



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00887/2020**

THE IMMIGRATION ACTS

**Heard at Field House by Video
Conference On 12 August 2020 (V)**

**Decision & Reasons Promulgated
On 12 November 2020**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

**L S
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Anonymity should have been granted at an earlier stage of the proceedings because the case involves protection issues. I find that it is appropriate to make an order. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent.

Representation:

For the appellant: Ms J. Blockley of Katani & Co. Solicitors

For the respondent: Mr A. McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 17 January 2020 to refuse a protection and human rights claim.
2. First-tier Tribunal Judge Prudham dismissed the appeal in a decision promulgated on 20 March 2020. The judge summarised the appellant's immigration history and noted that some aspects were disputed [9-12]. He summarised the case put forward by both parties [14-18]. The appellant said that he feared to return to China because he owed money to loan sharks and practiced Falun Gong. The judge began his findings by reminding himself of the relevant burden and standard of proof. He went on to state:

"32. The Appellant travelled through a number of countries on his way to the UK. He states he claimed asylum in Germany, however the outcome of that application is unclear or why the Appellant left before a decision had been made. There was a significant delay in his claim for asylum in the UK which was only made after his arrest in 2018. The Appellant has also absconded on more than one occasion and also claimed a false identity. I therefore find that **Section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004** applies. All of this damages his credibility.
3. The judge went on to state that he did not find the appellant's account credible [33]. Over the next five paragraphs he considered the appellant's varying accounts of his travel to the UK and his immigration history. He concluded:

"38. The findings that I make from these differing accounts is that the Appellant has not been open in his account of his immigration history and nor has he been co-operative. He has, by his own account, misled officials over his arrival in the UK. This all further damages his credibility. I am unable to make any finding as to whether he was deported back to China in 2003 by the German authorities. However this is but one small part of a much larger immigration history that damages the Appellant's credibility generally."
4. Only after having made these findings did the judge move on to consider the core aspects of the appellant's claim to fear persecution in China. He did not accept the appellant's claim that he practiced Falun Gong because: "In addition to the general lack of credibility of the Appellant there were inconsistencies in this account as well." He noted that the appellant did not mention Falun Gong when he was first interviewed. In his initial statement he said that his brother practiced Falun Gong but did not claim to practice it himself. It was only at the main asylum interview that he claimed that he could not return to China because he practiced Falun Gong. Even then, his account was vague as to what persecution he might have suffered [39]. For these reasons the judge rejected his claim to be at risk of persecution for reasons of practicing Falun Gong.
5. The judge then turned to consider the appellant's claim to be at risk as a result of money owed to loan sharks by his brother and himself. The judge noted that the appellant had been inconsistent in his evidence as to whether it was his brother or him who owed money to loan sharks. There

was also some evidence to show that the appellant had at one point claimed to be an only child although the judge noted that the appellant's evidence was that his brother died, which was why he claimed that the loan sharks began to target him for his debt [42]. The judge found the appellant's alternative account relating to the money he owed to loan sharks to be equally inconsistent. He gave two different accounts as to why he borrowed money. First claiming that he borrowed money to pay his brother's debt but at another point stating that it was to repay debts from his business. The judge concluded: "Given these inconsistencies and the general lack of credibility of the Appellant I did not accept his evidence that he was at risk from loan sharks should he return to China." [44].

6. In any event, the judge concluded that, even if this aspect of his account were accepted, the appellant would not be at risk because of the passage of time since he borrowed the money and in light of the country guidance in *ZC & Others (Risk - illegal exit - loan sharks) China* [2009] UKAIT 00028.
7. The appellant does not seek to challenge the specific findings made in relation to the appellant's claimed involvement with Falun Gong and loan sharks. He appeals the First-tier Tribunal decision on the sole ground that the judge placed undue emphasis on credibility issues relating to section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 ("AITCA 2004"). It is argued that the judge treated it as a starting point in his assessment, which coloured his other findings: *SM (Section 8: Judge's process) Iran* [2005] UKAIT 00116 referred. In that case the Upper Tribunal considered the effect of the 'novel' provisions contained in the 2004 Act.

"9. Given the terms of section 8, it is inevitable that the general fact-finding process is somewhat distorted, but that distortion must be kept to a minimum. There is no warrant at all for the claim, made in the grounds, that the matters identified by section 8 should be treated as the starting point of a decision on credibility. The matters mentioned in section 8 may or may not be part of any particular claim; and their importance will vary with the nature of the claim that is being made, and the other evidence that supports it or undermines it. In some cases, (of which the most obvious are perhaps those where there is contested evidence about the journey to the United Kingdom) it will simply not be possible to know whether section 8 applies until a preliminary view has been taken on the credibility of some other part of the evidence.

10. In our judgment, although section 8 of the 2004 Act has the undeniably novel feature of requiring the deciding authority to treat certain aspects of the evidence in a particular way, it is not intended to, and does not, otherwise affect the general process of deriving facts from evidence. It is the task of the fact-finder, whether official or judge, to look at all the evidence in the round, to try and grasp it as a whole and to see how it fits together and whether it is sufficient to discharge the burden of proof. Some aspects of the evidence may themselves contain the seeds of doubt. Some aspects of the evidence may cause doubt to be cast on other parts of the evidence. Some aspects of the evidence may be matters to which section 8 applies. Some parts of the

evidence may shine with the light of credibility. The fact-finder must consider all these points together; and, despite section 8, and although some matters may go against and some matters count in favour of credibility, it is for the fact-finder to decide which are the important, and which are the less important features of the evidence, and to reach his view as a whole on the evidence as a whole.”

Decision and reasons

8. In *SM (Iran)* the Upper Tribunal made clear that it will not be possible to know what weight should be given to the matters outlined in section 8 until after some assessment of the credibility of the core aspects of the claim. In light of the decision in *SM (Iran)* it is wise for a judge to avoid beginning a credibility assessment by considering a person’s immigration history and travel to the UK. After all, the central task of a decision maker is to assess whether there is a reasonable degree of likelihood that the person is at risk of persecution if returned to their country of origin. This is usually done with reference the appellant’s account of past events in their country of origin and by assessing what is likely to happen if they return with the assistance of background and other evidence.
9. The details of a person’s journey to the UK and their immigration history on arrival might become relevant to the overall assessment if there are concerns about the credibility of the core account. Lack of clarity about a journey to the UK might be a means to hide the fact, as in this case, that a person might have been refused asylum in another country. A history of absconding or a lengthy delay in approaching the authorities for protection in the host country might indicate that a person does not have a genuine fear of return.
10. However, a decision maker must always be conscious of the fact that the matters outlined in section 8 are peripheral to the core elements of a protection claim. A genuine asylum seeker might also have good reason to obfuscate about the exact nature of their journey to the UK given that they cannot always travel by legal routes and may have entered the UK illegally with the assistance of organised criminal networks. They may fear prosecution or retribution by criminal agents if too much detail is revealed. A genuine asylum seeker might also be reluctant to approach the authorities in the host country because of fear or mistrust arising from their experiences with the authorities in their country of origin.
11. It is for these reasons that the factors outlined in section 8 AITCA 2004 must be considered in the context of the claim as a whole. In one case those factors may be indicative of a lack of credibility if there are other concerns about the core account given by an applicant, in another case the same factors may be of less consequence if the core account generally is credible and an adequate explanation has been given for any concerns that touch on section 8 issues.
12. Turning to this case, it seems clear that the judge began his assessment of the appellant’s overall credibility by considering, at some length, issues

relating to his journey to the UK and his immigration history. He clearly placed weight on these matters as damaging to the appellant's credibility. Structurally, this gives this impression that he might have already concluded that the appellant was not a credible witness based on these issues alone before turning to consider the core elements of the claim relating to Falun Gong and loan sharks. Although the judge imported some element of his findings relating to the appellant's immigration history into his findings at [39] he went on to make clear that his subsequent findings were "in addition" the findings he had already made. He went on to outline a number of inconsistencies in the appellant's evidence relating to the two core elements. It was open to the judge to come to the findings he did on both elements. His findings on those issues have not been subject to direct challenge in the grounds of appeal.

13. Ms Blockley argued that the judge failed to take into account the findings in the psychological report of Alla Davis. First, the point was not argued in the grounds. Second, the oral argument was not particularised with direct reference to the report. On closer inspection of the report nothing suggested that the appellant's mental health was likely to affect his recall in any meaningful way that might have explained some of the discrepancies identified by the judge. At [9.4] the Consultant Psychologist stated that the appellant was oriented in time, place and person. His attention and level of concentration were normal and his long-term and short-term memories were 'sensibly adequate'.
14. Although it would have been preferable for the judge to follow the guidance given in *SM (Iran)* to consider section 8 matters after some consideration of the substance of the claim this is not a case where the judge's reasons relating to the Falun Gong or loan shark elements of the claim appeared to be directly affected by his view of the appellant's immigration history. The judge gave separate and sustainable reasons for rejecting the credibility of the two main elements of the claim "in addition" to the damaging credibility issues arising from the appellant's immigration history. In another case it might be apparent that a judge's view on section 8 issues were given undue prominence when the core claim was otherwise credible, but this is not one of those cases.
15. I do not read *SM (Iran)* as setting out a strict legal approach to section 8. For the reasons given by the Upper Tribunal at [9] of that decision and for those I have given above at [8-11], it is better not to use section 8 as the starting point in a credibility assessment. The mere fact that the judge placed emphasis on section 8 issues at the start of his findings does not necessarily amount to an error of law if there is nothing to suggest that those findings improperly infected the judge's view of the core elements of the claim. In this case the judge gave separate and sustainable reasons for rejecting the central aspects of the claim. I conclude that any error of approach in the structure of the decision was not material to the outcome of the appeal.

16. The First-tier Tribunal decision did not involve the making of a material error of law. The decision shall stand.

DECISION

The First-tier Tribunal decision did not involve the making of an error of law

Signed M. Canavan Date 10 November 2020
Upper Tribunal Judge Canavan

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent.
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email