expectation is also clear from the discussion about the curtains, making the appellant's luggage overweight, so the wife suggests he leaves them "until next time you come".

[40] The couple have also discussed the wife visiting China. Early on they talk about going to visit Xi Lake and visiting the appellant's family.

[41] On 26 May 2016, as the appellant is about to fly to New Zealand, the wife expresses last doubts: "I know we don't know each other very long, but I give myself to you. But now I feel myself at a loss. I feel ashamed as I cannot control myself. Is my decision too hasty? My family don't understand me. That makes my heart break. I feel too tired. The sorrow and pain torture me. I am afraid of the dark".

[42] The appellant responds by affirming his belief that they can find a solution together, but he would understand if she needed more time or wanted to change her mind. After a little time he writes that having given it more thought, he wants to encourage them, he speaks of what has drawn them together, his own introverted nature, the love he feels and the new life they can have caring for each other. The wife's last message is to reaffirm her love as she knows the appellant "will not change in the future". She reflects that love and marriage are a promise and a heavy burden requiring them to support each other with both hands. "Life is simple, related

to oil, rice and salt". Her home is now also his home, she tells him, and although it is not rich, they can make it so.

[43] The couple married 11 days after the appellant arrived in New Zealand. The wedding was at a registry office, attended by a group of friends of the wife, who wore a traditional elegant wedding dress. The ceremony was followed by a celebratory meal in a restaurant.

[44] The full record of the appellant and his wife's contact via WeChat was translated and provided to Immigration New Zealand as part of the response to Immigration New Zealand's letter of 17 July 2017 raising concern at the short duration of the relationship prior to the marriage. The Tribunal considers that the record reveals genuine tenderness and respect for each other. It may be an unusual start to a relationship but the Tribunal does not share Immigration New Zealand's concern that "the wife's conservative traditional cultural views, which the appellant claimed to share, as well as her religious beliefs, appeared incongruous with the expedited nature of the relationship" so as to call into question its genuineness. In fact, while the couple's equation of love with marriage may be characterised as "traditional", in another sense they are not conservative at all. If they were, they would not have chosen each other as partners.

[45] The other major concern raised by Immigration New Zealand when declining the work visa application was that the appellant sent $10,000 to the wife before he came to New Zealand. Counsel advised that this money was to contribute to the expenses of the appellant's stay and the relationship. However, Immigration New Zealand considered that it could not be certain as to the surrounding circumstances of the payments. It noted that the money was not spent on costs directly associated with the wedding but on expenses that "were predominately quoted and accrued after the payment of the $10,000", the most substantial being immigration-related fees, and that the wedding ring purchased on 29 May for $1,699 was purchased with an initial payment of $455 and the balance on lay-by.

[46] The appellant advised the wife on 3 May 2016 that he had got his son to remit $9,975 to her. It was not a big amount, he said, but she was to use it. The wife immediately replied "I will not use your money. I will apply for a bank card for you. You need to set up your code". He then says "Don't worry. Just use it dear". To which she again responds "I don't need it. When you come you use it". This exchange hardly suggests the payment was an agreed price for a marriage of convenience.

[47] That the money was spent on costs incurred after the appellant came to New Zealand is not significant, given that this was what the money was intended for. This included the wedding meal and a washing machine and microwave, but predominately the money was used for immigration-related fees which is consistent with the wife's assertion that the appellant should use the money. The Tribunal does not find that the money sent from the appellant to the wife casts doubt on the genuineness of the couple's motives for entering the marriage.

[48] Since their marriage, the appellant and his wife have travelled together to China, staying for two months in late 2017. During their stay they met the appellant's mother and siblings. That such a visit was always the couple's intention can be seen in their initial communications.

[49] The couple have now been living together for the last 27 months. Having considered all of the evidence available on appeal, the Tribunal is satisfied that it is a genuine and stable relationship.

[50] The fact that the appellant has married a New Zealand citizen is not of itself exceptional. However, if the appellant is deported, there will be significant effects on the wife. She would have to choose between accompanying the appellant to China or remaining here. Clearly, she is capable of staying in China as her recent visit there indicates. However, a relatively short visit for a definite time is different to an involuntary stay for an indefinite period and with no certainty that she and the appellant could return together to New Zealand. She does not wish to live long-term in China as she is now a New Zealand citizen, and, as such, she has no entitlements to a pension or subsidised health care in China. In New Zealand she has the security of her pension, medical care and her own home which she has rented from Housing New Zealand for the last eight years. It is reasonable that she would be reluctant to give up these benefits.

[51] The wife has a number of health issues, including blood pressure, diabetes, neuralgia and osteoarthritis with pain in her right knee, for which she requires a range of medications. While her conditions appear to be well-managed and she maintains her mobility and independence, she has an emotional bond with the appellant and looks to him for support, care and companionship. Living separately from him would put her under significant emotional stress and, given her age, this has real potential to negatively impact on her physical health.

Elder son's mental health

[52] The Tribunal has been advised that the appellant's elder son, aged 34 years, has recently experienced a deterioration in his mental health. He has a history of depression and over recent months his depression has become more acute. It is submitted that the son, who is currently a university student, values his father's support and has been additionally stressed by his father's immigration difficulties. The appellant is also keen to maintain his support for his son at this time.

[53] The son's medical records indicate that since 2013 he has been prescribed a range of medications for depression and sleep and that recently he has been experiencing ongoing insomnia, chest pain, anxiety and stress. He was seen at an accident and emergency centre in June 2018 with chest pain that was diagnosed as stress related. The appellant accompanied the son to his doctor's appointment in May 2018.

[54] The Tribunal accepts that the appellant's support at this time will be beneficial for the son.

Younger son

[55] Noted is the mention made in submissions that the appellant's 13-year-old son would benefit from having his father stay in New Zealand. The younger son is an international student and lives with his mother. As an international student it is expected that the son may have to live separately from one or both parents. No independent evidence about the appellant's relationship with this son since his divorce from his son's mother in 2013 has been provided, and it is unnecessary to consider the younger son's interests in order to dispose of the appeal.

Conclusion on exceptional humanitarian circumstances

[56] The appellant has been married to his New Zealand-citizen wife for over two years. She is aged 79 years and depends on the appellant for emotional and practical support. Her age reduces her capacity to cope with the uncertainties about her future that will follow from the appellant's deportation. Separation from him will cause her significant stress and anxiety, with the potential to impact on her physical health, while leaving New Zealand to live in China would have long term implications for her access to a pension and health care.

[57] The appellant's New Zealand-resident son has been experiencing a deterioration in his mental health so that his father's support at this time is beneficial.

[58] Considered cumulatively, the Tribunal finds that the appellant has established exceptional humanitarian circumstances.

Whether it would be Unjust or Unduly Harsh for the Appellant to be Deported

[59] The Tribunal must balance the reasons for the appellant being liable for deportation against the consequences for him, his wife and older son*: Guo v Minister of Immigration* [2015] NZSC 132, [2016] 1 NZLR 248 at [9].

[60] The appellant is liable for deportation because he is unlawfully here. He became unlawfully here after Immigration New Zealand declined to grant him a partnership-based work visa as it was not satisfied that his relationship with his New Zealand-citizen wife was genuine and stable. Key concerns were the quick progression of the relationship and money the appellant sent to the wife prior to his arrival in New Zealand.

[61] The Tribunal has been required to independently consider the appellant's relationship in connection with this humanitarian appeal and has accepted on the available evidence that, despite some unusual features about the manner in which the couple came to their decision to marry, the relationship is genuine and stable.

[62] Deportation of the appellant will potentially separate the couple or require the wife to leave New Zealand, either of which would cause her significant hardship, particularly having regard to her age. It will also deprive the older son of his father's support when he is experiencing mental health issues.

[63] The appellant has an outstanding residence application based on his partnership. Release of the decision to decline the appellant's application for a partnership work visa had the effect of suspending the final processing of the residence application. If the appellant is now granted a work visa, his residence application can be finalised while he and his wife are together in New Zealand.

[64] Weighing all these matters, the Tribunal finds that it would be unjust and unduly harsh for the appellant to be deported from New Zealand at the current time or before he has had the opportunity to receive the decision on his residence application and, if necessary, lodge an appeal.

Public Interest

[65] The appellant has been assessed as having an acceptable standard of health and he has no criminal convictions in China or New Zealand.

[66] There being no negative public interest factors, the Tribunal finds that it would not be contrary to the public interest for the appellant to remain in New Zealand on a temporary basis.

DETERMINATION

[67] For the reasons given, the Tribunal finds that the appellant has exceptional circumstances of a humanitarian nature which would make it unjust or unduly harsh for him to be deported from New Zealand.

[68] The Tribunal also finds that it would not in all the circumstances be contrary to the public interest for him to remain in New Zealand on a temporary basis.

[69] Pursuant to section 210(1)(b) of the Act, the Tribunal orders that the appellant be granted a work visa valid for 12 months.

Order as to Depersonalised Research Copy

[70] Pursuant to clause 19 of Schedule 2 of the Immigration Act 2009, the Tribunal orders that, until further order, the research copy of this decision is to be depersonalised by removal of the appellant's name and any particulars likely to lead to the identification of the appellant or his wife.

"V J Shaw"
V J Shaw
Member

Certified to be the Research Copy released for publication.

V J Shaw
Member