



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03966/2019

THE IMMIGRATION ACTS

Heard at Glasgow
On 27 September 2019

Decision & Reasons Promulgated
On 1 October 2019

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

XIN HUANG

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Devlin, Advocate, instructed by Chung, Solicitors

For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The SSHD's reasons for refusing the appellant's claims are set out in a letter dated 8 April 2019.
2. FtT Judge Kempton dismissed the appellant's appeal for reasons given in her decision promulgated on 17 June 2019.
3. The appellant's grounds of appeal to the UT are set out in the attachment to her application dated 1 July 2019.
4. Mr Devlin relied upon the grounds, which are quite detailed. He submitted further to the last point in the grounds, regarding section 8 of the 2004 Act, that the FtT at [17] fell into errors illustrated by *AJ* [2011] CSIH 49 at [8 – 9]: compartmentalising the

issue, and taking it as seriously damaging to credibility, which was not mandated by section 8.

5. Mr Govan replied to the grounds and submissions as follows:

- (i) The expression "very convenient" at [21] was not ideal, but it was a shorthand which had to be read in context of discrepancies found and all the reasons given at [19 - 25].
- (ii) Read as a whole, the decision showed that reasons had been given and material considerations had been taken into account.
- (iii) It was plain that the judge understood the appellant's account was that she left through the airport before a warrant was issued, and with the help of snakeheads.
- (iv) There was nothing wrong with observing the obvious convenience to her account of not being able to produce either her old or her new passport, or with drawing an adverse inference, when there were other reasons to find the account incoherent.
- (v) The FtT's main section 8 point was not only about not claiming in Zambia, but about not claiming for nine months in the UK, which was well founded.
- (vi) It might have been better if the judge had not taken this point first and under a separate heading, but that was a matter of style rather than substance.
- (vii) No error was disclosed which would merit justify setting aside the decision.

6. Mr Devlin made these points in reply:

- (i) The UT's jurisdiction concerned error on points of law, rather than the underlying merits of the case.
- (ii) While it was accepted that the UT also had to consider materiality of error and to look at a decision in the round, this was a case where discrete errors required the decision to be set aside. The correct approach could be taken firstly from *R v Lewisham London Borough Council, ex parte Shell UK Ltd* [1988] 1 All ER 938:

... I start with a short passage from the judgment of May LJ in *R v Broadcasting Complaints Commission, ex p Owen* [1985] 2 All ER 522 at 533, [1985] QB 1153 at 1177 where he said:

"Where the reasons given by a statutory body for taking or not taking a particular course of action are not mixed and can clearly be disentangled, but where the court is quite satisfied that even though one reason may be bad in law, nevertheless the statutory body would have reached precisely the same decision on the other valid reasons, then this court will not interfere by way of judicial review. In such a case, looked at realistically and with justice, such a decision of such a body ought not to be disturbed".

But where the two reasons or purposes cannot be disentangled and one of them is bad or where, even though the reasons or purposes can be disentangled, the bad reason or purpose

demonstrably exerted a substantial influence on the relevant decision the court can interfere to quash the decision....

(iii) *Hamden v SSHD* [2006] CSIH 57 at [15] is authority to similar effect:

We are unable to agree with the Tribunal that the Adjudicator's erroneous conclusion on the school certificate was incapable of "having affected his general conclusion in the case". The inference to be drawn from the certificate was at the forefront of the Adjudicator's reasoning in the critical paragraph 29 of his determination. Where a factor such as this has plainly coloured the approach of an adjudicator on the credibility of an appellant to a material degree, it is highly likely to have played a significant part in his attachment of significance to other potential inconsistencies in expression or fact arising at other points in the evidence. There is no reason to suppose that this has not happened here where the Adjudicator focuses first on the inference from the existence of the school certificate but uses the inconsistency in the descriptions of his assistant in the escape as a subsequent make-weight rather than as a central pillar in his thinking on credibility.

- (iv) The use of the term "convenient" was not shorthand, but an indication of absence of reasoning.
- (v) The criticism did not go to the structure and headings of the decision, but to that absence of reasoning.
- (vi) The errors could not be disentangled from other reasoning. They exerted a substantial influence, or coloured the judge's approach to a material degree.

7. I reserved my decision.

8. I see the following explanations in the decision for finding against the appellant on credibility (not being a comprehensive list):

- (i) No clear reason why the appellant would speak out on Taiwanese independence, rather than her Taiwanese friends;
- (ii) Impression given in oral evidence of a person quite "savvy", not of limited education as claimed;
- (iii) Appellant said in oral evidence that she moved in with friends after being warned, but that was not in her statement;
- (iv) Appellant's response to that point struck the judge as very weak, and thought up on the spur of the moment;
- (v) Self-contradiction whether several family members overheard the police, or only her father;
- (vi) Deliberate vagueness when caught out on this detail;
- (vii) "Very convenient" evidence to explain not having asked for a copy arrest warrant;

- (viii) Leaving the country on her own passport without incident;
 - (ix) Husband's return to collect son, without incident, after warrant issued (although warrant was in her name only);
 - (x) Leaving China for Zambia on a false work permit, not for asylum purposes but for other reasons, including the chance to seek a visa for the UK;
 - (xi) No claim on arrival in the UK;
 - (xii) Claim only after breakdown of marriage;
 - (xiii) Claimed loss of passport, and of noticing this only in 2017, not credible and "more than a coincidence";
 - (xiv) Non-production of passports more likely to be in order to conceal information;
 - (xv) No evidence of ever speaking in public, and certainly not to a crowd of 150 – 200 persons on a sensitive issue; alleged activity "completely out of the blue".
9. In most of those reasons, no error has been suggested.
10. The correct approach to whether errors require setting aside is not contentious, and is exemplified by the two authorities to which Mr Devlin referred. However, in my view the grounds isolate reasons given in particular paragraphs, and do not represent the decision fairly and as a whole. The reasons extracted by the first ground from [21] are not the whole story. The rejection of the claimed loss of passports has also to be put in context.
11. The FtT had the advantage of hearing the oral evidence, which was obviously a major factor. It is not suggested that the Judge's observations are inaccurate or that she drew any unjustifiable conclusions.
12. It is unfortunate, and not good form, to take section 8 first and under its own heading. The matter is part of, not separate from, "credibility findings and reasons". However, as Mr Devlin fairly accepted, those are points of style rather than substance.
13. The appellant is correct in pointing out that Zambia is not a "safe country" as defined in statute (although it is party to the Refugee Convention, and host to many thousands of refugees).
14. The judge's view of the appellant's travel and immigration history went well beyond not claiming in Zambia. It was based to a large extent on delay in the UK. The extent of the damage such delay does to credibility was a matter for a judge, according to the circumstances of the case before her.
15. The appellant's evidence did not satisfy the judge that her account was even reasonably likely to be true. The judge's reasons have been shown to include

infelicities and minor slips, but no serious flaw, and no error which bears significantly on the overall outcome.

16. The decision of the First-tier Tribunal shall stand.
17. No anonymity direction has been requested or made.

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

30 September 2019
UT Judge Macleman