



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

Appeal Number: AA/03116/2015

THE IMMIGRATION ACTS

**Heard at Glasgow
On 27 October 2015**

**Decision & Reasons Promulgated
On 30 October 2015**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

SHI JIAN CHEN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Winter, Advocate, instructed by Katani & Co,
Solicitors

For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of China, born on 16 April 1996. The respondent refused his asylum claim for reasons explained in a letter dated 4 February 2014. It was accepted that he had been a victim of trafficking, but no leave to remain was granted as a result. Although he entered the asylum process as a minor, his 18th birthday was 2 days after his substantive interview, so he was treated as an adult. His account of an alleged kidnap and of his experiences in general was found vague, implausible and

unreliable. He additionally expressed some fear of his parents, but inconsistently. Even if his claim were taken at highest and it had been accepted that he was kidnapped in 2010, the respondent considered there would be no risk on return to China, that sufficiency of protection was available, and that he had the option of internal relocation.

2. First-tier Tribunal Judge Agnew dismissed the appellant's appeal for reasons explained in her determination promulgated on 12 May 2015. She found the appellant an evasive, inconsistent and unsatisfactory witness. He failed to establish that family support would not be available if he returned (paragraph 24). She did not find any real risk of persecution or re-trafficking (paragraphs 33-37) and so the claim failed in terms of refugee or humanitarian protection status. At paragraph 41, she found no arguable case for going outside the Rules in terms of Article 8 of the ECHR, but that even if there had been such a case, removal would be proportionate.
3. The appellant sought permission to appeal to the Upper Tribunal. The first ground was error by applying the threshold criterion of a good arguable case to Article 8. The second ground was based on the Secretary of State's failure to fulfil the obligation to try to trace the appellant's family in China, which might have resulted either in identifying him as a member of a social group entitled to asylum, or might have been a material factor in deciding whether it was proportionate to return him, being a victim of trafficking.
4. A Judge of the First-tier Tribunal refused permission to appeal on both grounds. The application was renewed to the Upper Tribunal.
5. On 10 August 2015 an Upper Tribunal Judge refused permission on the first ground. The decision does not appear explicitly to decide whether to admit the second ground. It grants permission on the basis that it was arguable that the FtT committed a procedural error by refusing to adjourn in order for the respondent to produce the decision on trafficking.
6. In a Rule 24 response to the grounds of appeal the respondent submits that the question of adjournment was addressed at paragraph 11; the appellant wished to proceed; and any such error formed no part of the grounds submitted to either the FtT or to the Upper Tribunal.
7. By letter of 16 October 2015 the appellant's solicitors sought to amend the grounds by adding the procedural point about adjournment, and by adding a further ground, namely that in assessing sufficiency of protection the Tribunal erred by failing to consider that the individual circumstances of the appellant were capable of making a difference to the question whether there was sufficient protection available, and because protection after the event is no protection. A letter of 21 October 2015 indicates that permission would be sought to argue the first original ground (the threshold point), and that the second original ground, in relation to the tracing obligation, is maintained. A further letter of 23 October (very

properly) withdraws any reliance on the procedural point, it having been noted that the trafficking report was on the file of the appellant's solicitors, but was overlooked.

8. Mr Winter in submissions correctly acknowledged that the first ground was not arguable, because the judge at paragraph 41 did consider Article 8 in the alternative.
9. The only remaining ground was based on the tracing obligation. Mr Winter pointed out that the cases relied upon in the grounds have since been overtaken by *TN and Others* [2015] UKSC 40, [2015] 1 WLR. He accepted that the respondent could not be required to grant asylum status other than on a current basis, and not as a form of relief for any earlier breach of obligation (paragraphs 72 of *TN*). He also acknowledged that in this case there had been no request to the Secretary of State to carry out a tracing enquiry and there was no application to the Tribunal for adjournment while that was done (see paragraph 73), but observed that *TN* was not an authority available at the time. He submitted that if there were material error, it might even now be apt to adjourn pending tracing enquiries. It made no difference that the appellant is now aged 18. The appellant had been disbelieved especially because he gave no persuasive account about his family in China. The exercise of the tracing obligation would bear on that. The further reasons given for doubting the credibility of the appellant, paragraphs 25-27 of the determination, were relatively minor. The determination failed to acknowledge the respondent's tracing obligation. Unlike the 2 respondents considered at paragraph 74 of *TN*, this appellant had given the names and address of his parents at screening and at asylum interview. It might be relevant to internal flight whether he had any family support available. It might be relevant to proportionality that he was returning to a situation of isolation, to be contrasted with his situation here as a trafficked individual who has social work and other support. If material error were found, then either the case should be adjourned for the tracing obligation to be met, or the case should be resolved on submissions.
10. Mrs O'Brien said (justifiably) that her preparation had been largely set aside by the appellant's changing position on the grounds he sought to argue. However, she was able to proceed. She said that a trafficked person aged over 18, not found to be at risk of re-trafficking or otherwise on return, was simply not entitled to any form of status. There had been no time available to try to trace the appellant's parents before he became an adult. It had been reasonable to proceed to resolve his case. The respondent had not been asked then or since to do anything else. It was for the appellant to make his case and he was found to have given a plainly unsatisfactory account regarding his family and his efforts, or lack of efforts, to contact them, resulting in negative findings. Part of the evidence suggested a fear and reluctance to contact his parents, and there was no suggestion from him that he would be any more co-operative or informative now. The judge had reached proper conclusions on the core

facts such that the appellant had no case, and there was no reason to interfere.

11. Mr Winter in response suggested that paragraphs 52 and 53 of *TN* showed that failure in the tracing obligation could still be of “evidential relevance” because the lack of evidence resulting from the breach of duty might be relevant to assessment of present risk. The duty on the Secretary of State was established by the Procedures Directive as implemented in regulations, cited at paragraph 12 of *TN*. The respondent was not absolved from a failure to comply with that duty by the fact that an appellant turned 18.
12. I reserved my determination.
13. Mr Winter has done his best to tease together from the grounds of appeal and from *TN* some thread of argument. However, the endeavour is somewhat convoluted and strained, perhaps not surprisingly, given the history of the grounds and the emerging authority of *TN*.
14. The submission was notably short of references to the determination. I see nothing which suggests any legal error by the judge on the case which was put to her. There appears to have been no reference to any tracing obligation earlier than the application for permission to appeal to the Upper Tribunal. It is certainly not mentioned in the generic and reticent grounds of appeal presented to the First-tier Tribunal. The failure to raise it at the appropriate time has been passed over in silence.
15. The critical finding of fact, no risk of re-trafficking, is not open to dispute. The appellant was not (at least after his 18th birthday) entitled to a grant of status related either to the tracing obligation or to trafficking. There is only the faintest of suggestions in the rather confused evidence he gave that he might not return to his home area in safety, but even if that did present any difficulty the claim is defeated by the availability of internal relocation. The appellant is a young fit healthy man, there were no strong reasons to find him particularly vulnerable, and no reason why he could not manage as an adult male in his own country (paragraphs 36 and 37 of the determination). There was no realistic prospect that on the basis of his private life in the UK any judge might have reached a different outcome, or might do so on remaking the decision.
16. Whether or not the appellant’s parents can be contacted from the details he gave, his case has the same outcome.
17. The grounds do not identify any legal error by the First-tier Tribunal judge, and certainly not one such as might entitle the Upper Tribunal to interfere with her decision.
18. The determination of the First-tier Tribunal shall stand.

A handwritten signature in black ink that reads "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

Upper Tribunal Judge Macleman
29 October 2015