



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/01503/2020

THE IMMIGRATION ACTS

**Heard at Field House
On 30 November 2020**

**Decision & Reasons Promulgated
On 3 June 2021**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

**J Z X
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Burrett, Counsel instructed by L & L Law Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make this order because the appellant is an asylum seeker and is entitled to privacy.
2. This is an appeal against a decision of the First-tier Tribunal dismissing the appeal of the appellant against the decision of the Secretary of State on 20 January 2020 refusing him asylum or any other kind of international protection.
3. As the First-tier Tribunal rightly explains the appellant applied for asylum in the United Kingdom and asked to be recognised as a refugee. In outline he claims

to have a well-founded fear of persecution in China because he has breached the one child policy. The put him at risk from the authorities and caused him to leave China which caused him to have dealings with loan sharks and snakeheads and he claims now to fear the authorities and loan sharks and snakeheads in the event of his return. Additionally he claims to be a victim of trafficking.

4. He has previously applied for asylum and his appeal was dismissed.
5. A major feature of the First-tier Tribunal Judge's reasoning in the appeal that I have to consider was that the appellant had added nothing useful to the case that had been determined previously.
6. Permission was granted by the First-tier Tribunal in a fully reasoned decision finding it arguable, amongst other things, that the judge had misunderstood the evidence and so had concluded irrationally that the appellant had not been complaining about problems he had had in China before he left and the alleged error led the judge to conclude unsustainably that the appellant was not at risk now because he was not in trouble when he lived in China.
7. That point is well made in the grounds but Mr Clarke made a very strong defence of the Decision and Reasons.
8. I mean Mr Burrett no disrespect whatsoever by beginning with Mr Clarke's submissions.
9. The appellant's case was clearly set out in the grant of permission. Essentially it was suggested that the judge had factored into his adverse credibility findings a false premise based on the misreading of the evidence. Mr Clarke submitted there were two lines of attack in the grounds of appeal. The first was the finding that ought not to have been made and the second was the consequences of the appellant having claimed to have been trafficked.
10. As is set out under point five of the grounds of appeal the First-tier Tribunal gave as one of its reasons for disbelieving the appellant's claim that "the appellant was able to remain in China from 1997 to 2002 and was not arrested by the Chinese authorities". This is a reference to paragraph 80 of the decision and reasons where the judge continued:

"I am of the view that [the Chinese authorities] would have been able to find the appellant during the course of five years. The appellant's case is that during the period from 1997 to 2002, the appellant moved between various cities and provinces in China."
11. It is the appellant's case in his grounds that the First-tier Tribunal did not deal with his evidence saying that he did have difficulties during this time. The appellant relied on an "Addendum Witness Statement" dated 17 March 2020 which specifically referred to his earlier statement relied upon on in a hearing on 4 August 2016. In that statement he explained how he had had seven children with his wife at a time when, by reason of the well-known Chinese "one child" policy he was permitted to have only one child. An official from the family planning authority came to fine him. The appellant persuaded the authorities to wait until he was in better financial circumstances but this added a bribe to his bills. When they came to collect the money in 1997 there was an

altercation and he hit an officer and was detained and eventually sent to prison.

12. It was his claim that he was tortured in prison and detained for three months until his wife secured his release by paying a bribe having raised capital from a loan shark. His business collapsed during his absence and could not get alternative work because of his history of problems with the authorities. His debts increased. He said that after his release from detention:

“The police as well as the family of the injured police officer kept coming to check and harass me. I did not feel safe, and the harassment also made it extremely difficult for me.”

13. However the addendum witness statement relied on does not revisit this point. It offers no new evidence on the claim to have been harassed and ill-treated after release from detention. At paragraph 89 of the 2016 decision the judge said:

“The appellant was able to continue and live and work in various parts of China between 1991 and 2002. Had the authorities had any interest in him, they would have been able to find him and detain him. The fact they did not do so demonstrates that the appellant is not a wanted man in China as he claims.

14. As Mr Clarke pointed out, the claim that the appellant had been hassled was clearly before the judge in 2016 and it was rejected. The reasons for rejecting it are not clear but that the decision was not appealed successfully and Mr Clarke submitted the issues are settled.
15. Mr Clarke submitted that the First-tier Tribunal was plainly aware of further evidence from the appellant but dealt with it satisfactorily.
16. The appellant had relied on a letter purportedly from his wife in China stating that the Chinese authorities and the Chinese mafia had been looking for the appellant since 2019. This is explained at paragraph 81 of the Decision and Reasons. However, the judge did not find that evidence reliable. He did not understand why the appellant’s wife would be interested in offering him any support of any kind in 2019 because it was the appellant’s case that in 2017 his wife wanted nothing whatsoever to do with him.
17. Further the judge had seen a letter from Hestia, which I understand to be a respected charity based in London that offers support particularly to the victims of trafficking. The judge noted a difference between the letter supposedly from the appellant’s wife and the letter from Hestia suggesting that the appellant had not been consistent in his account which the judge found indicative of untruthfulness. Mr Clarke submitted there was no legal error whatsoever disclosed in the judge’s approach to the fact-finding.
18. Mr Clarke then directed his submissions to what he described as the “trafficking side of the claim”.
19. He argued that the judge had, rightly, started with the existing decision and then looked for further evidence. There was a development in the case. The appellant’s claim to have been trafficked appeared to find favour with journalists from both the BBC and the Financial Times but the appellant had not been able to persuade the competent authority that he was a victim of trafficking and the judge found no reason to be impressed with the opinions of

journalists. The judge attached “significant weight” to the claim for trafficking being made late. It was not raised for more than ten years after the appellant claimed to have escaped but the judge did not just leave things there. He also looked at an explanation for it not being raised and was not impressed that the appellant said his representatives had not asked him directly. Even allowing for alleged reticence on the part of the appellant the judge found it incongruous that the appellant was able to overcome his reticence to talk about his experiences in China but not the more recent experiences of escape from China.

20. Mr Clarke submitted that the judge’s approach was entirely lawful.
21. The judge considered the report of a consultant psychiatrist a Dr Dhumad and noted the conclusion that the appellant was suffering from a moderate to depressive episode and post-traumatic stress disorder and a moderate but significant risk of suicide on return to China. The judge did not regard this as evidence that the appellant was telling the truth about his experiences in China but directed himself at paragraph 65 of the Decision and Reasons that he had “made allowances for the appellant’s mental health when assessing credibility”. The judge found at paragraph 125 of the Decision and Reasons that there had been nothing before him to show the appellant would not be able to get the necessary mental health treatment in China.
22. It is against this background that I consider again Mr Burrett’s submissions.
23. The judge has formed a view on the evidence and has used the existing decision as a starting point and no more. Mr Burrett made submissions which might have gone to show how the decision could have been resolved differently but that is not the point. All of the evidence was considered by the First-tier Tribunal Judge who reached a conclusion that the appellant does not like.
24. I am not persuaded there is anything unlawful in the decision and I dismiss the appeal.

Notice of Decision

This appeal is dismissed.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 27 May 2021