



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/12693/2017

THE IMMIGRATION ACTS

Heard at Field House  
Ex tempore judgment  
On 13 July 2018

Decision & Reasons Promulgated  
On 13 August 2018

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

WQ  
(ANONYMITY DIRECTION)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance and not represented  
For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of China who was born in 1960. He initially arrived in the UK on 1 January 2001 using a false identity. He was next encountered on 2 February 2010 when again he gave a false identity. He returned to China, apparently voluntarily, on 27 April 2010 and returned to the UK on 24 August 2017 whereupon he claimed asylum.
2. The respondent made a decision on 20 November 2017 to refuse his asylum claim, the decision being characterised as a decision to refuse a protection claim. The appellant's appeal against that decision came before First-tier Tribunal Judge Ian Howard ("the FtJ") at a hearing on 25 January 2018 whereby he dismissed the appeal. The appellant submitted grounds of appeal against the FtJ's decision at a time when

he was unrepresented. That seems to be the case notwithstanding that at the hearing before the FtJ he was legally represented.

3. First-tier Tribunal Judge Keane, in granting permission to appeal, pointed out that the lengthy grounds amounted to no more than a disagreement with the findings of the FtJ but nevertheless identified an arguable error of law in terms of the FtJ's assessment of the appellant's credibility.
4. This appeal was listed before me today in London although the appellant is presently detained, it seems in immigration detention at Morton Hall immigration removal centre in Lincoln. It was hoped that he would appear by video link. However, technical difficulties meant that the video link could not be established.
5. I make it clear then, that it is not the case that the appellant has failed to attend the hearing. I assume that he would have wanted to appear by video link if the link could be established but it could not. I do not see any injustice in proceeding in the appellant's absence in the light of the fact that I have decided that the FtJ materially erred in law in terms of his assessment of the appellant's credibility such as to require his decision to be set aside and for the appeal to be remitted to the First-tier Tribunal. I proceed in the absence of the appellant on what I consider to be the reasonable assumption that he would want me to dispose of the appeal in that way in that he challenges the decision of the First-tier Tribunal and in essence seeks a proper hearing in circumstances where his credibility is assessed in a lawful manner.
6. The basis of the appellant's claim is, to summarise, that he had bought a house in 2010 but in 2016 the local government sought to purchase it from him at what the appellant says was a significant undervalue. The appellant refused the offer of compensation for the house and as a result his house was demolished by what the appellant described as a group of thugs and builders. There was an argument with those who attended to undertake the demolition. The appellant's brother was badly beaten and he died a month later.
7. The appellant complained to the local government but he says that the local government officers were not prepared to listen to his complaint. Thereafter, he was abducted and taken to the local police station where he was beaten and threatened that if he did not stop making the complaint worse would happen. He was detained for 15 days and on 30 January 2017 he lodged a second appeal with the local government. On his way home he received a call from his neighbour informing him that thugs and local government officials had gathered outside his house and were waiting for him to arrive home.
8. As a consequence, the appellant did not go home. Rather, he went to a different province where he found a friend who offered him work. It transpired though, that a warrant or summons had been issued for the appellant to report to the police and when his friend found out about the summons the offer of work was withdrawn. The appellant approached an agent to facilitate his departure and a sum of RMB150,000 was demanded to achieve it. Because the appellant had no money he was made to work on a construction site and was beaten. That period lasted for eight days before he was moved and eventually arrived in the UK.

9. Mr Clarke very fairly accepted that the FtJ's assessment of the appellant's credibility was significantly flawed in terms of his reasons for rejecting the credibility of the appellant's account. It was conceded that the FtJ's decision was inadequately reasoned and I agree with that concession. There are other reasons too for concluding that the FtJ erred in law in his assessment of the appellant's credibility.
10. The FtJ's findings are, in my judgment, very flimsy indeed. He said at paragraph 21 that although the appellant claimed to have a property he had produced no documentary evidence to support that aspect of his claim. He also referred to there being no copy of the warrant or summons produced. It is not clear whether these matters were put to the appellant in terms of why no such documentary evidence was provided.
11. I also note that in the appellant's asylum interview he said in answer to question 1 that a copy of a summons or warrant was provided to his former solicitors. Likewise, in answer to question 55 he said that a copy of the summons had been emailed to his solicitors. These aspects of his interview do not appear to have been canvassed with the appellant.
12. The FtJ said that the appellant's account had been consistently told although observed that it was not a complicated narrative. He also referred at paragraph 22 to a background document produced by the appellant's representative which referred to the demolition of homes in March 2017 in the district in which the appellant lived. He said at paragraph 23 that that report was certainly capable of adding weight to the appellant's claim. However, whether in fact it added weight to the appellant's claim the FtJ does not state.
13. Next, at paragraph 24, the FtJ found that the appellant's claim of being able to discharge a debt of RMB120,000 (although a higher figure is given at paragraph 20), the equivalent of about £12,000, in a period of eight days was not credible. Again, it is not clear whether that is a matter that was explored with the appellant, for example in terms of whether there was any expectation that the debt would be repaid in some other way after he had left China.
14. The FtJ said at paragraph 25 that the evidence provided by the appellant was "in reality scant" and stated "For the reasons I have found above I do not accept his account of his fleeing the PRC". However, in my view the reasons given for rejecting the credibility of the appellant's account are themselves scant and there are matters that, on the face of it, could and should have been explored with the appellant before his account was rejected as being incredible.
15. In all these circumstances, I am satisfied that the FtJ erred in law in terms of his assessment of the appellant's credibility and that error of law is such as to require his decision to be set aside.
16. Mr Clarke accepted that if that was my view, the appropriate course was for the appeal to be remitted to the First-tier Tribunal for a *de novo* hearing. I also agree that that is the appropriate course having regard to the Senior President's practice

statement at paragraph 7.2. There is a need for a proper assessment of the credibility of the appellant's claim.

17. Accordingly, having found that the decision of the FtJ contained an error of law requiring the decision to be set aside, I do set aside his decision and the appeal is remitted to the First-tier Tribunal for a hearing *de novo* before a judge other than First-tier Tribunal Judge Howard. No findings of fact can be preserved.

*Decision*

The decision of the First-tier Tribunal involved the making of an error on a point of law. Its decision is set aside and the appeal is remitted to the First-tier Tribunal for a hearing *de novo* before a judge other than First-tier Tribunal Judge I. Howard.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Given that this is a protection claim and the particular circumstances at present appear to warrant it, I make an anonymity order. It will be a matter for the First-tier Tribunal to decide whether the anonymity order is to continue once the proceedings before it have been concluded.

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Upper Tribunal Judge Kopieczek

7/08/18