



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

Appeal Numbers: IA/00643/2016
IA/00645/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 23 March 2018**

**Decision & Reasons
Promulgated
On 12 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

**MR LIANYI DOU (FIRST APPELLANT)
MS HUA WEI (SECOND APPELLANT)
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr L. Rooney, Waltham Forest Citizens Advice
For the Respondent: Mr Nath, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are nationals of China and husband and wife, born on 9 August 1962 and 14 January 1963 respectively. The First Appellant entered the United Kingdom on 28 August 2001 as a student and further

extended his leave until 31 March 2016. His application for an extension was then refused. He appealed against that decision and his appeal was dismissed on 25 June 2006. He then sought to remain on the basis of his human rights, based on the fact that on 9 December 2003 he suffered a road traffic accident when he came off his motorbike as a result of being hit by an object thrown deliberately at him. As a consequence he was in intensive care at University College Hospital for a considerable period due to head injuries and underwent a number of surgical operations including to his eyes. His wife, due to the fact he was in a coma for five months, sought to join him and was granted admission to the UK on 23 January 2004 where she sought to remain as his dependant.

2. The First Appellant's human rights application was refused. He appealed and his appeal came before Immigration Judge Rintoul (as he then was) on 10 December 2007 along with that of his wife. In a decision promulgated on 15 December 2007, Judge Rintoul dismissed the appeals. However, the First Appellant and his wife remained in the UK without leave and most recently applied for leave on 29 December 2014. This application was refused in a decision dated 18 January 2016, with the right of appeal.
3. The Appellants appealed and their appeal came before Judge of the First-tier Tribunal Mr R Hussain for hearing on 26 April 2017. In a Decision and Reasons promulgated on 20 June 2017 the judge dismissed the appeal on the basis that removal of the Appellants to China would be proportionate.
4. Permission to appeal was sought in time to the Upper Tribunal. The grounds in support of the application asserted that the judge erred:
 - (a) in failing to give adequate reasons for his findings and in failing in particular to consider fully the new medical evidence presented at the appeal which constituted a fairly large bundle of evidence covering the period 3 December 2008 onwards, including medical reports from the First Appellant's consultant psychiatrist, clinical neuropsychologist and GP amongst others;
 - (b) in failing to assess Article 3 in light of the Grand Chamber judgment in the case of Paposhvili v Belgium, application number 41738/2010;
 - (c) in concluding at [13] that no satisfactory evidence had been submitted to suggest that the health facilities for the First Appellant's treatment in China are either unavailable or inadequate, which was contrary to the evidence set out at pages 56 through to 76 of the Appellants' supplementary bundle which set out the problems with healthcare in China and the limited mental health facilities available; and
 - (d) in his consideration of Article 8 outside the Rules in that he failed to take account of the very exceptional circumstances which had caused the First Appellant to be in his present predicament, in particular that the assault, as a consequence of which he suffered traumatic head

injuries which had in turn led to his serious mental health problems, had meant that he had not been able to leave the UK as intended and his partner would not have needed to travel to the UK to join him if he had not been assaulted and needed her care. He had no intention to become an overstayer. His injuries were not naturally occurring and were the results of the actions of an individual never apprehended in the UK when the First Appellant was living here lawfully.

5. Permission to appeal was granted by Resident Judge Appleyard in a decision dated 29 December 2017 on the following basis:-

"3. The grounds seeking permission to appeal are all arguable. They assert that the Judge has failed to give adequate reasons for his findings and failed to consider, fully, new medical evidence. Secondly, that the Judge failed to adequately consider the appeal under Article 3. Thirdly, that he erred in coming to conclusions in relation to the availability of health facilities in the Appellants' country of origin and finally in considering Article 8 outside the Immigration Rules the Judge did not fully take into account the exceptional circumstances relating to the first Appellant.

4. As I say these are all arguable grounds."

Hearing

6. At the hearing before me, I heard submissions from Mr Rooney on behalf of the Appellants. His challenge was essentially focused on the judge's finding at [13] of the decision, which provides:

*"In line with **Devaseelan**, I take the findings in the determination of Judge Rintoul as a starting point. Whilst acknowledging that the Appellant had suffered serious injuries, he concluded at paragraph 4.9 that the Appellant's health condition did not meet the threshold to engage Article 3. The medical evidence submitted in the current appeal does not suggest any significant deterioration such as to suggest that I can come to any different conclusion. The Appellant's claim was encapsulated by Judge Rintoul at paragraph 4.18 in that the Appellant seeks to remain in the UK to continue to receive medical treatment which he is unable to afford in China. On the evidence before me the basis of the Appellant's claim remains the same, however no satisfactory evidence has been submitted to suggest that the health facilities for the Appellant's treatment in China are either unavailable or inadequate. Accordingly, I find that there are no obstacles in relation to the Appellants' integration back into China."*

7. Mr Rooney submitted that the judge entirely failed to consider that the First Appellant's mental health had deteriorated since the decision of Judge Rintoul and that process had begun following the dismissal of his appeal and had included a suicide attempt and ongoing suicidal ideation. This was not evidence that was before Judge Rintoul and thus could not be taken into account by him since the First Appellant had been under the

care of psychiatrists since December 2007 as was clear from the expert medical evidence that was submitted before the First-tier Tribunal. Mr Rooney also sought to rely on his remaining grounds, albeit acknowledging in respect of ground 2 that the interpretation of Paposhvili must now be considered in light of the Court of Appeal judgment in AM (Zimbabwe) [2018] EWCA Civ 64.

8. In his submissions Mr Nath stated that the judge had been correct to rely on Devaseelan [2002] UKIAT 00702 as the starting point following Judge Rintoul's decision on 19 December 2007. He accepted that there however had been a substantial passage of time since then, but he submitted that the judge encapsulated the decision at that time in relation to Article 3 and Judge Rintoul's finding at [4.9] that the First Appellant's health condition did not meet that threshold. Mr Nath submitted that the judge clearly considered the First Appellant's health condition in the round and does refer to the medical evidence submitted in the current appeal, so it should be taken that he has looked at it and that his findings were open to him.
9. In his reply, Mr Rooney returned to the Judge's decision at [13] and reiterated that none of the evidence now relied upon was available to Judge Rintoul so that when that judge came to the conclusion that the Article 3 threshold was not met, it was of course based on the evidence available to him at the time, at which time there was no suggestion of suicide attempts or suicidal ideation which must clearly constitute a deterioration in his health overall. Mr Rooney further submitted that the First Appellant has been in the UK for almost seventeen years and would suffer very significant difficulties reintegrating into Chinese society pursuant to paragraph 276ADE(vi) of the Rules. He submitted that the judge had failed to consider this, despite the fact that it was addressed in the Respondent's refusal decision and raised in the skeleton argument.

My Findings

10. I find material errors of law in the decision of First-tier Tribunal Judge Mr R Hussain. Whilst it is correct that the starting point for the judge's consideration was the previous decision by Judge Rintoul of 19 December 2007, in light of the decision of Devaseelan [2002] UKIAT 00702, the fact of the matter is that by the time the appeal came before him approximately nine-and-a-half years had passed and the First Appellant's medical situation is not the same as it was at the time of the hearing before Judge Rintoul. In particular, it is clear from the medical evidence, in particular, the reports of the consultant psychiatrist, Dr Borrell, at pages 10 to 12 and 13 to 15 of the Appellants' bundle, and from the First Appellant's clinical neuropsychologist Dr Owen, at pages 19 through to 28, that the First Appellant's mental health has clearly deteriorated since the time of Judge Rintoul's decision. I find accordingly that the judge's conclusion at [13] that *"The medical evidence submitted in the current appeal does not suggest any significant deterioration such as to suggest*

that I can come to any different conclusion” is unsustainable in light of the evidence that was actually before him.

- 11.** I further accept Mr Rooney’s submission also in relation to [13] of the judge’s decision that in finding there was no satisfactory evidence that health facilities for the First Appellant’s condition were unavailable or inadequate the judge failed to take into account the clear evidence of a lack of provision for mental health treatment in China as set out at pages 56 to 76 of the supplementary bundle.
- 12.** Thirdly, although it was not a point raised expressly in the grounds of appeal, I consider it is a Robinson obvious point that the judge erred in finding there were no obstacles to the Appellants’ integration back into China in light of his errors in relation to the medical evidence and the background evidence as to mental health treatment in China.

Decision

- 13.** I find material errors of law in the decision of First-tier Tribunal Judge R Hussain. I set it aside and remit the appeal for a hearing *de novo* before the First-tier Tribunal at Hatton Cross.
- 14.** There is no anonymity order.

Signed Rebecca Chapman

Date 9 April 2018

Deputy Upper Tribunal Judge Chapman