



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

Appeal Number: PA/07049/2018

THE IMMIGRATION ACTS

Heard at Glasgow Upper Tribunal

**Decision and Reasons
Promulgated**

On 30 May 2019

On 10 June 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

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

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Winter, Counsel, instructed by Maguire Solicitors

For the Respondent: Mr A Govan, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of China whose appeal was dismissed by First-Tier Tribunal Judge Clough in a decision promulgated on 13 December 2018. Grounds of application were lodged and ultimately granted by Upper Tribunal Judge Chalkley in a decision dated 20 March 2019. Thus, the matter came before me on the above date.
2. Mr Winter relied on his grounds. The Judge had failed to provide any reasons as to why there was said to be a discrepancy between the

appellant's description of the injuries he said he sustained between the asylum interview and his statement; as a result the appellant was prejudiced.

3. Secondly, the Judge had failed to provide any reasons for the adverse credibility findings at paragraphs 12 and 13. Furthermore, the Judge erred in law at paragraph 14 when relying on the advanced surveillance system on Chinese railways as indicating that it was not credible that he would have been able to leave the country as he had claimed. There was no evidential basis to arrive at such a finding.
4. I was asked to set the decision aside and to remit the appeal to the First-Tier Tribunal for a fresh hearing.
5. For the Home Office Mr Govan accepted there was a difficulty in paragraph 11 when the Judge said that the appellant's description of his mistreatment by the police at the checkpoint differed from that set out in his asylum interview but the Judge had taken this from the refusal letter. Furthermore, what the Judge had written in paragraph 14 was wrong. The Judge had found that he had left China by boarding a train from Beijing to Moscow and did not experience any problems from the authorities. The Judge said, "this is not credible" given the advanced surveillance system on Chinese railways but this finding was wrong because there was not such a system in place at the time. Notwithstanding the difficulties in the decision I was asked to dismiss the appeal.
6. I reserved my decision.

Conclusions

7. Judge Clough rejected the core of the appellant's account because of discrepancies in his claim concerning his arrest. The Judge says that the appellant's description of his mistreatment by the police at the checkpoint in his witness statement differs from that set out in the asylum interview. The Judge said the details of his injuries differed.
8. At no point does the Judge set out what the discrepancies were and in what way the injuries are said to have differed. The Judge was bound to give clear and adequate reasons for finding that there were discrepancies and the Judge has manifestly failed to do that. Not to give adequate reasons on an issue of materiality is an error in law. For the sake of completeness, having looked at the witness statement and the asylum interview, it is not easy to see that the Judge was correct in her assertion that there were discrepancies.
9. At paragraph 12 the Judge says it was not credible that the appellant would have been charged with offences involving theft or housebreaking but gives no reasons for that finding. Furthermore, at paragraph 13 the Judge found that it was not credible the appellant's mother would have been able to obtain the appellant's release from custody on medical grounds by paying 3,000 Yuan but no reasons are given for that finding either. It was accepted by Mr Govan that the Judge's reasoning in

paragraph 14 on the advanced surveillance system on Chinese railways is also wrong.

10. While the Judge makes further findings regarding the appellant's credibility (primarily based on the proposition that he knew nothing about claiming asylum) the Judge has rejected the appellant's core account without giving adequate or satisfactory reasons. Plainly the decision is unsafe and the appeal will have to be heard again.
11. The decision of the First-Tier Tribunal is therefore set aside in its entirety. No findings of the First-Tier Tribunal are to stand. Under Section 12(2)(b) (i) of the 2007 Act and of Practice Statement 7.2 the nature and extent of the judicial fact finding necessary for the decision to be remade is such that it is appropriate to remit the case to the First-Tier Tribunal.

Decision

12. The making of the decision of the First-Tier Tribunal did involve the making of an error on a point of law.
13. I set aside the decision.
14. I remit the appeal to the First-Tier Tribunal.

Signed *JG Macdonald*

Date 4th June 2019

J G Macdonald
Deputy Upper Tribunal Judge