Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11795/2018

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision & Reasons Promulgated**
On 24 May 2019	**On 10 June 2019**

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

MS DUOJIZHUOMA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Winter, instructed by Latta & Co Solicitors
For the Respondent: Mr A Govan, Senior Presenting Officer

DECISION AND REASONS

1. The appellant, who is a national of China from Tibet, has been granted permission to appeal the decision of First-tier Tribunal Judge Agnew who for reasons given in her decision dated 12 December 2018, dismissed the appellant's appeal against the Secretary of State's decision dated 21 September 2018. This has been to refuse her protection and human rights claim which had been based on her ethnicity as a Tibetan and her Buddhist belief.

2. The appellant had been educated in Beijing and, after being awarded an Honours Degree in History at Beijing University, obtained a scholarship from the Cambridge Overseas Trust to attend Cambridge University in order to study an MPhil in Social Anthropology at Cambridge University. She came to the UK for that course in September 2012. On her return to China she worked for the Tibet Development Fund and later the Tibetan Foreign Affairs Office. She was then offered a place for an MSc in Social Anthropology at Oxford University which did not however include a scholarship, to begin in October 2014. The offer was repeated in March 2015. She was successful in obtaining a grant from the Dalai Lama Trust for a Graduate Scholarship but was unable to take up a place at Oxford University because the Chinese authorities had held her passport.

3. The appellant had left her job in January 2017 during which she had received harassment from the authorities in China. In July that year she received an offer from Edinburgh College to study a six month English course and flew to the United Kingdom on 17 August 2017 to do so, with a Chinese passport valid until 21 June 2019. She applied for a new passport in December 2017 from the Chinese Consulate in Edinburgh. The refusal of that application had led to her asylum claim.

4. After a survey of the evidence on which she made findings, the judge concluded:

> "52. There are significant problems in the appellant's evidence which I find go to the core of her claims and which she has not satisfactorily explained to the low standard of proof which rests with her. Her evidence is not internally or externally consistent. The cumulative effect of these matters is such that in my view no evidence can be given to her claims as to the problems she claimed she experienced in China or since she arrived in the UK.
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> 53. Articles 2 and 3 of the European Convention on Human Rights stand or fall with the asylum claim and therefore it is not necessary for me to consider these further or the humanitarian protection issue.
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> 54. The respondent did consider the appellant's private and family life at paragraphs 114 to 129 of the refusal letter and found that she did not qualify under the Immigration Rules. Mr Forrest submitted that there were very significant obstacles to the appellant returning to China and therefore she met the requirements of paragraph 276ADE(vi). However, this is based on the acceptance of the appellant's claims of her experiences in China and the UK whereas I have found these not to have been established to the low standard of proof resting with her under the Refugee Convention. The standard of proof is higher in human rights claims.
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> 55. Mr Forrest made submissions under Article 8 of the ECHR and made reference to the considerations listed in section 117B of the Nationality, Immigration and Asylum Act 2002. Section 117A(3) confirms that the Tribunal is required to carry out a balancing exercise where a person's circumstances engage Article 8(1) to

decide whether the proposed interference is proportionate in all the circumstances.

56. The maintenance of effective immigration controls is in the public interest (section 117B(1)). I have found that the appellant not only does not meet the Immigration Rules but has deliberately made a false asylum claim in order that she can remain in the UK. Those who have attempted to deceive the authorities in an effort to gain residency status in the UK, as this appellant has, should be strenuously discouraged. Her private life has been established whilst she knew her status in the UK was precarious. She is not financially independent. She has had access to public funds in various ways including paying for her maintenance, accommodation and health care, all of which is a burden on the taxpayer."

5. The grounds of challenge are lengthy. They comb through the determination and in part are commentary and disagreement. I am however able to infer the following challenges:

(i) A failure to apply Immigration Rule 339L and give the appellant the benefit of the doubt regarding the background evidence on the issue of passports in Tibet.

(ii) The appellant had not been inconsistent with her evidence regarding the cessation of her studies in 2012 and her passport seizure.

(iii) The judge had required impossible corroborative evidence that would not exist.

(iv) The judge had erred over the date of the Korean visa and the basis of her passport return.

(v) The judge had failed to assess what risk, if any, the appellant faced as a "splittist".

(vi) A failure to consider the appellant's evidence she was required to attend an "education" course.

(vii) A failure to consider the appellant's explanation of the danger caused by the possibility of an expired passport.

(viii) A failure by the judge to consider the appellant's evidence that she was told orally the renewal application of her passport had been refused.

(ix) It was unreasonable of the judge to expect Diana Dodd to give evidence.

(x) A failure to consider the potential risk as a failed asylum seeker upon return.

(xi) The judge had gone behind a concession made by the respondent regarding her attendance at a Buddhist temple in Scotland.

(xii) It was an unreasonable requirement to have seen evidence of the appellant's blog.

(xiii) The judge had failed to consider the risk the appellant would face if she were not credible on return.

(xiv) A failure by the judge to consider the receipt of funding from the Dalai Lama Trust in 2015.

(xv) A failure to consider correctly the obstacles faced by the appellant on return to China.

(xvi) Mr Forrest referred to in the decision was a representative in another appeal for another appellant in the same court room on the day of the hearing.

6. In granting permission to appeal, Judge Gibb considered the grounds arguable and observed at [2] and [3]:

> "2. The grounds, which were in time, complain that the judge erred in: (1) relation to adverse credibility findings; (2) not assessing whether online evidence would lead to a perception as to supporting Tibetan Independence; (3) her approach to the evidence of a witness, and going behind a concession; (4) failing to address risk as a failed asylum seeker; (5) conflating protection and the test in 276ADE; and (6) appearing to confuse cases in the list by referring to a different representative than that for the appellant.
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> 3. The grounds are arguable. The 6th point raises a concern as to the appearance of a fair hearing/anxious scrutiny in a protection case. The other matters justify consideration as to whether, considered together, they are enough to undermine the adverse credibility findings; and whether all aspects were considered addressing risk on return."

7. I am grateful to Mr Winter and Mr Govan for their detailed submissions in particular Mr Winter who candidly acknowledged the range of grounds and the difficulties that this posed. His overall submission was that the judge erred by not carrying out an adequate risk assessment based on the various facts found and in play. He was not instructed to yield up any of the grounds and it seemed to me that there was no substitute to going through the decision line for line to see if error on one of the 16 grounds was made out. Context is all otherwise there was a danger that passages could be overlooked that might (or might not) sustain the decision.

8. My analysis of the decision begins with the observation that it was a careful well-structured one that as accepted by Mr Winter took account of all the evidence. Disagreement with the result which was summarised by the judge at [52] to [56] is not enough as Mr Winter accepted. To show to error it was necessary to see if any tangle (using Lord Wilson's metaphor in *KV (Sri Lanka) v SSHD* [2019] UKSC 10*)* was more than minor. With these factors in mind I turn to each of the grounds.

9. Ground (i): Benefit of the doubt is not regarded as a rule of law in the assessment of an asylum claim; see *KS (Benefit of the doubt)* [2014] UKUT 552 (IAC). The provisions in 339L replicate article 4(5) of the Qualification

Directive which does not require the benefit of the doubt to be applied but instead sets out a criteria where corroboration will not be required when certain conditions are met. This ground is not made out; the judge did not reach her conclusion for want of corroboration but due to an unchallenged assessment of the country information.

10. Ground (ii): The appellant did not mention the additional reasons given in oral evidence why she did not return to complete her course at Cambridge when it was open to her to do so. Whilst the judge might have better expressed the point, she was unarguably entitled to draw an adverse inference from reasons not previously mentioned in the appellant's interview or her statement. Not giving the same (and thus consistently expressed) reasons for a particular event can be a legitimate credibility concern.

11. Ground (iii) and (xii): Mr Winter accepted that these ran together. To my mind, in the light of the evidence provided for the initial arrangements for the course, the judge was rationally entitled to query the absence of evidence of any exchange with the university regarding her additional reasons for truncating her studies by reference to her wish to enhance her listening skills and her grandmother's poor health. It was rationally open to the judge to observe that copies of the blog (as opposed to the photograph) had not been produced but that it would have been helpful to have seen them.

12. Ground (iv): As accepted by Mr Winter, the reference to 2011 as the date of issue of the visa was clearly a typographical error in the light of the judge's subsequent reference to the brevity of its life: This is not a factor that has any bearing on the correctness of the decision. Mr Winter also accepted that grounds (x), (xiii) and (xiv) also relate to this aspect of the challenge. Each asserts a failure to consider the risk it is claimed the appellant would face. A reading of the decision shows that the judge had risk in her mind throughout which was assessed against legitimate credibility concerns in the context of a proper evaluation of the country evidence summarised in the extracts cited above. I am not persuaded that any of the grounds in this category even when taken together makes out error of law. Mr Winter acknowledged his difficulties with reference to (x) in any event.

13. Ground (v): This ground is little more than a bare assertion and fails to take account to matters that the judge accepted and those she rejected after a careful analysis of the evidence between [29] and [37] leading to her finding in [37] as follows:

> "37. If the authorities had any suspicion regarding the appellant, I consider it highly unlikely she would have been able to travel abroad, rather than take a course before she left, if required, or leave at all. The background information is that these courses are directed towards monks and nuns. There are some education schemes or were for villagers but the appellant does not fall into any of the categories covered by the background information

> before me. I find that this claim that the appellant was required to attend a political education course and failed to do so which means she would be at risk on return is an invention of the appellant in order to expand her reasons for fearing persecution on return."

1. Ground (vi): This ground, as accepted by Mr Winter, relates to (v) above and was considered in [37].

2. Ground (vii): The judge gave rational reasons why she had doubts over the explanation by the appellant for claiming asylum. She acknowledged the difficulties that Tibetans had in obtaining the new type of passport and was entitled to conclude that the Consulate's refusal should not have been a significant surprise. It was also open to the judge to consider the possibility of the grant of a new passport (see [41]) but to qualify that with the observation:

> "That is neither here nor there but the point is that the appellant has produced documentary evidence of an application but the documentary evidence then comes to an abrupt halt with no follow up."

14. Ground (ix): The judge's observations regarding the absence of evidence from Ms Dodd in the light of the significant support provided by her. It was for the witness to say that it was not possible to give such evidence rather than for it to be asserted in the grounds.

15. Ground (xi): It is correct that the respondent considered the appellant should be given the benefit of the doubt and that it was accepted she did attend a pilgrimage and was photographed with the Lama (in Scotland). Implicit in the judge's consideration of this in [47] is an acceptance that the appellant attended a pilgrimage on at least one date. It was open to the judge to observe the absence of evidence in support of the appellant's contention that she had been attending almost monthly since October 2017. The respondent had not accepted the evidence of such claimed regular attendance.

16. Ground (xv): Mr Winter accepted that this disclosed no ground of any substance.

17. Ground (xvi): I do not consider this to be a major tangle. Mr Winter accepted that the error was not material in that the judge had accurately recorded what Mr Price had said. It was an unfortunate slip but not one that led to material error.

18. Stepping back from these individual challenges and taking an overall view of the assessment undertaken by the judge, I am satisfied that she directed herself correctly as to the law and carried out a careful assessment of all the evidence. She gave sustainable reasons for rejecting the aspects she did not accept. The conclusion by the judge that such risk was not made out was one that was rationally open to her on the evidence and it was one reached without legal error.

NOTICE OF DECISION

This appeal is dismissed.

No anonymity direction is made.

Signed

UTJ Dawson Date 3 June 2019

Upper Tribunal Judge Dawson