



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

Appeal Number: PA/10408/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 2 October 2020**

**Decision & Reasons Promulgated
On 18 March 2021**

Before

UPPER TRIBUNAL JUDGE OWENS

Between

**ZXW
(ANONYMITY ORDER MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Devlin, Counsel instructed by Chung Solicitors

For the Respondent: Ms Pettersen, Home Office Presenting Officer

Interpretation: Ping Wang in the Mandarin language

DECISION AND REASONS

Introduction

1. The appellant is a citizen of the Republic of China born on 28 October 1971. She was trafficked into the United Kingdom on 10 April 2013 and claimed asylum on 27 March 2019. On 11 March 2019 she was referred to the National Referral Mechanism and on 26 September 2019 a 'conclusive grounds' decision was made

finding that the appellant was a victim of human trafficking or slavery, servitude and/or forced compulsory labour.

2. Her claim for asylum was refused on 16 October 2019. An appeal against that decision was dismissed on 10 December 2019 by First-tier Tribunal Judge Clapham. Permission to appeal was granted by Upper Tribunal Blum on all grounds on 18 February 2020. The respondent indicated that she did not oppose the application for permission to appeal and I dealt with the error of law decision on the papers on 9 June 2020. I was satisfied that First-tier Tribunal Judge Clapham had erred in law for the reasons set out in my decision of 9 June 2020 which is appended to this decision at Appendix A. I set aside the decision on 10 December 2019, preserving the findings of fact set out below. The matter came before me to re-make the appeal.

The Appellant's Claim

3. The appellant came from a poor family and left school early in order to work. At the age of 16 she was tricked into travelling to a different part of China for better paid work with other young women. There, she was held against her will for a year and repeatedly beaten. She was then sold to a man who over the period of 26 years beat her, raped her, forced her to have sex with other men in order to pay his gambling debts. The appellant tried to run away but her husband had links with the local police. He also cut her achilles heel to prevent her from running away. The appellant's husband borrowed a large amount of money to pay for his gambling debts. In 2013 he sold the appellant on to loans sharks to pay off the debt. The appellant was taken against her will. She was trafficked to the UK where she was held against her will and forced into prostitution for over a year. During that period, she was not paid. She was beaten and badly assaulted before she escaped. She claims that she cannot return to China because she is at risk of harm from her previous partner and is at risk of being re-trafficked. She is also unable to relocate to another part of China. She now has serious mental health problems.

Reasons for Refusal

4. It is accepted by the respondent that the appellant is a victim of human trafficking and domestic abuse, however the respondent is of the view following HC & RC (Trafficked women) China [2009] UKAIT 00027 that there is sufficiency of protection for the appellant in China and that the option of internal relocation is open to her. It is not considered that there are very significant obstacles to the appellant's integration to China because she speaks Mandarin, spent her formative years in China and is familiar with the culture and customs. There are no exceptional circumstances which would result in unjustifiably harsh consequences for the appellant. The appellant is able to obtain medical treatment for her mental health conditions. There are no exceptional circumstances which would warrant the exercise of discretion outside of the context of the Immigration Rules.

Grounds of Appeal

5. The appellant asserts that she is at risk of serious harm in China in contravention of the Refugee Convention by virtue of her membership of a social group and that to remove her to China would also be a breach of Article 3 ECHR because she is at risk of being re-trafficked. Her removal from the UK would also constitute a breach of Article 8 ECHR.

The Burden and Standard of Proof

6. The burden of proof is on the appellant to demonstrate that as at the date of the hearing there are substantial grounds for believing, or a real risk that she meets the requirements of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006.
7. In respect of Article 8 ECHR, the burden is on the appellant to demonstrate on the balance of probabilities that Article 8 ECHR is engaged at which point the burden shifts to the Secretary of State to demonstrate that the interference is justified.

The Law

8. In order to qualify for international protection, the appellant must meet the requirements of the 1951 Convention, Article 1A, as reflected in the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 and the provisions set out in paragraphs 327 to 339P of the Immigration Rules which implement Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals as refugees or as persons who otherwise need international protection.
9. Paragraph 339L of the immigration rules (implementing Article 4(5) of the Directive) indicates that it is the duty of the appellant to substantiate the claim and sets out the relevant conditions to be met when assessing evidence.

Documentation

10. At the outset of the appeal, I clarified with the parties that we all had the same documentation. This comprised of the respondent's bundle enclosing the appellant's screening interview, statement, asylum interview and documents provided in support of her asylum claim as well as the appellant's previous appeal bundle.
11. The appellant sought to adduce new evidence not before the previous Tribunal in the form of a new bundle containing an up-to-date psychiatric report, Country expert report and further background material. The appellant's representative filed the relevant Rule 15(2A) notices.
12. I am satisfied that in a protection and human rights claim the relevant date is the date of the hearing and that it was fair and just to allow the appellant to adduce

further evidence relevant to her current state of mental health as well as the circumstances in which she would find herself in China. I am also satisfied that the background material was not available at the last hearing. Ms Pettersen did not object to the evidence being admitted. In these circumstances, I admitted the new bundle of evidence.

13. I was also provided with an up to date skeleton argument. Both parties confirmed that they had had sight of all of the documents.

14. I have considered all of the documentation before me even if not specifically mentioned.

The Hearing

15. Given that it is agreed that the appellant has complex PTSD and is a vulnerable witness. Since the factual findings in respect of her personal history are agreed, both parties agreed that it was appropriate to proceed by way of submissions only. These are set out in the Record of Proceedings.

Findings and Reasons

16. First-tier Tribunal Clapham accepted the appellant's account in its entirety and the Secretary of State does not seek to challenge these findings. His findings are preserved.

17. On this basis the findings in relation to the appellant's circumstances are as follows:
 The appellant came from a poor family. Her father was a miner. She was born in Guizhou province in Southern China which is one of the poorest and most economically underdeveloped provinces in China. She completed primary education but did not finish her secondary school. She had to work so that she could continue in education. She was working in a café when she and some of the other young women who worked there were approached by well dressed men who offered them well paid work in another part of China. The appellant and her friends agreed to go. At this time, she was 16 years old. The girls were taken to Fujian province where they were held in an abandoned house. The appellant refused to sleep with the men who were brought to the house and remained longer than the other girls. Her captors then threatened to kill her if she did not agree to marry the next man who came. She was then sold to the next man who came to the house a Mr WBZ. He was ten years older than her.

18. She was taken to his home in Da Zhi in Fujian province. The appellant was not formally married to the man who purchased her, but she refers to him as her "husband". Mr WBZ was a gambler and a very violent man. Over a period of 26 years the appellant lived in unbearable conditions. Her husband raped her. He beat her and he forced her to have sex with his friends when he needed to raise money to pay his gambling debts. The appellant was desperate. She tried to escape on a few occasions, but the village was remote and her husband always managed to find her and bring her back with the help of a relative who worked at the police station.

Her husband also cut her Achilles tendon to prevent her from running away. The appellant was living in fear. She had two children, but she gave them to others to look after because she thought her husband would mistreat them. Her husband said they were not his children in any event. The appellant did report the domestic abuse to the police but was told that this was a domestic matter. The police refused to get involved.

19. In 2013 loan sharks came to the house and informed the appellant that her husband owed them money for gambling debts and that she would have to work for three years to pay off the debts. She was threatened that if she refused to come or if she tried to escape, they would hurt her children. The appellant was taken against her will and trafficked via Malaysia and on to the UK. She was taken to Birmingham where she was locked in a room in a house. She was not allowed to leave. She was forced to have sex with up to 40 different men a day on a regular basis. The appellant had a serious vaginal infection which was not treated. She frequently cried and tried to refuse to do what she was told. As a result, her minder locked her in a cellar for 5 or 6 days with no food. When she was let out of the cellar, the minder and a guard attacked her and then poured boiling oil over her legs which became infected and were very painful. Her captors refused to take her to the hospital and she attempted suicide. After that she worked as the cleaner/domestic in the brothel until one of the guards took pity on her and let her out one night. On escaping, the appellant approached a Chinese stranger and explained her situation. The stranger put her in touch with another Chinese national who offered her work as a nanny in exchange for food and accommodation. When that family moved, they put her in touch with other people who were prepared to feed and accommodate her in return for work as a cleaner in Edinburgh. She was too frightened to contact the authorities in the UK because of her fear of being sent back to China.

20. To quote Dr Craig White;

"[the appellant has] experienced lack of shelter, lack of food or water, ill health without access to medical care, confiscation or destruction of personal property, beatings to her body, rape, other types of sexual abuse or sexual humiliation, knifing or axing, torture that has involve the systematic infliction of mental or physical suffering, imprisonment forced labour, extortion or robbery, brainwashing, forced to hide, kidnapped, other forced separation from family members, enforced isolation from others, someone was forced to betray her and place her at risk of death or injury, witnessing beatings to the head and body, witnessing torture, witnessing killing or murder, witnessing rape or sexual abuse and other situations where she was very frightened or in which she felt her life was in danger.

She reported that she has experienced beatings to her head, suffocation or strangulation, near drowning, other types of injury to her head such as burns and starvation. Following instances when she received beatings and other types of injury to her head, she experienced a loss of consciousness lasting in the region of a few hours and she reported being near to death following the episode of starvation".

Mental health evidence

21. From the outset of her asylum claim, the appellant has described suffering from mental health problems. In the appellant's initial asylum interview she reports having problems sleeping, suffering from nightmares and headaches. She also states that she is very anxious about going out and meeting strangers and that she worries that the traffickers will see her. She states that her previous life was 'hell'.
22. I had before me medical evidence addressing the appellant's mental health. There was a letter from Dr Elspeth Traynor, principal Clinical Psychologist Glasgow Psychological Trauma Service dated 24 June 2019 which was produced by the appellant in support of her claim for asylum, a letter from Dr Rachel Bonney Principle Clinical Psychologist Glasgow City Health and Social Care Partnership dated 20 November 2019 which was produced in support of the appeal before the First-tier Tribunal and more recent evidence in the form of an expert psychiatric opinion by Professor Craig White issued on 17 September 2020.
23. The medical evidence is all consistent in reporting that the appellant has severe mental health problems and has been experiencing symptoms of trauma, which is unsurprising, given the appellant's history of significant, prolonged and intense abuse.
24. The respondent did not seek to challenge the medical evidence. I accept the medical evidence in its entirety. The first two letters were written by senior clinical practitioners working with the appellant and Professor Craig White manifestly has the clinical expertise to examine the appellant and give an opinion on her mental health problems.
25. Professor Craig White's professional qualifications, expertise and experience are set out at paragraphs 4 to 17 of the report and he is clearly qualified to prepare an expert psychological report. He sets out the information and evidence he had before him which includes the medical evidence I have listed above, and at paragraphs 37 to 61 he explains the manner and tools of assessment including the Harvard Trauma Questionnaire and Hopkins Symptom checklist and he declares that he believes his opinions to be true.
26. In terms of symptoms, the appellant is reported to experience recurrent thoughts or memories of hurtful and terrifying events, to feel as if the events were happening again as well as experience recurrent nightmares. She also feels detached and withdrawn from people and is jumpy and easily startled. She has trouble sleeping, feels that she has no future. She feels exhausted and has bodily pain. She also experiences guilt, blames herself and feels humiliated by her experience. She also has difficulty concentrating and making plans, has outbursts of anger has lost interest in daily activities. She feels betrayed, a lack of trust, powerless and feels that other people are hostile to her. She also feels terror, feelings of panic and extreme nervousness.

27. She indicated a significant fearlessness of death and has previously attempted suicide. She has planned to kill herself with sleeping tablets and her partner is keeping a close eye on her.
28. The expert also points to the increased distress to the appellant of her mental health problems because in her culture, admission of mental illness marks someone as weak and mental affliction is seen as source of humiliation and potential ridicule. He also points to the shame and stigma experienced by her.
29. His unchallenged opinion is that the appellant;

"has been experiencing clinically significant psychological symptoms that meet internally recognised diagnostic criteria for Complex Post Traumatic Stress Disorder (C-PTSD) and Depressive Order (see Annex A). This is consistent with research that has identified the cumulative effect of pre-trafficking trauma exposures and trafficking-related trauma, leading to significant negative psychological outcomes beyond PTSD. Sex trafficking survivors report significantly more C-PTSD symptoms are, as in Ms W's case, more likely to have comorbid PTSD and depression."

30. Professor Craig White points to the fact that there is a real risk of severe and continuing mental health disorders because the appellant has experienced multiple intensely traumatic events which are difficult to process. He also concludes that;

"The presence of severe complex PTSD symptoms and secondary depressive symptoms are associated with significant dysregulation in [her] ability to consider interpersonal risks, threats to her welfare and wellbeing, to form trusting and supportive relationships and reliably assess the intentions or motive of other people. It is my opinion that there is a real and significantly heightened risk that she would be extremely vulnerable to further exploitation, revictimization and abuse".

31. In short, the appellant has particularly complex and severe mental health problems. Her neurophysiological and psychological processes have been damaged by significant trauma which impact on her response to fear and threat assessment. She does not have an ability to self-regulate. At 68 of his report, Professor White points to research which indicates that people with clinical symptoms and severe trauma history similar to the appellant are three times more likely to experience and encounter unsafe relationships and revictimization. He also points to the fact that the appellant is at risk of committing suicide because she has reported a strong sense of entrapment, is not fearful of death, has made prior attempts, has current specific plans and is experiencing suicidal ideation.

32. He concludes;

"This represents a real risk of intensification of suffering and on account of her suicide risk, real and present threat to her life expectancy".

33. He concludes that without treatment, the appellant's prognosis is poor. She requires an integrated multidisciplinary care and treatment plan. The appellant is

not able to cope in the UK with the psychological injuries and being returned to China is likely to worsen her mental state.

34. Professor Craig has researched treatment for mental health issues in China at 69 to 76. He comments that it is recognised that there is insufficient mental health resources and service capacity. According to the WHO report the recognition rate of global mental disorders in China is far below the world average for instance 21% in Shanghai. There is a lack of suitably trained mental health staff. One of the main problems is perceived stigma in accessing services and Professor Craig's view is that this with inadequate mental health services, insufficient funding and fragmented hospital centred mental health care mean that the appellant would have difficulties accessing services.
35. The lastest Respondent's Country Policy and Information Note on China dated 2021 states at 7.2.2;

"The 2019 DFAT report noted that: 'Mental health services are governed by the Mental Health Law (2013; amended 2018) and the National Planning Guideline for the Healthcare Service System (2015-2020). The government has increased investments in mental health services over the last decade; however, services remain inadequate to meet demand and mental illness remains a public health challenge in China.

'Estimates suggest 54 million people reportedly had depression in 2017, 173 million had a diagnosable mental illness or psychiatric disorder in 2012 (and only 15 million of the 173 million people sought treatment), and China accounted for 26 per cent of global suicides in 2016. Women suicided at a rate at least three times higher than men (the only country in the world where this is the case), and those in rural areas suicided at a rate at least three times higher than those living in urban areas. Unlike in other parts of the world, a low rate of psychiatric illness (particularly clinical depression) is associated with suicides in China. This is due to a combination of the unique cultural-socioeconomic disadvantages experienced by rural females in China and cultural attitudes toward suicide".

36. The evidence cited by the respondent confirms the lack of mental health professionals, the lack of funding, gaps in the supply of services, demand outstripping supply, the stigma attached to both seeking help and incentivising people from working in the industry.

Expert evidence

37. There was before me an expert report by Dr Elena Consiglio who I find is qualified to give an opinion on the situation in China. I note that much of the source material relied on in her report is similar to that relied on by the respondent and her general conclusions in respect of the situation in China do not differ greatly from the Respondent's own recent Country Policy and Information Note on Modern Slavery in January 2021. Where there are differences, I have relied on the respondent's own guidance.

Refugee Claim

38. It is accepted that the appellant is the victim of past persecution and that trafficked women in China fall into the category of particular social group.

39. It is the respondent's primary position that following HC & RC (Trafficked women) China [2009] UKAIT 00027 there is in general sufficiency of protection for trafficked women in China.

40. Paragraph 2 of the headnote in HC & RC begins;

"Women and girls in China do not in general face a real risk of serious harm from traffickers".

41. Mr Devlin submitted that the underlying reasoning behind this statement is set out at [55] to [63] of HC. The Tribunal noted inter alia that China's population numbered 1,330,044,605, that the three sending provinces in central China (Anhui, Henan and Hunan) had a combined population of 223 million inhabitants and that NGOs estimated that the number of victims trafficked each year was between 10,000 to 20,000. The Tribunal concluded that;

"Although the problem of trafficking in China is a large one in terms of overall numbers, given the small numbers involved in relation to the size of the female population in China, it cannot be said that the deficiencies in the system of state protection in themselves give rise to a serious harm from traffickers for women and girls generally...."

42. However, Headnote (2) continues;

"Where, however, it can be established in a given case that a woman or a girl does face a real risk of being forced or coerced into prostitution by traffickers, the issue of whether she will be able to receive effective protection from the authorities will need careful consideration in the light of background evidence highlighting significant deficiencies in the system of protection for victims of trafficking. But each case, however, must be judged on its own facts. China is a vast country, and it may be, for example, that in a particular part of China the efforts to eliminate trafficking are determined and the level of complicity between state officials and traffickers is low. If an appellant comes from such an area, or if she can relocate to such an area, there may be no real risk to her".

43. I am satisfied that in the individual case of the appellant, there is a real risk of her being forced or coerced into prostitution or being re-trafficked for the reasons set out below. In this respect I rely on paragraph 399K of the immigration rules. The appellant has already been subject to significant, repeated, sustained serious harm and I can see no reason that this would not be repeated. This involves considering the appeal on its own facts.

44. The agents of persecution in this appeal are third parties including the traffickers and the appellant's husband. I consider first those areas where the appellant has

already been subject to serious harm and whether there is sufficiency of protection available to her in those areas.

General comments on sufficiency of protection

45. HC & RC states at paragraph (1) of the headnote;

(1) Although the Chinese authorities are intent upon rescuing and rehabilitating women and girls trafficked for the purposes of prostitution, there are deficiencies in the measures they have taken to combat the problem of trafficking. The principal deficiencies are the lack of a determined effort to deal with the complicity of corrupt law enforcement officers and state officials and the failure to penalise as trafficking acts of forced labour, debt bondage, coercion, involuntary servitude or offences committed against male victims.

46. It is therefore recognised in HC & RC that there is corruption and complicity at a local level between law enforcement officers, state officials and traffickers. This headnote was based on what was said in the 2008 US Department of State Trafficking in Persons Report which was before the Upper Tribunal. At [58] of the decision the Tribunal in HC & RC referred to the report and noted that it provided that "although China was making significant efforts to comply with the minimum standards for the elimination of trafficking ... it did not fully do so and therefore it was placed on the Tier 2 watch list".

47. HC & RC was promulgated in 2009 which was 11 years ago, and I consider more up to date evidence in relation to this issue.

48. My attention was drawn to the fact that in the US Department of State Report Trafficking in Persons report 2017, China was downgraded from Tier 2 to Tier 3 of the Watch List. This indicates a decline in the authorities commitment to tackle trafficking. The report defines Tier 3 to refer to countries whose governments "[did] not fully meet the TVPA's minimum standards and were not making significant efforts to do so." The current US Department of State Trafficking in Persons Report 2020 re-iterates that;

'The Government of the People's Republic of China does not fully meet the minimum standards for the elimination of trafficking and is not making significant efforts to do so; therefore the PRC remained on Tier 3'.

49. I am satisfied from this that if anything the position has changed for the worse since 2009 and there continue to be serious deficiencies in the measures the Chinese authorities have taken to tackle trafficking. The reports point to failings in the identification of trafficking victims and a lack of reporting statistics in relation to prosecutions and assistance. I find that Headnote (1) still applies and that the evidence before me does not indicate that the Chinese authorities in general (apart from at border areas in respect of women trafficked into China from other countries) have eliminated corruption and complicity between criminal trafficking organisations and local police and officials. This is also emphasised by Dr Elena

Consiglio in her very full expert report at pages 74 to 112 of the bundle. Indeed the respondent's current position is that there continue to be deficiencies.

50. I will first consider the risk to the appellant of returning to both the area where she most recently lived for 26 years and the area where she was born and lived until she was 16 years old.

Risk on return to Fujian and Ghizhou

Fujian

51. Miss Pettersen conceded for the respondent that the appellant would be at risk of serious harm in Fujian province in the area in which she previously lived for 26 years. I am in agreement. I have regard to paragraph 399K of the immigration rules in this respect. This is the area where the appellant used to live with her husband and where she was previously the victim of serious harm including sustained and significant domestic violence over a period of 26 years as set out above. Apart from being physically and mentally abused, she was forced into prostitution by her husband. I find no reason why she would not be subject to that treatment again. The appellant has only been absent for 7 years and her husband lived there for many years and there is no reason to believe he would not be there, nor that he would not continue to exploit her in the same way with impunity.
52. This is also the place that the appellant was trafficked to at the age of 16 and trafficked from at the age of 42. The gambling debt has not been paid. I am satisfied that those people who trafficked her initially to the area and the loan sharks who then trafficked her abroad also have ties with this area and would be aware if she returned. Since she has been trafficked by them already and escaped before she paid off the debt and is highly vulnerable, I find that she would be at risk of being trafficked again. I find that in her home area there is no sufficiency of protection from the authorities because the appellant was clearly not able to access protection in the 26 years in which she lived there. The appellant was trafficked to the area and sold to her husband. The authorities were aware that the appellant was being assaulted by her husband and took no action even when she complained to the police. A police officer assisted to return her to her husband when she attempted to escape. I am satisfied that in her area the traffickers were able to act with impunity by virtue of the ease with which they trafficked her out of China.

Guizhou

53. The appellant was trafficked from her own area Guizhou at the age of 16 and has not had contact with her own parents since then - a period of over 30 years.
54. Should the appellant return to Guizhou, there is a reasonable likelihood that the appellant would not be identified by the Chinese authorities either on entry or on return to this area as a former victim of trafficking. The US Department of State 2020 report on Trafficking implies that China lacks procedures for the identification

of victims and that line officers are not fully trained in their implication. This is confirmed in the supporting expert report from Dr Elena Consiglio.

55. I also find that there is a reasonable likelihood that the appellant would be unwilling to approach the Chinese authorities for protection as a victim of trafficking. Her previous experiences mean that she has a profound distrust of the authorities because she had a negative experience in the past. The police were not able to offer her protection against her husband despite reporting incidents of violence and even assisted to take her back to her husband when she ran away. In her asylum interview it is also apparent that the appellant views the snakeheads and traffickers as being very powerful and connected with the authorities.
56. Further, she is a traumatised and vulnerable woman with significant mental health issues and is afraid of people. She no longer has a supportive family or social network in this area. Her family were poor. Her father is a miner. The appellant states that the mining industry in that area has closed down. If her parents are still alive, she has no idea if they will be there. And in any event because of her shame, the stigma of having been a prostitute, her distrust of other people, her profound mental health problems and the stigma of having mental health problems, there is a real risk that she would not be able to seek support from her family or that they would not be willing to give her support. Her family are members of the conservative Bouyei ethnic group. Indeed, I am satisfied from the US Department of State Report on Trafficking 2020 the appellant is likely to face stigmatisation and ostracism because of her involvement in prostitution.
57. Further Guizhou province is one of the poorest and economically underdeveloped provinces in China and is one of the main provinces for trafficking to China according to the UNAIP "The trafficking situation in China, 5 March 2011". This indicates that the authorities are not able to prevent trafficking and indicates complicity between the traffickers and the authorities. The US Department of State 2020 Report on Trafficking notes "an acute lack of protection services in the south" which indicates that there has not been much improvement in the situation since 2011. On this basis I am not satisfied that there is sufficiency of protection for victims of trafficking in this area.
58. The appellant has already been trafficked from this area and given her individual characteristics including her previous history of trauma, her very poor mental health, her age, her lack of family and social support, I am satisfied that there is no good reason that she would not be trafficked from her home area again. I find that paragraph 399K also applies to Guizhou and that there is a real risk of her being trafficked again in her home area.

Risk of being re-trafficked in other parts of China

59. Mr Devlin's first submission is that the appellant would be found and re-trafficked by the same traffickers if she returned to another part of China because her husband still owes money to the loan sharks. The debt has not been re-paid and the

police have links all over China and it is easy to locate an individual because of the centralised systems. In addition, he submits that her husband would attempt to relocate the appellant in order to discharge the remainder of the debt and exploit her as he did in the past. He submits that Mr WBZ exploited the appellant for 26 years. He prevented her from escaping. He has a relative in the Chinese Police force who was instrumental in capturing her when she escaped, and she has not taken her ID card with her. He pointed to evidence that almost all of the 30,000 police stations in China have computerised their management of the hukou and the hukou records of 650 million people are accessible via a single national computer network. The system is described as an all-purpose control system and individual police officers have access to it. The appellant made it very clear to the expert that she subjectively believes that she will be found wherever she goes.

60. I accept on the lower standard that the appellant was trafficked by a powerful and well organised criminal operation because they were able to operate internationally and were able to traffic the appellant through various different countries to get her to the UK using false documentation and also because they were also holding other women against their will which indicates a significant scale of operation. I also agree that were she to return to her husband's area he would have a motive for re-trafficking her and that she would be vulnerable to re-trafficking in her home area of Guizhou for the reasons I have set out above. Nevertheless, I agree with Ms Pettersen, that it is difficult to see that the appellant's husband or those who trafficked her would be aware of her return to a different area of China after an absence of 7 years. Although in theory the relative would be able to locate her on the system if she were to obtain a hukou or temporary residence card, this would pre-suppose that the relative was constantly looking out for her return. China is an enormous country with a huge population. I find that even on the lower standard this risk is remote and on that basis, notwithstanding that the appellant has a genuine subjective fear that she will be tracked down by her original traffickers, I find that there is no real risk that the appellant's husband or original traffickers would re-traffic her if she were to return elsewhere in China because they would not know she was there.
61. It is not submitted by Mr Devlin that the appellant would be at risk in her home area because she would need to return to that area to obtain a hukou. I find in accordance with headnote (4) that the appellant would not need to return to the area where she was originally registered.

Prevalence of Trafficking

62. US Trafficking in Persons report in China 2018 states;

"As reported over the last five years, China is a source destination and transit country for men women and children subjected to forced labour and sex trafficking"

63. The respondent's latest information confirms that this is still the case. The US report confirms that there still exist well organised criminal syndicates and local gangs

who play key roles in the trafficking of women and girls in China. I am satisfied that trafficking still takes place in China although in accordance with HC & RC, I find that there is in general no risk of trafficking because of the sheer size of the population. However, it is manifest that trafficking still does take place and has not been eradicated.

Risk to the appellant due to individual profile/visible and discernible characteristics

64. Recent authorities on trafficking make it clear that when considering the risk of an individual being re-trafficking, one must have regard to the individual's personal visible and discernible characteristics. This is consistent with headnote (2) in HC & RC which states that "careful consideration" must be given to the background situation and each case must be judged on its own facts.
65. The appellant has a number of visible and discernible characteristics which make her vulnerable to being re-trafficked in general which I set out in more detail below.
66. I find that the appellant is a highly vulnerable individual. She is a 49-year-old woman who has experienced prolonged, severe and intense trauma over 28 years or so which has had a very detrimental effect on her mental health. She has severe Complex PTSD and depression. She is also at risk of suicide. I have given great weight to the medical evidence in respect of her vulnerability, her lack of self-regulation and her inability to protect herself. In the UK, after the appellant escaped her traffickers, she placed herself in vulnerable situation on more than one occasion and has been reliant on the goodwill of strangers not to continue to abuse her. Professor White repeatedly refers to her vulnerability in this respect. His opinion which is unchallenged and which I accept is;

"The risk of [the appellant] being exposed to repeated instances of abuse violence and exploitation should not in my opinion be solely considered in respect of view expressed in respect of the capacity of and/or intention of the Chinese public authorities to ensure the safety protection and care [the appellant] so clearly requires. The risk of repeated exposure to abuse degrading treatment and/or exploitation will also be determined by her significantly impaired ability to self - regulate her emotions, engage in decisions about the risk presented in social and interpersonal interactions and take self -protective actions particularly in respect of interactions with men and/or confidence in being protected by representations of the Chinese authorities (given her prior reported experiences of doing so and being returned to situations in which she then experienced further emotional sexual and physical abuse)"

67. On return to China the appellant would be a single, 49 year old mentally ill woman without any social or family support system whatsoever. She has had no contact with her children for ten years and they last resided in an area which she cannot return to. In addition, she has a lack of education and no vocational or proper skills to gain employment. Ms Pettersen did point to the fact that the appellant has some experience of child-minding and cleaning, but these are very low skilled jobs. The

expert points to the fact that current age of retirement for females is 50 and discrimination against women in the labour market on grounds of sex. I also accept the view of the expert that if she is returned to China the appellant's mental health will deteriorate even further. I find that there is a reasonable likelihood that she will not access treatment because the medical facilities are limited for mental health problems, her condition is severe requiring complex multi-disciplinary treatment and she will be reluctant to access treatment due to both the shame of having a mental health problem and the shame of being a sex worker. Viewing all the characteristics of the appellant holistically, including her age, sex, vulnerability and mental health profile, her fear and distrust of strangers and her shame, I am satisfied that it reasonably likely that she would not be able to find work. It is accepted that the appellant is subjectively terrified of being returned. In the UK in a country where there is protection, she reports being scared of going out and being vigilant towards threats. I find that this would be even more the case in China. It is said that the Chinese authorities will not let their citizens starve, however from the evidence in relation to hukous and residence cards I find that in order to access public services the appellant would need to be registered and I discuss this below.

68. I find that the appellant would be vulnerable to being re-trafficked by virtue of her visible and discernible characteristics which are set out at [67] above. I rely on the opinion of Professor Craig White who states;

"The presence of severe complex PTSD symptoms and secondary depressive symptoms are associated with significant dysregulation in her ability to consider interpersonal risks, threats to her welfare and wellbeing, to form trusting and supportive relationships and reliably assess the intentions of motives of other people. It is my opinion that there is a real and significantly heightened risk that she would be extremely vulnerable to further exploitation, revictimization and abuse".

Sufficiency of protection elsewhere in China

69. I turn to whether if the appellant relocated to another city or town in China the appellant can mitigate her risk of being re-trafficked by seeking protection from the Chinese authorities. I have already found that the Chinese authorities are deficient in identifying victims of trafficking at [54] above. HC & RC refers to deficiencies in the system. The US Trafficking in Persons Report 2020 states;

"For the third consecutive year the government did not report identifying any trafficking victims of referring them to protective services"

70. The 2018 report also states;

"The government decreased efforts to protect victims".

71. The Country Policy and Information note 2018 relied on by the respondent in the refusal letter refers to maintaining public order and social stability being the key priorities of the police in China which outweigh protecting the public from criminal activity. It is said the oversight of the police is limited, localised and ad-hoc. It is also noted that some local authorities have targeted those who make complaints

against the police with punishments including arbitrary arrest and detention and there is no reliable data to show that police and security agents who commit abuses are held accountable for those abuses or that they generally enjoy impunity. It is also said that it is difficult for ordinary people to pursue cases against officials. This suggests that avenues of redress are limited and there are difficulties in general in obtaining protection from criminal activity.

72. The background evidence is that at local government level there is a reluctance to tackle trafficking and that there are powerful and intertwined interests. There is a large level of corruption at a local level. Dr Consiglio points to the abuse and ill treatment of victims of sexual exploitation at the hands of local police and authorities. There are laws in place to prosecute traffickers, but the government did not publish the number of investigations instigated into trafficking cases. Dr Consiglio concludes that victim protection services are scarcely implemented and are overall deficient to guarantee protection to victims of trafficking throughout China and especially in rural areas and especially in the case of female victims of human trafficking for the purposes of sexual exploitation. Her view is largely based on the evidence from the recent UN trafficking reports and background evidence which is also relied on by the respondent and does not in my view depart from headnote (1) of HC & RC.
73. The respondent's position is that the appellant will be protected because there are shelters available for the victims of trafficking. The respondent pointed to evidence in Refworld in respect of shelters which was taken from the 2018 US Trafficking in Persons report.
74. The appellant produced the latest US Trafficking in Persons report in China 2020 which states;

"in prior years the government reported maintaining at least ten shelters specifically dedicated to care for victims of trafficking as well as eight shelters for foreign trafficking victims and more than 2,300 multi-purpose shelters nationwide that could accommodate trafficking victims; it did not report on these shelters in 2019. the Ministry of Civil Affairs, a nationwide women's organisation, and grassroots NGOs could provide victims with shelter, medical care, counselling, legal aid and social services, as well as rehabilitation services in some cases. Access to specialised care depended heavily on victims' location and gender; experts noted ad hoc referral procedures and an acute lack of protection services in the south, and makes victims were less likely to receive care nationwide. The government did not report how many victims benefited from these services and widespread stigma against victims of sex trafficking likely continued to discourage many from accessing protection services. Implementation of a law placing foreign NGOs in the PRC under MPS supervision continued to impose burdensome requirements and restrictions on the activities of civil society organisations including those able to provide services for trafficking victims and communicates vulnerable to crime"

75. I find from this that it is in general difficult to access the limited assistance and shelters for victims of trafficking. The report also states that the efficacy of the victim assistance is unclear. Recommendations in the 2020 UN report include;

"Ensuring that authorities do not subject trafficking victims to extended detention punishment or deportation, expanding victim protection services including comprehensive counselling and medical reintegration and other rehabilitative assistance for male and female victims of sex and labour trafficking".

76. In 2008, Dr Jackie Sheenan gave evidence to the Tribunal in HC & RC in that there was a high demand for shelters and that admission is for a short period only. It was accepted by the panel at [62] that that the capacity of the specialised shelters to take trafficked women amounted to about 2000 women out of 10,000 to 20,000 victims of trafficking a year and that this is insufficient provision. There was nothing before me to indicate that anything has improved in this respect. Having considered all of the evidence before me including the evidence in the note of Arguments for the appellant, I find that resources are limited, patchy, inconsistent and unreliable and particularly poor in the south. On the totality of the evidence before me, I find that these resources are limited.
77. On this basis I find that it is not reasonably likely that the appellant will have access to a shelter with specialist services for the victims of trafficking.
78. I also find that because of this appellant's individual profile that there is a real likelihood that she would not access these support services for the reasons set out above including her profound vulnerability, her distrust of other people, the shame of having been a prostitute, because of her previous negative experience and because of her perception that the authorities are connected to what she refers to as the "snakeheads". Even if the appellant did access a shelter it would be for a very limited period only.
79. I am satisfied to the lower standard that there is a real risk given the appellant's discernible and visible characteristics that she would not be able to access shelters or support services.
80. I am satisfied on the evidence before me given the particular and individual characteristics of this appellant that she would not be able to access sufficiency of protection either in her home area or in other parts of China.
81. The situation in respect of Victims of Trafficking is confirmed in the latest County Information and Policy Note 2021 in relation to Victims of Modern Slavery in China. This states at 2.5.9

"Overall there remains deficiencies in the government's efforts to combat trafficking with available protection lacking in some cases, particularly for men. Therefore, in general, the state is able but not always willing to offer effective protection. Each case however, must be considered on an individual basis"

82. I find that this appellant would be vulnerable to re-trafficking even in another part of China because of her specific characteristics. I accept Professor Craig's opinion that the appellant is very vulnerable to exploitation. This is borne out by the appellant's willingness to trust strangers to assist her in the UK despite knowing whether they would harm her. She has only managed to survive in the UK by

undertaking unpaid work for individuals which arguably is a form of exploitation in itself. In this I distinguish her from the appellant in HC& RC who was found to be streetwise, resourceful, who had youth on her side and additionally did not suffer from the profound mental health problems experienced by this appellant.

Internal relocation

83. If am wrong that the appellant is at risk of being re-trafficked anywhere in China, I turn to the possibilities of internal relocation. It has been accepted that the appellant is at risk of being re-trafficked in Fujian Province and I have found that there is a risk of her being re-trafficked in her home area of Guizhou.
84. I turn to the issue of internal relocation in line with the principles in *Januzi [2006] UKHL 5* and particularly the test set out at [21];

“The decision-maker, taking account of all relevant circumstances pertaining to the claimant and his country of origin, must decide whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so”.

85. The question is whether the appellant could live a relatively normal life without undue hardship judged by the standards that prevail in the country of nationality.
86. Although the appellant originally asserted that she would have to return to her home area to obtain a hukou, it is accepted by her representative that this is no longer the case and that it is possible to obtain one of these documents from a different area. This is consistent with headnote (4) in HC & RC.

87. Headnote (4) of HC & RC states;

(4) Due to reforms of the Chinese household registration system known as the “hukou” system it is unlikely that a returned trafficked woman would be obliged to return to the place where she is registered. The reforms have made it relatively easy for ordinary migrant workers to get legal, albeit temporary, urban registration and there is no reason why this should not extend to returned trafficked women.

88. The respondent’s position is that there are over 160 cities in China with a population of over 1 million but the only city that the respondent names that the appellant could relocate to is Beijing. I take into account that China is a huge country with an enormous population.
89. The importance of the hukou system (which is being replaced with a residence permit system) is that it is impossible to obtain housing, employment or public services including medical treatment without this document. Mr Devlin’s argument is twofold. First, he submits that the appellant falls within the ambit of Headnote (4) in the sense that although it is relatively easy for migrant workers to get temporary registration, the appellant is not an ordinary migrant worker because of her individual circumstances. Secondly, he also submits that the current country

background information does not support the proposition that it is relatively easy to get legal albeit temporary urban registration in Beijing or other large cities.

90. The Hukou system is explained in detail in the respondent's CPIN as well as examined in the expert report from 36 to 53. I accept that in theory it is possible for an individual to obtain a hukou from another regional authority. The appellant would have a 'rural' designated hukou, although reforms have made it possible for such 'rural' holders to apply for 'urban' hukous. The process of transferring a hukou to another area is complex and costly. There are stringent requirements, and the appellant would importantly need a stable job and housing. The higher the level of job and the more it is linked with the government the more likely the success in obtaining a hukou. As is pointed out in HC & RC it is now possible to obtain temporary resident permits issued by the local authorities.

91. The respondent suggests that the appellant could live in a large city such as Beijing but the evidence is that in many large cities there are restrictions on the issue of the number of such cards (2.3.4 CPIN) and there is fierce competition for them. Residence cards will be issued to professional workers and public sector workers only.

92. At 16.1.5 of the CPIN it is stated;

"The Diplomat noted in February 2017 that;

"New Hukou rules introduced by local governments in China's largest cities such as Beijing, Shanghai, Guangzhou and Shenzhen as well as Chengdu, Wuhan and Xi'an, make it tough for migrant workers by grading an application according to a points system based on an applicant's education level, tax payment and work experience...." "

93. This is also confirmed in the DFAT report. The appellant did not complete secondary school, has never worked in Beijing or a big city has not made tax payments and has no vocational skills. She would be competing for temporary residence permits against much more qualified individuals. I find that there is a reasonable likelihood that she would not be able to qualify for a temporary permit in Beijing or in any of the large cities listed above. Without a temporary resident permit the appellant would be unable to access public services.

94. In a large city, she would be forced to survive in the informal economy in a very poor state of health and in these circumstances, there is a real risk of her being vulnerable to exploitation and forced into sex work or re-trafficked for the reasons set out above. I also find that it would be unduly harsh for her to live in these conditions even in comparison with other Chinese nationals because of her specific vulnerabilities including her long history of trauma and mental health difficulties.

95. It is said by Ms Pettersen that it would be easier for the appellant to obtain the necessary temporary residence card in smaller cities, but I am in agreement with Mr Devlin that to obtain a temporary residence card she would still need to be

employed because this is the consistent background evidence before me. The respondent's own guidance stresses the difficulties that thousands of individuals face in obtaining temporary residence card even in smaller cities and towns and the appellant has her own characteristics which would make it even harder for her.

96. I find that there is a real likelihood given the appellant's extreme vulnerability, including not least her age, her sex, her significant mental health problems which would increase in China, her lack of family and social support, her lack of formal education and work experience as well as her past as a prostitute and victim of trafficking that she would not be able to obtain employment even in the informal economy and would therefore even in a small city find herself without the documentation to obtain even basic levels of support, accommodation or medical treatment. Dr Consiglio points to large numbers of migrant workers who migrate to urban areas being left without social assistance which is tied to the place where an individual has a hukou. She points to the migrant population being particularly vulnerable to criminal networks in these circumstances.
97. I find that even in a smaller city the appellant would be living in circumstances in which she would have no employment, no registration card which would allow her to access public services, no family support and that she would be vulnerable to exploitation. I find that her mental health would deteriorate. I do not find that it is reasonable for her to relocate and that it would be unduly harsh to expect her to do so.
98. For all of these reasons I find that the appellant has shown that she faces a real risk of serious harm on return to China as a result of her membership of a social group and that she is entitled to protection in line with the Refugee Convention and Article 3 ECHR.

Article 8 ECHR

99. I find firstly that the appellant has established private life in the UK having lived in the UK for 7 years and having been in receipt of medical treatment. In this respect I note that the threshold of engagement is low in accordance with AG/Eritrea [2007] EWCA Civ 801.
100. In terms of Article 8 ECHR it is confirmed in TZ (Pakistan) v SSHD [2018] Imm AR 1301 that if an applicant meets the requirements of the immigration rules, this is dispositive of the human rights appeal.
101. In this appeal the relevant immigration rule is paragraph 276ADE(1)(vi). This states;

- (1). The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:
- (vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there

would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK.

102. The appellant must establish that there would be very significant obstacles to her integration into China, were she to be returned there. In considering these rules my task is to assess the obstacles to integration relied on, whether characterised as hardship or difficulty and to decide whether they are 'very significant' (see Parveen v SSHD [2018] EWCA Civ 932). Parveen is also authority for the principle that assertions in relation to obstacles must be supported by evidence.

103. I have regard to the following principles. Firstly, in SSHD v Kamara [2016] EWCA Civ 813 it is said;

"The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life'

104. In AS v SSHD [2017] EWCA Civ 1284 it is said;

"Consideration as to obstacles to integration requires consideration of all relevant factors, including generic ones such as intelligence, employability and general robustness of character."

105. The appellant is a citizen of China. She was born, raised and educated in China and lived there until she was aged 42. She can therefore be taken to be an insider in terms of understanding how day to day life in the country is carried on. She is manifestly familiar with the language and culture. However, she has now been absent from China for 7 years. She spent the previous 26 years locked in an abusive and claustrophobic relationship where she was subject to intense trauma. She no longer has contact with her parents, sibling or children. I have found that she has no knowledge of the whereabouts of her family members and I have found above that even if she could locate them, given her history of being trafficked and the shame attached to that together with their conservative views that they would not be supportive to her or willing to accept her into their family unit. The appellant is a victim of forced marriage, human trafficking and sexual exploitation. From the country background evidence, I find that that the shame and stigma associated with these experiences would hinder her being accepted or building up new relationships. The appellant also has significant mental health problems. I have accepted and set out the medical evidence which demonstrates that she is fearful of other people and afraid to leave the house and that she is not able to protect herself or self-regulate due to the negative psychological effects of the trauma on her. I have also accepted that she is at risk of suicide and that if she returns to China her mental health will deteriorate further and that treatment is not available to her for the reasons set out above.

106. The appellant is an extremely vulnerable individual. She is the opposite of a robust and adaptable individual. I am satisfied that her vulnerability when combined with her lack of education, lack of formal qualifications, lack of vocational skills and work experience as well as her age and sex means that she will have significant difficulty in accessing employment or accommodation and would face significant difficulties supporting herself. She would also be likely to experience a decline in her mental health and experience considerable distress. I find that these factors holistically when combined, would prevent the appellant from participating in society, to be accepted and to build up human relationships. Taking into account the appellant's individual characteristics, I find that there are very significant obstacles to her integration into China and that she satisfies 276ADE(1)(iv) of the immigration rules.

107. Since she satisfies the immigration rules, in accordance with TZ (Pakistan) v SSHD [2018] Imm AR 1301 I find that this is dispositive of her human rights appeal and I find that her removal from the UK would constitute a disproportionate interference in her private life and amount to a breach of Article 8 ECHR.

Notice of Decision

108. The decision of the First-tier Tribunal was set aside (see attached)

109. The appeal is remade and allowed on asylum, Article 3 ECHR and Article 8 ECHR grounds.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

RJ Owens

Date 17 March 2021

Upper Tribunal Judge Owens