



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

Appeal Number: AA/09930/2015

THE IMMIGRATION ACTS

Heard at Newport (Columbus House)

**Decision & Reasons
Promulgated
On 19th May 2017**

On 2nd May 2017

Before

**UPPER TRIBUNAL JUDGE A GRUBB
DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**J D
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr S Kotas, Senior Home Office Presenting Officer
For the Respondent: Ms S Dipnarain (Solicitor) Duncan Lewis Solicitors

DECISION AND REASONS

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

Anonymity having previously been ordered in the First-tier Tribunal and there being no application to remove the order, we see no reason to do so and the order remains in place. Unless and until a Tribunal or a court directs otherwise, the Respondent is granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the Respondent and to the Appellant. Failure to comply with this direction could lead to contempt of court proceedings.

1. Although this is an appeal by the Secretary of State, for convenience we will refer to the parties as they appeared before the First-tier Tribunal.

Introduction

2. The Appellant is a citizen of China. She was born on [] 1973.
3. The Appellant was trafficked to the United Kingdom for sex work. Having entered on a visit visa she overstayed and was arrested at the massage parlour in which her traffickers had placed her. Apparently, the police had been alerted by a tip-off instigated by the Appellant and made through a client of hers. On 23rd July 2013, the Appellant made a claim for asylum. On 8th May 2015, the National Referral Mechanism (NRM) concluded that the Appellant was a victim of human trafficking.
4. On 24th June 2015, the Respondent refused her application for asylum and decided to remove her.

The Appeal to the First-tier Tribunal

5. The Appellant appealed against the decision to remove her and to refuse her claim for asylum asserting that in her circumstances, namely being the victim of human trafficking, her history of involvement in prostitution, having suffered historical domestic violence and having outstanding debts to traffickers and a daughter to support, she was at real risk of re-trafficking.
6. Judge Solly found that the risk was made out and concluded that there was not a sufficiency of protection in China (i.e. whether in her home area or elsewhere) and that in any event internal relocation was not an option.

The Appeal to the Upper Tribunal

7. On 26th October 2016, the Respondent was granted permission to appeal by the First-tier Tribunal because the judge had arguably failed to make any or any adequate findings on the sufficiency of protection in China. The judge in rejecting the argument that the Appellant could internally relocate given the size of China and her ability to live and work in several different countries, arguably gave insufficient reasons why she was departing from existing country guidance of HC [2009] UKAIT 00027.
8. On 30th November 2016, the Appellant filed a rule 24 notice seeking to uphold the judge's decision.

Discussion

9. Before us, Mr Kotas, who represented the Secretary of State, relied and elaborated upon the Grounds of Appeal.
10. Ground 1 is that the judge failed to make a proper finding on sufficiency of protection in China, instead relying on the Appellant's subjective position

i.e. that she has no confidence in state protection, and her finding at [139] that the police in China have been unable to protect the Appellant from domestic violence in the past. The judge was obliged to make a finding based on the objective position. Engaging in discussion with the panel Mr Kotas was quick to recognise that the grounds mischaracterised the judge's findings because, whilst she acknowledged the Appellant's subjective view at [124] and [139] her conclusion, when the decision was read in the round, it shows sufficiency of protection was assessed in the context of the country background information including expert reports.

11. The ground is sustainable. The judge correctly self-direct in the context of HC and RC (Trafficked Women) China CG [2009] UKAIT 00027 when she highlights at paragraph 95 head note (ii) of the case as follows:

“Women and girls in China do not in general face a real risk of serious harm from traffickers. Where, however, it can be established in the 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.”

12. Further the judge records at [98] the Respondent's assertion that the support from the authorities is sufficiently effective to reach the standards set out in Horvath, and considers the provisions of Horvath, in the context of the facts, between [103] and [106]. Whilst the judge notes the subjective views of the Appellant which she finds consistently expressed and genuinely held, it is the country and expert evidence of Elizabeth Flint at [107], [109] and [110], the views of the Respondent at [111], the expert evidence of Professor Sheehan at [113], [114] and [115] which provides the foundations for the judge's finding. The judge, at [112] reminds herself of the test that she has earlier identified, and at [17] and [18] factors in the submissions of the Respondent. The judge notes the positive regard that the NRM had to the evidence of Ms Flint, and sets out at [121] why she finds the academic qualifications and experience of Professor Sheehan justify her giving weight to what she notes is an extremely detailed report with referenced foot notes. Although rejecting the Respondent's criticisms of Professor Sheehan as articulated by the Presenting Officer the judge has plainly taken a balanced view of the report because for example at [102] finds that her evidence was not sufficient to depart from the country guidance of HC and RC concerning the ease of ordinary migrant workers to obtain temporary rights to work in urban areas noting that the references are to evidence that predates the country guidance case. The judge was careful in paragraphs [113] and

[114] to examine the sources relied upon by the expert and notes that the evidence concerning risk on re-trafficking does postdate the country guidance case. In short, the decision of Judge Solly does not run counter to HC and RC but represents precisely the individual consideration required by it. The judge concludes that the expert is right when she asserts that the Appellant will be vulnerable to re-trafficking in China for the same reasons that she was vulnerable in the first place, further, historically she has been trafficked by an established network with police connections, able to locate her in the event that she returns to her home area, something the judge finds that she is bound to do because of contacting her daughter there. The judge notes that contrary to the grant of permission the Appellant's family have been contacted by the traffickers. In short even if the Appellant relocated she would remain at risk of being traced by the traffickers because of the continuing connection with her home area that the daughter presents. Having found that there was not a sufficiency of protection countrywide the issue of internal relocation falls away to the point that any error asserted in these grounds is immaterial.

13. Mr Kotas made a valiant effort to save the ground by persuading us to interpret the ground as a challenge to the expert evidence arguing that "everything" turned on the evidence of Dr Sheehan, and because, in his view, Dr Sheehan's evidence was insufficient to support the conclusion of an inadequacy of sufficiency of protection: the conclusion was perverse. However, as Mr Kotas recognised before us, the grounds are clearly drawn as an assertion that the judge has not made her own independent assessment, including of the country information, as to the availability and sufficiency of protection but merely relied upon the Appellant's subjective bare assertion. The ground cannot be read to extend to encompass a perversity challenge to the judge's assessment of the expert evidence. As can be seen from our reasoning above the reduction to reasoning premised on Dr Sheehan's report alone is simplistic. In any event, we see no basis upon which a perversity challenge could succeed given that support evidence.
14. Ground 2 is an irrationality challenge to the decision in respect of internal relocation. If the matters set out above are not sufficient to dispose of this criticism of the judge, there is a clear finding at [141] that internal relocation does not provide an answer to the risk, and reading the decision in the round, as we are bound to do, the conclusion has its basis in the finding at [129]. The judge sets out the consistency between the two expert reports, the absence of any criticism of Elizabeth Flint's report, the support that the external evidence provides to their opinions and, relying on the expert opinion from Professor Sheehan, finds that internal relocation is not a viable option for the Appellant. That finding, reads back to [112], which properly identifies that relocation must be to a safe place, and continuing forward to [125], is clearly premised on the finding that the Appellant would be at risk of re trafficking from new, if not the same traffickers, anywhere in China. Although the judge's detailed consideration jumps around a little, read in the round, she has dealt with

the relevant issues following a correct self-direction, and reached conclusions which were open to her on the evidence.

15. Ms Dipnarain made helpful submissions pointing to the detailed reasoning of the judge concerning the treatment of the experts and referred us to various parts of the country information supporting their conclusions including the Trafficking in Persons Report and reminded us that the requirement to give reasons is not unduly onerous particularly where there is no departure either from country guidance or from the views of the experts. The judge made plain what evidence she expected and the primary data upon which she relied was sufficient to support her conclusions.
16. In short for the reasons we have set above the evidence, including the expert reports provides an adequate evidential basis for the findings, and there is no merit in the Respondent's grounds.

Decision

17. The decision of the First-tier Tribunal reveals no error of law and stands.

Signed

E. Davidge

Date 17 May 2017

Deputy Upper Tribunal Judge Davidge