



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

Appeal Number: PA/03586/2017

THE IMMIGRATION ACTS

Heard at Field House

On 3 November 2017

**Decision & Reasons
Promulgated**

On 13 November 2017

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**[L H]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representation

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of China. By a decision sent on 9 June 2017 Judge Mitchell of the First-tier Tribunal (FtT) dismissed her appeal against a decision made by the respondent on 5 April 2017 to refuse her asylum and humanitarian protection.
2. At the hearing before the FtT judge the appellant was represented by Counsel, but for this hearing before the Upper Tribunal her solicitors sent a letter several days beforehand stating that the claimant had not put them in funds and so they were no longer instructed to represent her. I established from the file that the appellant had been sent a notice of today's hearing at her given address. No communication had been

received from her explaining or excusing her absence. In such circumstances I decided to proceed with the hearing in the absence of one of the parties. I heard briefly from Mr Tufan.

3. The written grounds of appeal are lengthy and somewhat discursive but raise essentially three main points of challenge. First of all it appears to be submitted that the judge erred by failing to take account of the fact that the appellant had been detained for a period since March 2017 which prevented her from being able to adduce evidence to support her claim to have been trafficked into the UK. Second, the judge appears to have disregarded the fact that the respondent had not followed her own published guidance as set out in Victims of modern slavery – Competent Authority guidance, 21 March 2016 requiring consultation with third party organisations when assessing the appellant’s claim. This failure demonstrated a lack of anxious scrutiny.
4. Third, the judge applied a higher burden of proof than required by the Competent Authority (which was reasonable grounds to believe). Fourthly, it was submitted that no consideration was given to the appellant’s special circumstances and/or her Article 8 rights and ties with the UK, having lived here for over nine years.
5. It is most unfortunate that the appellant did not attend the hearing as she has thereby denied herself the opportunity to be heard in person. Fortunately for her, the written grounds of appeal set out her case to full effect.
6. As regards the fourth ground the appellant’s nine years in the UK was characterised by illegal working and evasion of the immigration authorities through use of a false identity. She was also unable to identify any close family or private life ties.
7. I am not persuaded that the grounds disclose a material error of law.
8. The first ground appears in part to challenge the decision-making of the Competent Authority (who interviewed her and decided she was not a victim of trafficking). That Authority’s decisions are not appealable before a Tribunal. Insofar as it also appears to challenge the judge’s decision-making, the papers reveal that the appellant was no longer in detention by the end of April. That means she had over four weeks to prepare her case freely. There was no application for an adjournment, nor any notification of pending inquiries in China.
9. As regards the second ground, it suffers from the same disability as that already mentioned in respect of the first – it challenges the decision made by the Competent Authority in the context of the UK implementation of anti-trafficking and anti-slavery measures. There was no obligation on the officers deciding her international protection claim to contact third party organisations.

10. The third ground is puzzling to say the least since whatever standard of proof is applied by the Competent Authority (Mr Tufan says it is balance of probabilities; the Competent Authority Guidance suggests its “reasonable grounds” test is either a variant of that or slightly lower), it is certainly not lower than the low standard of proof applied by the judge to the appellant’s international protection claim, namely substantial grounds for believing/real risk: see paras 6-7. Insofar as this ground also alleges a failure on the part of the judge to apply anxious scrutiny by not weighing in the balance factors in the appellant’s favour, that is belied by a reading of the determination which not only notes that the appellant had mental problems but at several points demonstrates that the judge was careful not to treat negative factors as necessarily undermining the appellant’s account: see e.g. paras 22, 23, 39, 44, 48 and 51. As regards the appellant’s mental health problems, the judge noted at para 51 that “they may support the appellant’s claim to a degree”. This determination does not disclose any lack of anxious scrutiny: the judge’s credibility assessment weighed factors in favour of the appellant as well as those against. The judge also considered the appellant’s claim from a number of angles, looking at consistency, plausibility and sufficiency of detail. The judge’s reasoning discloses no error of law.
11. As regards the fourth ground, the appellant’s nine years in the UK was characterised by illegal working and evasion of the immigration authorities through use of a false identity. She was also unable to identify any close family or private life ties.
12. For the above reasons the grounds of appeal are not made out. I would observe that even had the judge accepted the entirety of the appellant’s account, it was not one that established that she would be at real risk of persecution or serious harm or ill-treatment on return to China. Both Upper Tribunal country guidance and the background country information demonstrate that for persons owing money to snakeheads or loan sharks there is in general a sufficiency of protection and also, in the alternative, a viable option of internal relocation. On the appellant’s own account of being able to elude the loan sharks for a year in China, there was an insufficient factual basis for considering that her individual circumstances would put her at risk on a return to China some nine years since she left.

Notice of Decision

13. The grounds of appeal do not disclose an error of law and accordingly the decision of the FtT Judge must stand.
14. No anonymity direction is made.

Signed:

Date: 10 November 2017

A handwritten signature in black ink that reads "H H Storey". The letters are cursive and connected, with a distinct loop at the end of the word "Storey".

Dr H H Storey
Judge of the Upper Tribunal