



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

Appeal Number: AA/08210/2015

THE IMMIGRATION ACTS

**Heard at Glasgow
On 26 November 2015**

**Decision &
Promulgated
On 31 March 2016**

Reasons

Before

UPPER TRIBUNAL JUDGE DEANS

Between

**Ling Zhang
(Anonymity order not made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Price, Latta & Co, Solicitors

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

DECISION AND REASONS

- 1) This is an appeal against a decision by Judge of the First-tier Tribunal Morrison dismissing an appeal of asylum and human rights grounds.
- 2) The appellant was born in 1989 and is a national of China. She claims that her parents were killed at the end of 2003 when a housing developer demolished the family home with the family inside. The appellant's parents had refused to move and one night the developers came and demolished the house while she and her parents were sleeping in it. The appellant survived and was taken in by a neighbour. She tried to make a complaint in the petitions office in the nearest city but the developer had a relationship

with the government and claimed that the house collapsed on its own. When the appellant went to make her complaint she was detained for about a week. In detention she was threatened and given only bread and water. After she was released she was followed. The appellant returned to live with a neighbour but one day she was cornered by two men who beat her up and threatened her. They told her that if she complained again she would be killed. After this the neighbours did not want her to stay with them anymore. The appellant used the family's life savings to employ a "snakehead" to arrange her travel to the UK.

- 3) After her arrival in the UK the appellant met some Chinese people. She lived and worked with them for about a year and a half doing washing up in a take-away restaurant. After about three years in London she moved to Manchester where she stayed for 3 or 4 years working at another restaurant. She then went to Edinburgh to work in a take-away. From there she went to a restaurant in Livingston where she was detected by immigration officials and she claimed asylum.
- 4) The Judge of the First-tier Tribunal observed that if the appellant's account was true then she would have left China when she was only 14. There was, however, no evidence apart from the appellant's own account to support her claim that was when she left China. She had no contact with the authorities in the UK until she was detained in July 2013. She produced a witness statement from a friend who said she had known her only since 2012.
- 5) The judge acknowledged that the appellant had given a consistent account of the events in which she claimed to have been involved in China and these were plausible when considered against the background information. There was a factual discrepancy over whether she had used the family savings to pay the snakehead to leave China or whether she had borrowed the money from the snakeheads. There was also an inconsistency arising from differing accounts she had given of how she had travelled from China to the UK. The judge found these discrepancies damaging to the appellant's credibility.
- 6) The judge considered the appellant's response after the demolition of the house. The judge did not consider it credible that a girl who had just turned 14 would have reported the developers to the local petitions office. He did not find it credible that a recently bereaved 14 year old girl would have taken such action, nor did he find it credible that the response of the officials in the department would have been to detain her for a week. In his view it was much more likely that the authorities would have ignored the appellant knowing that her parents were dead and there were no adult family members who might cause trouble. Even if the appellant had been detained for a week, it was not credible that she would subsequently be approached out of the blue a few weeks later by people whom she said represented the developer and who threatened her. If she had been detained and released the developers had no reason to think that she would be any further trouble to them. In addition the judge did not consider it plausible that the appellant would have found the family's savings of 10,000

RMB among the ruins of their family home; that she would have hidden this from the neighbours while she was living with them; and then arranged herself to find and pay snakeheads to fund her journey.

- 7) The judge concluded that the appellant's account was a fabrication and she did not face a real risk of persecution on return to China.
- 8) The judge then considered the appellant's private life, first of all in relation to paragraph 276ADE of the Immigration Rules. The judge was not satisfied that there would be very significant obstacles to her integration into China. The judge did not consider it necessary to consider Article 8 outside the Rules.

Application for permission to appeal

- 9) The application for permission to appeal started with the appellant's claim that she had come to the UK in 2004. The judge was not prepared to make a finding that the appellant arrived in the UK in 2004 and was prepared to accept only that she had been in the UK since 2012. The judge could not therefore take as an adverse credibility point under section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 that the appellant had delayed making an asylum claim for a period of almost 10 years, since 2004. In addition, the judge considered that the appellant had had a lengthy period in which to fabricate the details of her asylum claim. This was on the assumption that she had had almost 10 years to do this whereas the judge's finding was that she had not been in the UK since 2004 but only since 2012. It was not clear to what extent the judge had accepted the Home Office submissions on these matters. The judge's reasoning on these matters was not based upon by his findings in fact. This was an arguable error of law that went to the core of the claim and infected the other negative credibility findings.
- 10) The grounds then refer to certain factors which the judge found adversely affected the appellant's credibility. These were, first, the issue of whether or not the appellant owed any money to snakeheads and, second, the implausibility of the appellant's alleged actions in China at the age of 14. According to the grounds these issues were not put to the appellant by the respondent in the reasons for refusal letter, nor at the hearing by the respondent's representative. The judge did not put them to the appellant. They were not obvious points that required to be responded to by the appellant without notice. The appellant did not have a fair opportunity to answer them. Reliance was placed upon Oke, Petitioner [2012] CSOH 50.
- 11) The grounds refer to paragraph 276ADE of the Immigration Rules. It is submitted that the judge applied the wrong test by finding that the appellant did not have a lack of ties to China. The proper test was whether there were significant obstacles to reintegration. The judge also said that any ties which the appellant had lost were a matter of her own choice for

which she was to blame. The question of choice was, however, not relevant to the application of paragraph 276ADE(vi).

- 12) Continuing with the right to private life, the judge found there was no good arguable case that would entitle him to make an Article 8 assessment outside the terms of the Rules. The judge had treated the concept of a good arguable case as a sifting or intermediary test. This was now known to be wrong, as pointed out in Oludoyi IJR [2014] UKUT 00539. The judge had applied the wrong legal test.
- 13) Finally the grounds criticise the judge's application of section 117B of the Nationality, Immigration and Asylum Act 2002. The judge erred in finding that s117B(3) required some certification of achievement or attendance at English language courses. The issue was only whether the person could speak English. In addition, given the judge had found that the appellant was an economic migrant and had worked until she claimed asylum, the finding that she was not financially independent prior to her asylum claim was unreasonable.
- 14) Permission to appeal was granted by the First-tier Tribunal in relation to the credibility issues arising from the asylum grounds. The points in relation to the judge's finding as to when the appellant arrived in the UK in conjunction with the supposed delay in claiming asylum and the opportunity to fabricate a claim were arguable. In relation to the discrepancies that were not put to the appellant it was difficult to see why they needed to be but this issue was still arguable.
- 15) In granting permission the judge considered there was no merit in relation to the Article 8 grounds. The judge ultimately applied the correct test under paragraph 276ADE. The point the judge was making was that there were no factors to be considered when considering Article 8 which had not been taken into account when considering paragraph 276ADE. In these circumstances it was not arguable that the judge needed to consider Article 8 outside the Rules as the appellant could not have succeeded. Even if the judge were wrong in relation to the English language and financial independence factors, these factors did not weaken the public interest in the maintenance of immigration control.
- 16) A rule 24 notice was lodged on behalf of the respondent. This stated that the Judge of the First-tier Tribunal directed himself appropriately and made findings that were open to him. The judge found there was no basis for making a finding on the length of time the appellant had been in the country. Any error in taking into account the submission that the appellant had had plenty of time to fabricate the details of her asylum claim was not material in the light of the strong adverse credibility finding. The grounds were nothing more than a disagreement with the Tribunal's findings.
- 17) A rule 25 response was lodged on behalf of the appellant, intended to serve also as a skeleton argument. This contended that in relation to when

the appellant arrived in the UK either a finding had been made of the wrong period of time or contradictory findings had been made. Reliance in this regard was placed on the grant of permission to appeal. Reference was made to the case of Murray Group Holdings [2015] CSIH 77.

- 18) It was further submitted in the rule 25 response that the appellant had not had a fair opportunity to answer points taken against her. It appeared to be accepted in the grant of permission to appeal that these matters were not put to the appellant, even though it was said it was difficult to see why they needed to be. Again this constituted an error in terms of Murray Group Holdings.
- 19) Taking issue with rule 24 notice, the rule 25 response stated that the grounds were not just a disagreement with the findings of the First-tier Tribunal. It was not accepted that the Judge of the First-tier Tribunal made findings which were open to him. If errors were made in the assessment of credibility then these were material.
- 20) It was further submitted in the rule 25 response that there were errors going to the core of the claim and that a new decision required to be made. The appeal should be remitted for hearing again before the First-tier Tribunal.
- 21) At this point it may be observed, having regard to the terms of the rule 25 response, that any observations made by the Judge of the First-tier Tribunal who granted permission to appeal are not binding on the Upper Tribunal in respect of the question of whether the First-tier Tribunal made an error of law. They are intended to explain why the judge who grants permission to appeal considers that the points in question are arguable. They do no more than this – they are not to be regarded as expressing any conclusions on those points. They therefore cannot be founded upon by either side.

Submissions

- 22) At the hearing before me Mr Price submitted that there were arguable errors in the decision of the First-tier Tribunal, as indicated in the grant of permission to appeal. At paragraph 31 the judge referred to the appellant having come to the attention of the UK authorities nine years after she claimed to have arrived in the UK. The judge did not accept the appellant had arrived in 2004. A delay of 9 or 10 years in claiming asylum was very different from a delay of one year. Having found the appellant had arrived only in 2012 it was wrong of the judge to accept a submission on behalf of the respondent that the appellant had delayed for nine years in claiming asylum.
- 23) Mr Price continued that the judge found at paragraphs 28 and 29 that the appellant's account was consistent and credible. The issues on which the judge found discrepancies were not put to the appellant at the hearing. They were not obvious issues to which the appellant should have provided a

response. There was procedural unfairness. The appellant should have had notice of the points against her. Reliance was again placed on Oke.

- 24) For the respondent, Mrs O'Brien relied on the rule 24 notice. On the question of delay in claiming asylum, the judge said that if he accepted what the appellant said then there was a long delay in making a claim. This was the position of the Secretary of State and it was open to the judge to accept this. It was clear that the judge had had difficulty in making a finding as to when the appellant arrived in the UK. The position was that if it was accepted what the appellant said about her date of arrival then the negative credibility point could be taken against her.
- 25) Mrs O'Brien submitted that in the case of Oke, which was a judicial review, there was a complete failure to have a fair hearing and follow a fair process. In the present appeal it was not known what answers the appellant would have given to the questions at issue but there was nothing before the Tribunal to indicate that these points should not have been taken. It was pointed out that the discrepancies in the appellant's account of her travel to the UK were referred to in the reasons for refusal letter. Mrs O'Brien submitted that the credibility factors might be looked at cumulatively. At paragraph 33 of the decision it was made clear why the judge found against the appellant in terms of credibility.
- 26) Mrs O'Brien pointed out that permission to appeal had not been granted in respect of Article 8. Mr Price confirmed that this aspect of the decision was not challenged.
- 27) Mrs O'Brien concluded that in relation to credibility criticisms might be made but the appellant had not shown a continued risk to her in China and the decision should stand.
- 28) Mr Price responded that this was a case where there was unfairness because the appellant had not been allowed to explain points that were taken before her. There was an ongoing risk to her in China. The appellant had been detained and feared she was on a blacklist because she had made a complaint. This was a fear of the state.

Discussion

- 29) The principal issues argued on behalf of the appellant were that the judge had made adverse credibility findings based on contradictory findings and that the judge had acted unfairly in taking adverse points against the appellant on which she had not been given the opportunity to comment. I will address first the judge's findings on the question of when the appellant arrived in the UK.
- 30) At paragraph 23 of the decision the judge pointed out that according to the appellant she was only 14 when she left China but she had no contact with the authorities in the UK until July 2013. At paragraph 24 the judge

then recorded an acknowledgement by Mr Price that the appellant's failure to claim between her supposed arrival in the UK in 2004 and her detention in 2013 went against the appellant's credibility. Mr Price was recorded as having said, however, that this was not determinative of her credibility. The judge accepted this but then said it was a matter on which he must place some weight. The judge further stated that what concerned him particularly was that the appellant acknowledged in her oral evidence that she had been aware of the asylum process since 2008, when she claimed to have been living in Manchester. The appellant was asked why she did not claim asylum in 2008 and replied that she had work and a job so did not apply earlier. When she was questioned again about this she said that at that time her life was quite stable and she was satisfied with it. The judge recorded at paragraph 9 that the appellant had previously informed the respondent that she had been told by people that if she claimed asylum she would be sent back to China. This was not, however, the explanation the appellant gave in her evidence at the hearing for her delay in claiming asylum. The judge concluded on the basis of the appellant's evidence at the hearing that the appellant's main interest in being in the UK was economic rather than keeping herself safe.

- 31) The decision of the Judge of the First-tier Tribunal shows that he accepted the submission on behalf of the appellant that any supposed delay by the appellant in claiming asylum was not determinative of her credibility. The judge said that nevertheless he had to have regard to this, which is correct in terms of section 8 of the 2004 Act. The judge found a damaging inconsistency in the reasons given by the appellant for not claiming asylum earlier and the judge's reasoning in relation to this was not challenged.
- 32) Subsequently, at paragraph 33, the judge said he was not prepared to make a finding that the appellant arrived in the UK in 2004. The only finding he was prepared to make was that the appellant had known since 2012 the friend in the UK who gave a statement on her behalf. The judge then said, in effect, that he was unable to make a finding as to the date when the appellant arrived.
- 33) There is no contradictory finding by the judge as to when the appellant arrived in the UK. It was accepted at the hearing that if the appellant arrived in 2004 then a delay in claiming asylum would count against her but would not be determinative. More significantly, however, she gave inconsistent explanations for not claiming asylum earlier and the judge was entitled to find that this was damaging to her credibility.
- 34) The other aspect arising from the question of when the appellant arrived in the UK is the submission on behalf of the respondent that the appellant had a more than adequate opportunity to prepare a fabricated account. On reading paragraph 26 of the judge's decision, however, it seems that the terms of the submission were ambiguous. The submission may have been based on the suggestion that the appellant had had between 2004 and 2013 to fabricate her account or, alternatively, that the appellant had had time to

do so between claiming asylum in July 2013 and being asked for the first time for a detailed account of her claim at an interview in December 2014. The judge concluded, at paragraph 26, that there was some weight to be given to the submission that because of the appellant's lack of contact with the authorities she had had a very lengthy period in which to make up the details of her claim.

- 35) In stating this the judge has not resolved the ambiguity in the submission. The judge referred to "a very lengthy period" during which the appellant had a lack of contact with the authorities in the UK. It is not clear what the judge means by the appellant having had "a very lengthy period in which to make up the details of her claim." The judge may have been referring to the appellant's alleged arrival in 2004, or her claimed knowledge since 2008 of the possibility of claiming asylum or, possibly, the gap between the screening interview in August 2013, to which the judge refers, and the full interview in December 2014. This issue, however, is a minor aspect of the judge's reasoning and I accept the respondent's submission that by itself it is not material. The more important question is whether the other reasons given by the judge for making an adverse credibility finding were matters on which the judge was entitled to base his decision.
- 36) Two of these reasons in particular are challenged by the appellant. The first was the apparent discrepancy over whether the appellant owed any money to the snakehead. The second reason which is challenged is that the judge said it was implausible that a 14 year old would have acted in the way that the appellant did by making a complaint to the petitions office and by making arrangements to leave the country.
- 37) In relation to the payment of the snakehead, the reasons for refusal letter at paragraph 3.g states that according to the appellant's account at her asylum interview, she paid 10,000 RMB to the snakehead using the life savings of her family. At paragraph 15 the letter states that the appellant claimed to have left China with the help of a snakehead using her family's life's savings but it was unclear how the appellant obtained this money given that she claimed that her parents' house was demolished and her parents were killed.
- 38) The judge records at paragraph 28 of his decision that in her witness statement at paragraph 25 the appellant confirmed that she paid the snakehead 10,000 RMB. The judge then refers to the appellant's screening interview and records that when asked to explain briefly why she could not return to China she said: "The government tried to take my property and I owe money to the snakeheads." The judge regarded it as a discrepancy in the appellant's evidence whether she paid the snakehead from her family's life savings or borrowed the money to do so. (I note in fact that the precise terms of what is recorded in the record of the screening interview at 4.2 are: "The government tried to take my property and I owe money to the mafia" but I do not consider that the judge referring to "snakehead" rather than "mafia" is material.)

- 39) Mr Price took issue with the judge's characterisation of this as an obvious point. Although it does not seem to have been picked up by the writer of the refusal letter I agree with the Judge of the First-tier Tribunal that it was nevertheless apparent on the face of the documentary evidence. The judge was entitled to take this point against the appellant, particularly when the appellant had provided two completely different accounts of her journey to the UK, as found by the judge at paragraph 30 of the decision. This finding was not challenged.
- 40) The judge's findings about the plausibility of the appellant's behaviour at the age of 14 are, as Mrs O'Brien acknowledged, not beyond criticism. Nevertheless, the appellant's age at the time of the alleged events was a significant point to which the judge was entitled to have regard. While no plausibility points in relation to the appellant's age appear to have been raised at the hearing before the First-tier Tribunal, there was no uncertainty in the appellant's account about her age when the alleged events took place. The judge's main conclusion in relation to this, as set out at paragraph 29, was that it was more likely the authorities would simply have ignored the appellant knowing that her parents were dead and there were no adult family members who might cause trouble. I do not perceive anything unfair or unreasonable in the judge's finding on this point. It was a finding which the judge was entitled to make.
- 41) Furthermore, the judge found that it was implausible that the appellant found the family savings of 10,000 RMB in the rubble of the house. The reasons for refusal letter records at paragraph 15 that it is unclear how the appellant obtained this money given her claim that her house was demolished and her parents were killed. The appellant does not appear to have explained at her asylum interview how she obtained the family savings and indeed, in her witness statement, at paragraph 33, the appellant states she was not asked by the Home Office where she obtained the money. She then states at paragraph 34 that she knew her parents had kept important documents and some savings in a chest of drawers in the house. After the house was demolished she went to the ruins. She found the chest of drawers and opened it. Prior to this she did not know how much was in there but when she opened it she discovered over 10,000 RMB, which she used to pay the snakehead. Then in her oral evidence, as the judge recorded at paragraph 29, the appellant said that she kept this money hidden at the neighbour's house until she decided to leave.
- 42) The question of how the appellant obtained her family's life savings was not considered until the appellant gave her witness statement for the purpose of the hearing. It might have been preferable if at the hearing the Secretary of State's representative had challenged the appellant directly about how she obtained this money from the ruins of her family home. It does not appear that he did so. It does not necessarily follow, however, from the lack of any direct challenge that the judge was not entitled himself to consider the plausibility of the appellant's account of this matter, along

with the plausibility of the other actions the appellant claimed to have taken at that time. At paragraph 31 of the decision the judge took all the plausibility issues he had identified into account and reached the following conclusion:

“As I already indicated this is an unusual case due to the age of the appellant when she claims to have left China and the fact that she did not come to the attention of the authorities for some 9 years after she claimed to have arrived in the UK. I have considered all the evidence before me carefully and while I accept that the appellant’s account is plausible considered against the background information my conclusion is that her account is not plausible when I take into account the appellant’s age when she claims her parents’ home was demolished and the way in which she said she reacted by going to the local petitions office to make a complaint and thereafter being sufficiently strong willed to be able to go back to the demolished family home, search amongst the ruins and fortuitously find 10,000 RMB which she was able to recover, hide from her neighbours during the period that she lived with them and then arrange herself to find and pay snakeheads to fund her journey. My conclusion is that the appellant’s account stretches credibility too far and I do not regard it as being credible even taking into account the low standard of proof in these cases.”

- 43) I consider that the judge’s conclusions in paragraph 31 as to plausibility need to be taken as a whole. When they are considered in this way, there is nothing unfair about the way in which the judge reached these conclusions. He heard the appellant’s evidence and was required to make an assessment of the credibility and plausibility of her account, which he did. He did not make any error of law in so doing.
- 44) There is a further point arising from the grant of permission to appeal, to which reference was made in the appellant’s rule 25 response. This is concerned with a finding apparently made by the judge at paragraph 33 of the decision, where he referred to a question the appellant was asked about whether she knew if the developer who demolished her family home was still operating. According to the judge the appellant paused for some time before answering and said that it was such a long time since she came to the UK she did not know. The judge then recorded the appellant’s claim that if she was returned to China she would continue with her complaints against the developer. It was nevertheless clear that she did not know if the developer was still operating and she appeared to have taken no steps to find out whether it was.
- 45) It is not entirely clear what purpose these comments played in the judge’s reasoning. What the judge seems to have been suggesting was that the appellant could have taken some steps to discover whether the developer was still in existence but had not done so. The judge appears therefore to have been commenting on an omission in the evidence. It does not appear to be a significant part of the judge’s reasoning. It is not clear why the

judge who granted permission to appeal drew attention to this in her decision. In my view, the point neither detracts significantly from nor contributes significantly to the overall credibility findings made by the judge.

46) In conclusion, I agree with the submission made by Mrs O'Brien to the effect that although criticisms may be made of some of the points made by the Judge of the First-tier Tribunal, overall the judge has given adequate and valid reasons for making an adverse credibility finding against the appellant. For the reasons given above, I do not agree with the appellant's arguments that the making of this adverse finding discloses any error of law.

Conclusions

47) The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

48) I do not set aside the decision.

Anonymity

49) The First-tier Tribunal made an order for anonymity. In view of the findings made by the judge, however, to the effect that the appellant was not at risk on return to China, I do not see a continuing justification for such an order. No application was made for it to be continued. Accordingly I lift the order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.)

Signed

Date

Upper Tribunal Judge Deans