



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal number: PA/09797/2019 (V)

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC

Decision & Reasons Promulgated

On 7 May 2021

On 19 May 2021

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

FC

(ANONYMITY ORDER MADE)

Respondent

DECISION AND REASONS (V)

For the appellant: Mr A McVeety, Senior Presenting Officer

For the Respondent: Ms R Head, instructed by Montecristo LLP

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote

hearing. At the conclusion of the hearing, I explained that I found no error of law in the decision of the First-tier Tribunal, reserving my reasons, which I now give. The order made is described at the end of these reasons.

1. To avoid confusion, for the purpose of this decision I have referred below to the parties as they were before the First-tier Tribunal.
2. The appellant is a Chinese national with date of birth given as 19.5.85, who first arrived in the UK as a student in 2010 and who was subsequently granted further limited leave to remain, latterly as the spouse of a settled person.
3. The Secretary of State has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 4.9.20 (Judge Bird), dismissing on asylum grounds but allowing on Article 3 human rights grounds, the appellant's appeal against the decision of the Secretary of State, dated 30.9.19, to refuse her international protection and human rights claims and to maintain the deportation decision made following her conviction in 2017 for money laundering offences, for which she was sentenced to a term of 75 months' imprisonment.
4. Although the respondent had issued a s72 certificate excluding the appellant from asylum and humanitarian protection, at [37] of the impugned decision the judge concluded that the appellant had successfully rebutted the presumption in that there was no evidence that she was a danger to the community. However, it does not appear to have been disputed that the appellant's claim fell outside the protection of the Refugee Convention, with which the judge agreed at [57] of the decision. However, the judge found that there was a real likelihood that the appellant would on return be subjected to treatment breaching her article 3 ECHR rights, in that there was a "strong likelihood" that she would be prosecuted by the Chinese authorities and that "the term of imprisonment imposed is likely to be persecutory."
5. In summary, the grounds submit that the First-tier Tribunal Judge made a material misdirection in law and failed to give adequate reasons for findings made. Complaint is made as to aggravating factors found by the judge, including that the appellant was a member of the Communist Party when China is a Communist Party country.
6. Permission to appeal was granted by the First-tier Tribunal on 26.10.20, the judge being "satisfied that there is an arguable error of law in the decision in that the Judge may not have properly applied (the) guidance in YF (double jeopardy -JC confirmed) China [2011] UKUT 32 (IAC). In particular it is unclear, given that China is a Communist state, as to why the appellant being a member of the Communist Party would be an aggravating factor. Further, the

Judge made findings in relation to the appellant's mother than may well not have been available to her on the evidence. In addition, there is no proper indication as to how the Judge can find that the article printed in the press would come to the attention of the Chinese authorities."

7. The Upper Tribunal has received the undated 'appellant's response to respondent's review', drafted in the form of a witness statement, and an undated skeleton argument. The first document was sent to the Tribunal under cover of an email on 7.12.20. There is also an undated witness statement from the sponsor. Ms Head confirmed that these materials were prepared for the First-tier Tribunal appeal hearing. However, my attention was drawn to the further bundle prepared specifically for this hearing, including Ms Head's 'Reply to the SSHD Grounds'. I have carefully considered these materials and taken them into account as appropriate. I have also carefully considered the decision of the First-tier Tribunal in the light of the oral and written submissions and the grounds of application for permission to appeal to the Upper Tribunal.
8. The appellant's human rights claim was that on return to China she would face re-prosecution for the serious money laundering offences which will be considered to have embarrassed China. YF found that absent particular aggravating factors, the risk falls well below the level required to engage international protection under the Refugee Convention, the ECHR or humanitarian protection. The appellant's case as advanced by Ms Head at the First-tier Tribunal, as recorded from [42] of the decision, was that there were a number of aggravating factors, including that the Chinese authorities were aware of the appellant's conviction and that there had been considerable adverse publicity so that the Chinese authorities had questioned her mother and frozen the mother's bank accounts, and 'requested' the appellant to contact the police on her return to China.
9. The essence of Mr McVeety's submissions were two-fold. First that the expert evidence should not have been given the weight it was accorded by the First-tier Tribunal, particularly given that the expert's evidence was rejected in YF. Second, that the judge should have made a more careful assessment of the alleged aggravating factors said to lift the appellant's case above the YF threshold.
10. The respondent's case as drafted in the grounds is weak and borders on a disagreement with the decision and an attempt to reargue the appeal. At the hearing before me, Mr McVeety acknowledged that arguments about article 8 and very compelling circumstances were unlikely to succeed. Further, he accepted that the grounds misunderstand the relevance of the appellant's Communist Party membership. He accepted that her status as a Party member

and the fact that her father was a local chairman of the Party raised her profile and that the Chinese authorities may regard her criminal offending with greater seriousness as she will be held to a higher standard. Mr McVeety also accepted that the Sing Tao Chinese language newspaper is widely acknowledged to be the official mouthpiece of the Chinese Communist Party in Europe and as such its contents including an article about the appellant would be known to the Chinese authorities.

11. Whilst the First-tier Tribunal decision could have addressed the alleged aggravating factors more carefully, I agree with Ms Head's submission that the respondent has been unable to point to any specific misdirection in law. In reality, the judge accepted all the asserted aggravating factors, including the mother's evidence supported by bank documents. The appellant's money laundering offences involved over £2 million and not only UK banks but Chinese banks and Chinese nationals, to whom money transfers were made. The judge accepted that the adverse publicity would have come to the attention of the Chinese authorities and that her position as an official Communist Party member increased the risk for her.
12. Considering the decision as a whole, whilst a different judge may have reached a different conclusion, I cannot say that the findings or their supporting reasoning were made irrationally or perversely. I am satisfied that on the evidence those findings were open to the judge. The grounds do not demonstrate any material error of law. In MR (permission to appeal: Tribunal's approach) Brazil [2015] UKUT 00029 (IAC) the Upper Tribunal held that, "A judge considering an application for permission to appeal to the Upper Tribunal must avoid granting permission on what, properly analysed, is no more than a simple quarrel with the First-tier Tribunal judge's assessment of the evidence." Similarly, in Herrera v SSHD [2018] EWCA Civ 412, the Court of Appeal said that it is necessary to guard against the temptation to characterise as errors of law what are in truth no more than disagreements about the weight to be given to different factors, particularly if the judge who decided the appeal had the advantage of hearing oral evidence. It is well-established law that the weight to be given to any particular factor in an appeal is a matter for the judge and will rarely give rise to an error of law, see Green (Article 8 -new rules) [2013] UKUT 254. Further, the Court of Appeal has repeatedly explained the caution to be exercised by appellate courts in interfering with evaluative decisions of first instance judges, as stated by Lewison LJ in Fage UK Ltd. v Chobani UK Ltd. [2014] EWCA Civ 5 at [114].
13. In the circumstances and for the reasons set out above, I find no material error of law in the decision of the First-tier Tribunal so that it must be set aside.

Decision

The appeal of the Secretary of State to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands and the appeal remains allowed.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 7 May 2021

Anonymity Direction

I am satisfied, having had regard to the guidance in the Presidential Guidance Note No 1 of 2013: Anonymity Orders, that it would be appropriate to make an order in accordance with Rules 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in the following terms:

“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 to, amongst others, both the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings.”

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 7 May 2021