



IAC-FH-CK-V1

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

Appeal Number: PA/03410/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 18 September 2017**

**Decision & Reasons
Promulgated
On 22 September 2017**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

**[Y C]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Mannan, Counsel, instructed by Linga & Co

For the Respondent: Ms K Pal, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of China and his date of birth is [] 1973. He made an application for asylum which was refused by the Secretary of State on 31 March 2017. The Appellant appealed against this decision and his appeal was dismissed by Judge of the First-tier Tribunal L K Gibbs, following a hearing on 28 April 2017. The decision was promulgated on 4 May 2017. Permission was granted by Upper Tribunal Judge Gill on 10 July 2017.

2. The Appellant's case, very much summarised, is that in 1993 he borrowed money from loan sharks to set up a biscuit factory in China. The business failed and the factory was closed down because flour used in the manufacture of the biscuits was found to be poisonous. Following this in 1996 he was arrested by the authorities in spent a year in police detention during which time he was tortured. The Appellant's debt remained outstanding. He was released from police custody following his wife having raised a surety of 30,000 RMB. The Appellant breached bail and went into hiding in Fujian Province. In 2002 he then made arrangements with a snakehead to leave China, paying the snakehead around 200,000 RMB.
3. The Appellant arrived in the UK in 2003. He was arrested on 29 August 2013 and released on reporting restrictions. The Appellant absconded. He was encountered again on 11 January 2017 and he made an application for asylum on 22 February 2017. The Appellant claimed to be the victim of trafficking and his claim was referred to the National Referral Mechanism (NRM). In a decision of 23 March 2017 the NRM rejected the Appellant's claims to have been trafficked. The NRM decision maker relied on the fact that the Appellant agreed with the snakehead to come to the UK in order to earn money and that he did not claim that he was forced to travel to the UK. There has been, as far as I am aware, no challenge to the NRM decision.
4. The judge made findings which are contained in paragraphs 18 to 22 of the decision:

"18. I find it implausible that if the appellant faced the risk that he claims from both the Chinese authorities and the loan sharks that he would have remained in China for around seven years following his claimed release from detention (1996/7-2003). Further, I find that the chronology that he has provided in this regard lacks consistency because in his asylum screening interview (ASC) he said that he was arrested in 1995 but in his full asylum interview (AIR) says 1996. He also provides an account of where he was living in hiding (AIR86) but this chronology only amounts to four years, leaving at around three years unaccounted for which I find is a significant discrepancy that undermines his credibility. I also note that the appellant remained in the Fujian province where he has lived all of his life which further, in my view, undermines the credibility of his claim to have been at risk. In addition, on the issue of his detention in China, I find that the appellant's credibility is undermined by his failure to mention this in his ASC despite being asked if he had been ever been detained (ACS 5.4).

19. The appellant's evidence is that he paid the snake head, Xin Zhong 200,000 RMB to help him leave China. I find however that he was unable to explain where he got this money from (if he had been in hiding for years), and why, if he had access to such money, he did not seek to repay the loan sharks who he claims were after him. I consider that this is evidence that is inconsistent with the appellant's claim and further undermines the weight that I can attach to his evidence.

20. In addition to these concerns is that the fact that the appellant as able to leave China using a passport in his own name which I find undermines his claim to be wanted by the authorities. I also find his evidence is that he arranged with Xin Zhong to travel to the UK to work here, not that he was forced to do so (AIR 109) and at AIR 110 the appellant agreed that his main reasons for not wanting to return to China are economic.
 21. Further, the appellant's evidence is not that he owes Xin Zhong money for arranging his journey because he had already paid him in China, and I find that this diminishes the credibility of his claim in his ASC that he was forced to work in the UK. Additionally I find it very significant that in his AIR 111 he retracts this claim '*I never said that I was locked up*' which I find is a significant inconsistency which he has failed to reasonably explain. The fact that he then reinstates this claim in his witness statement that he was forced to work in the UK without the chance to escape further undermines his credibility in my mind, notwithstanding the lower standard of proof.
 22. Whilst I do not dispute that the Appellant has cigarette burns on his arms, given my over concerns regarding his credibility I am not persuaded that these were caused by the Chinese authorities. Given the nature of the scars I find that there are possible alternative explanations for these which have not explicitly been considered by the doctor at the detention centre."
5. The grounds are twofold. First; it is asserted that the judge gave inadequate reasons for reaching conclusions in respect of the medical evidence and failed to take into account the Rule 35 report. It is further stated that the judge focused on minor inconsistencies to conclude that there are possible alternative explanations in respect of the Appellant's scarring. Secondly, it is asserted that the judge should have considered Article 8, including paragraph 276ADE, as the Appellant has been here for fourteen years and he has some family ties and family life here.
 6. I heard submissions from Mr Mannan and he conceded that the Rule 35 report does not clearly consider possible alternatives and that there was a deficiency in the medical evidence before the judge. However, the thrust of his argument was that the judge fell into error in alluding to other causes when this was not considered by the doctor. Mr Mannan suggested the way forward would be to direct the doctor to provide a further report dealing with possible alternative explanations.
 7. Ms Pal submitted that the judge did not err. The judge had a very brief report on which basis she had to make findings of fact. It was a matter for the Appellant to obtain further medical evidence to put before the judge, if that was appropriate, but it is too late now to fill the gaps in evidence.

Conclusions

8. The Rule 35 report, prepared by Dr N Ali, following an assessment of the Appellant, is dated 9 March 2017. The doctor concludes that "that there is

some scarring on his [the Appellant] left forearm as a result of cigarette burns, this is shown in section 5.” The report goes on to conclude: “This gentleman’s account is plausible and the scarring on his left forearm could be consistent with a burn from a cigarette.” The judge clearly did consider the Rule 35 medical report (see para 22) and accepted that the Appellant has cigarette burns on his arms.

9. A proper reading of the decision makes it clear that the judge did not rule out that the scars were forced by torture, but she did not accept that they had been caused by the Chinese authorities during the Appellant’s detention in 1996. It is in this context that she referred to “possible alternative explanations not considered by the doctor”. It was not for the judge to speculate about possible alternative explanations, the point she made is that having considered the evidence in the round, including the very limited medical evidence, it did not establish that the cigarette burns had been caused in 1996 by the Chinese authorities in the circumstances described by the Appellant. This finding was open to the judge on the evidence. There is no error of law.
10. Article 8 was not advanced at the hearing by the Appellant and this ground was not expanded upon in oral submissions before me. It was not incumbent on the judge to consider the appeal under Article 8. In any event, in the light of the lawful dismissal of the Appellant’s asylum claim and the absence of evidence of very significant obstacles it is inevitable that the appeal would have been dismissed under the Rules.
11. In terms of the wider Article 8 assessment, albeit he has been here since 2003 and the decision interferes with his private life, there is no evidence of the Appellant’s family life now referred to in the grounds before me or indeed of a significant private life here. The Appellant has been here unlawfully. Having regard to all material factors, including the scant evidence in respect of Article 8 and section 117B of the 2002 Act, it is inevitable that the only lawful conclusion is that the decision is proportionate to the legitimate interest (in this case is the economic wellbeing of the country through the maintenance of immigration control).

Notice of Decision

12. The decision of the judge is lawful and sustainable and there is no error of law and the decision is maintained.

No anonymity direction is made.

Signed Joanna McWilliam

Date 22 September 2017

Upper Tribunal Judge McWilliam