



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00538/2018

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice
On 14 May 2018

Decision sent to parties on:
On 22 May 2018

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

R W (PEOPLE'S REPUBLIC OF CHINA)
[ANONYMITY ORDER MADE]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms E Daykin, Counsel instructed by Lupins solicitors
For the respondent: Mr D Clarke, a Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity order

The First-tier Tribunal made an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008: unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the original appellant, whether directly or indirectly. This order applies to, amongst others, all parties. Any failure to comply with this order could give rise to contempt of court proceedings.

Decision and reasons

1. The appellant appeals with permission against the decision of the First-tier Tribunal dismissing her appeal against the respondent's refusal of international protection under the Refugee Convention, humanitarian protection, or leave to remain in the

United Kingdom on human rights grounds. The appellant is a citizen of the People's Republic of China.

2. There was a preliminary issue at the First-tier Tribunal hearing: the appellant sought an adjournment to obtain medical evidence regarding his scars, and a country expert report, the commissioning of which had been delayed by funding issues, although both experts had written to say that if commissioned, they would be able to write reports in time for the First-tier Tribunal hearing.
3. The medical evidence concerned significant bodily scarring: the appellant had scars on his left elbow, left forearm and left shin, and a missing toenail, said to have been inflicted in an assault in 2014 when he was beaten, including with an iron rod. The existence of the scars was confirmed in a rule 35 report dated 1 January 2018 from the medical officer at the detention centre.
4. At paragraph 18 of the decision, the First-tier Tribunal Judge said that the appellant was a man with a history of working in farming and the construction industry and that given the delay since the injuries were said to have been inflicted, nothing could be gained from an expert medical report. However, at [32], after setting out the appellant's evidence about his injuries, the Judge said that 'there is no report or record of [hospital] treatment' for the injuries.
5. The Judge also refused to adjourn for country evidence on the basis that there was country guidance which would deal with the country position for persons subject to land grabs, fear of loan sharks, and snakehead gangs.
6. The appellant appealed to the Upper Tribunal, saying that the First-tier Tribunal Judge had erred in refusing to adjourn.

Permission to appeal

7. Permission to appeal was granted on the basis that 'the arguable consequence of the Judge's decision to refuse to grant the request was to exclude the appellant from presenting evidence which on the appellant's case was arguably germane to the issues before the Judge'.

Rule 24 Reply

8. The respondent in his Rule 24 Reply asserted that the adjournment request had been dealt with in detail and that the Judge had given sound, cogent reasons for rejecting the application, and further, that at [29] the First-tier Tribunal had accepted that the appellant's account was broadly consistent with the country background evidence, such that the absence of a country expert was not material to the outcome of the appeal.
9. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

10. At the hearing, Mr Clarke for the respondent indicated that he accepted that at [18] and [32] the Judge had made findings which were procedurally unfair to the appellant and that the appeal should have been adjourned for medical evidence. He maintained the respondent's position in relation to the country.
11. That is also my opinion. This decision will be set aside and remade afresh in the First-tier Tribunal, with no findings of fact or credibility preserved.

DECISION

12. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law. I set aside the previous decision. This decision will be remade in the First-tier Tribunal on a date to be fixed.

Date: 15 May 2018

Signed [Judith AJC Gleeson](#)
Upper Tribunal Judge Gleeson