



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

Appeal Number: UI-2021-001588
(PA/52734/2020); LP/00245/2021

THE IMMIGRATION ACTS

**Heard at Bradford
On 22 July 2022**

**Decision & Reasons Promulgated
On 13 September 2022**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

AAZA

(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Muquit instructed by Freemans Solicitors.

For the Respondent: Mr Diwnycz, a Senior Home Office Presenting Officer

DECISION AND REASONS

- 1.** The appellant appeals with permission a decision of First-tier Tribunal Judge O'Hanlon ('the Judge') dated 19 July 2021 in which the Judge dismissed the appellant's appeal on all grounds.
- 2.** The appellant is a citizen of Yemen born on 2 May 2000. There is no dispute concerning his identity nor that since the age of one he has lived with his family in China.

3. The Secretary of State in the refusal letter dated 26 November 2020 specified the place to which the appellant will be removed as China.
4. Having considered the evidence with the required degree of anxious scrutiny the Judge sets out findings and reasons from [29] of the decision under challenge.
5. The Judge considers the question of the possibility of return of the appellant to Yemen from [31]; recording that the refusal letter at paragraph 61 accepts that the appellant will be at real risk of serious harm contrary to Article 15 of the Qualification Directive in the event of return to Yemen and accepting, if that were the case, that he will be entitled to a grant of humanitarian protection.
6. After reflecting on submissions made concerning Yemen the Judge finds at [37 -38] the following:
 37. Having considered all of the evidence before me in the round, I am not satisfied to the requisite standard of proof that the Appellant's claimed fear of persecution or serious harm in the event of return to Yemen is based upon a reason recognised by the 1951 Refugee Convention as opposed to justified and well-founded fear in the event of return to Yemen as a result of the general situation of indiscriminate violence and internal armed conflict and I therefore do not find that the Appellant satisfies the requirements to a grant of asylum insofar as the question of return to Yemen is concerned
 38. In her submissions, the Appellant's Representative suggested that although the Respondent had purported to grant the Appellant humanitarian protection on the grounds of The Qualification Directive, that protection only applied in the event of return to Yemen and that as the Respondent decided that the Appellant would be returned to China (paragraph 67 of the Refusal letter), in effect the Appellant was being denied humanitarian protection. Whilst I found there is some attraction in this argument, I do in fact you draw a distinction for the purposes of this appeal between the possible return of the Appellant to Yemen where he is a national and China where the Appellant had resided for virtually the whole of his life. I find that it is necessary to consider the issues affecting the Appellant's possible return to China as separate from the issues relating to the Appellant's possible return to Yemen.
7. The Judge, having examined that position, concluded that the appellant could return to China and dismissed the appeal.
8. The appellant sought permission to appeal which was granted by another judge of the First-tier Tribunal on 4 October 2021, the operative part of the grant being in the following terms:
 2. The in-time grounds assert that the judge erred in finding that there was an alternative safe country the grounds assert that the judge incorrectly shifted the burden of proof to the appellant in relation to the issue of whether he could go to China. It is also asserted that the finding that the appellant could go to China is irrational because he does not have permanent residency there or a current Visa.
 3. The judge's conclusion that the appellant's ability or otherwise to obtain a Visa or residency permit was not relevant to her consideration of the asylum or humanitarian protection claim is an arguable error of law. The judge has taken into account guidance given in the cases of

GH (Former Kaz, Country Conditions, Effect) Iraq CG [2004] UKIAT 00248 and GH v Secretary of State for the Home Department [2005] EWCA Civ 1182 but these cases both concern appellants returning to their home country.

Error of law

- 9.** Paragraph 8 of Schedule 2 of the Immigration Act 1971 permits an illegal entrant to be returned to either:
 - (a) the country of which they are a citizen, or
 - (b) the country or territory in which they obtained a passport or other identity documents, or
 - (c) the country or territory from which they embarked for the UK, or
 - (d) a country or territory to which there is reason to believe they will be admitted.
- 10.** It is permissible for a removal direction to specify more than one country of destination. In RR (refugee - safe third country) Syria [2010] UKUT 422 (IAC) the Tribunal held that in an asylum appeal in which the claimant has only one country of nationality (country A), it is permissible for the Secretary of State to propose more than one country of destination (country B etc): see also JN (Cameroon) [2009] EWCA Civ 643 at [23].
- 11.** Mr Muquit did not challenge the provisions of the 1971 Act or the ability of the respondent to return the appellant to the country or territory from which he embarked to the UK which, on the facts of this appeal is China.
- 12.** It was similarly accepted that there is no right of appeal against a removal direction and if and when one is formally issued in this appeal any challenge to that will have to be by way of judicial review.
- 13.** Mr Muquit submitted that an issue arose when considering what will be reasonably expected on arrival, that the refusal letter did not give specific details as to how the appellant could be removed China, and that had the Secretary of State has set out the basis of return and the route that could be appealed against by the appellant.
- 14.** Mr Muquit submitted the problem in this case was that the authorities in China were unlikely to let the appellant in, as he had no right to enter or the type of visa identified in the pleadings, that there was no assessment of any risk the appellant would face on return to China, and that the Judge's findings that this was an irrelevant fact is infected by legal error. It was submitted the Judge mis-read the appellant's argument.
- 15.** It was further submitted on the appellant's behalf that the Judge's assessment of risk in China is perverse, contrary to the law and evidence, and failed to take into account what the appellant claimed happened to him which it was argued crossed the necessary threshold, such as to amount to persecution. The appellant claims his father was arrested once he had left China but all the evidence of the impact upon the appellant was before the Judge.

- 16.** The appellant claims that the actions of the State in China are persecutory and that the Judge could not justify the decision. It was argued the appellant's mother was not in the meeting attended by his father where it is alleged the issues arose of concern to the authorities in China, but she too had been persecuted indicating a family connection and risk to the appellant on return. Mr Muquit submitted the appellant is a member of a particular social group on this basis.
- 17.** It was submitted that the Judge should have properly assess the evidence and that had the Judge done so a different decision would have resulted.
- 18.** I do not find the claim the Judge failed to consider the evidence with the required degree of anxious scrutiny made out, as the Judge clearly did.
- 19.** In relation to the appellant's case before the Judge the following is written at [24]:

24. The Appellant's case, based upon his screening interview, further representations, skeleton argument and oral evidence at the hearing, can conveniently be summarised as follows:-

- (a) The Appellant is a national of Yemen, born 2 May 2000. He was born in Bangkok, Thailand where he lived for a year prior to moving with his family to China where his father ran an import/export business.
- (b) The Appellant's family do not have settled status in China, his father having to renew his residency every year. Since the Appellant turned the age of 18 he is only able to reside there on a student visa in his own right.
- (c) The Appellant's family includes his father, mother and two siblings, born in 2003 and 2004 respectively.
- (d) The Appellant received his education in China. He commenced University studies in 2018 at Changsa Human University and in his second year studied at Changsa Central University.
- (e) Although the Appellant has lived in China for the majority of his life, he has not been granted citizenship.
- (f) The situation in Yemen has continued to deteriorate since the war commenced in 2014.
- (g) On 4 December 2019 the Appellant's father and another Yemeni citizen residing in China organised a conference where Yemeni nationals resident in China raised money and provided clothing to support displaced and vulnerable citizens of Yemen.
- (h) During the conference those who attended also raised the problem of the Igor (Uighur) Muslims in China. This is taboo subject for the Chinese authorities.
- (i) The Appellant's role was to distribute leaflets during the conference to generate awareness about the Yemeni war and the negative involvement of the Saudi-led coalition. The Appellant's father was a chief organiser and was in charge of money raised during the conference.

- (j) On 11 January 2020 the Appellant arrived in the United Kingdom to continue his higher education. Whilst he was checking in his luggage for departure from China his passport was taken by Chinese airport security and retained for fifty minutes. The appellant was questioned by Chinese airport security. The Appellant's pass
 - (k) port was returned to him. When the Appellant arrived in the United Kingdom he became aware of the rumours that the Chinese government had begun arresting Yemenis who had attended the conference.
 - (l) On 25 January 2020 the Chinese intelligence and local police visited the Appellant's father's place of work. He was questioned by the Chinese security forces about his work and his family in China and abroad. He was physically and verbally abused during the interrogation and asked to surrender his Yemeni passport.
 - (m) The Appellant's father was informed that he had organised the conference which was not licensed or approved by the Chinese government. He was released after several hours.
 - (n) Since he made his application for asylum the Appellant's family in China have been constantly harassed by the Chinese government.
 - (o) The Appellant's father has been diagnosed with a heart condition and his mother is suffering from depression. His siblings have had their education interrupted. They have been unable to enrol for education as the Appellant's father's residency in China is unconfirmed as the Chinese authorities took his passport. The Appellant's father has been interviewed on several occasions and he is required to return to the local police station on a weekly basis.
 - (p) The Appellant believes that his family is to be removed to Yemen but that is not possible at present.
 - (q) The Appellant's Visa application and copy passport demonstrates that his residency permit in China expired on 20 July 2020. He is no longer enrolled on a course of study there and in view of the developments with his family and his own connection to it, it is unlikely that he would obtain another Visa/residence permit.
- 20.** The Judge's findings are set out from [29] of the decision under challenge. From [39] the Judge considers the question of the appellant's possible return to China.
- 21.** The Judge finds at [42] that the appellant's claim fear of persecution in China is based upon what has happened to his family rather than his own direct personal experience. In assessing the merits of such a claim the Judge clearly took into account the basis of the appellant's account as summarised above.
- 22.** The Judge finds that even taking the appellant's account at its highest he had not established that what occurred to him constituted persecution for the purposes of the Refugee Convention [46] and that the appellant had not established it was reasonably likely that he will be subject to persecution or serious harm in the event of return to China [47].
- 23.** The Judge noted the appellant had intended to return to China before the expiry of his residence permit and to renew the same and noted

the suggestions as to how the appellant could obtain the necessary Chinese visa or to extend his previous study Visa in the reasons for refusal letter.

24. In relation to the issue of whether the appellant will be permitted to re-enter China, the Judge found at [51 - 52]:

51. It is impossible to determine whether or not an application made by the Appellant now for a Visa or residence permit for China as a student (as he had prior to leaving China) would be successful. No evidence has been put before me to indicate that the Appellant has made such an application. It is generally asserted on behalf of the Appellant that such an application would not be successful but there is no evidence that this is the case. In any event, having considered the case of top **GH (Iraq) GC [2004] UKAIT 00243** which held that the method or impracticality of an enforced return is not relevant to the consideration of the risk faced under the Refugee Convention or the ECHR. I further take notice of the decision on appeal in this case of **GH v SSHD [2005] EWCA Civ 1182** where the Court of Appeals said that an asylum seeker is not a refugee if he is not at risk in his home area and any difficulties in getting him back safely to his home area will not normally result in a decision to remove him being overturned.

52. In light of this guidance, particularly taking into account that on the basis of the Appellant's evidence, no application has been made for the necessary documentation to enable him to return to China, I do not consider that the Appellant's ability or otherwise to obtain a visa or residence permit is relevant in my consideration of the Appellant's refugee or humanitarian protection claim. That he has a well-founded fear of persecution in the event of return to China and I therefore dismiss his asylum appeal insofar as it relates to China also.

25. I have considered in detail the skeleton argument relied upon by Mr Muquit dated 18 July 2022.

26. The case referred to by the Judge of GH considered the scope of an appeal pursuant to section 82 of the Nationality, Immigration and Asylum Act 2002 as it stood prior to the amendments made by the Immigration Act 2014.

27. The 2014 Act introduced a new section 82 which in its current format reads:

82 Right of appeal to the Tribunal

- (1) A person ("P") may appeal to the Tribunal where—
 - (a) the Secretary of State has decided to refuse a protection claim made by P,
 - (b) the Secretary of State has decided to refuse a human rights claim made by P, or
 - (c) the Secretary of State has decided to revoke P's protection status.
- (2) For the purposes of this Part—
 - (a) a "protection claim" is a claim made by a person ("P") that removal of P from the United Kingdom—

- (i) would breach the United Kingdom's obligations under the Refugee Convention, or
 - (ii) would breach the United Kingdom's obligations in relation to persons eligible for a grant of humanitarian protection;
- (b) P's protection claim is refused if the Secretary of State makes one or more of the following decisions—
- (i) that removal of P from the United Kingdom would not breach the United Kingdom's obligations under the Refugee Convention;
 - (ii) that removal of P from the United Kingdom would not breach the United Kingdom's obligations in relation to persons eligible for a grant of humanitarian protection;
- (c) a person has “protection status” if the person has been granted leave to enter or remain in the United Kingdom as a refugee or as a person eligible for a grant of humanitarian protection;
- (d) “humanitarian protection” is to be construed in accordance with the immigration rules;
- (e) “refugee” has the same meaning as in the Refugee Convention.

(3) The right of appeal under subsection (1) is subject to the exceptions and limitations specified in this Part.

- 28.** The decision under appeal before the Judge was therefore the refusal of the appellant’s protection claim.
- 29.** It is not made out this is a case similar to those considered by the Court of Appeal cases such as *J1 v Secretary States the Home Department* [2013] EWCA Civ 279 as it was not made out that there was any risk to the appellant of suffering harm in his journey from the United Kingdom to China.
- 30.** The assertion by Mr Muquit that the Judge’s findings on risk on return are perverse admits a very high threshold which I find he has not demonstrated has been met. The Judge noted what had occurred to the family and, in light of the reality of life within China, it is not surprising that if mention was made of the Uighur Muslims of which the authorities in China became aware, they would have undertaken investigation and question those involved in the meeting.
- 31.** The authorities must have known of that meeting as unauthorised meetings are not permitted in China and is likely that either there was a representative of the State present in the meeting or a person who reported what had been said to the authorities.
- 32.** The Judge does not dispute the fact the appellant may have been stopped and questioned at the airport but it is clear that he was able to leave China and fly to the UK having had his passport handed back

to him. He claims his father's passport was taken, yet his was not. I do not find the Judge has been shown to have erred in law in his conclusion that the appellant had not demonstrated that he had suffered an act of persecution in the past or is likely to do so in the future. There is no evidence that he has done anything further that may give rise to suspicion of support for any particular group of concern to the authorities in China whilst he has been in the UK.

- 33.** What the appellant is effectively arguing is the impracticality of his return to China.
- 34.** In *HF (Iraqi) and Others v Secretary State the Home Department* [2013] EWCA Civ 1276 it was found that an international protection claim made by an appellant cannot succeed by reference to any alleged risk of harm arising from the absence of an appropriate travel document, in that case it was a current or expired Iraqi passport or a laissez passer which it was contended the appellant would face a real risk without on return to Iraq at Baghdad airport, if a Tribunal finds that an appellant's return is not currently feasible on account of a lack of any of the required documents.
- 35.** Proceedings before the immigration tribunals are adversarial by nature and in *MA (Ethiopia)* [2009] EWCA Civ 289 it was found that where the central issue before the Tribunal was whether someone would or would not be returned, the Tribunal should in the normal course require the claimant to act bona fide and take all reasonable practical steps to seek to obtain the requisite documents to enable him/her to return.
- 36.** The specific finding of the Judge in this appeal is that there was no evidence the appellant had undertaken the necessary bona fides enquiries to ascertain whether he will be granted further leave to enter and remain within China as he had previously. That is a finding in accordance with the evidence and neither perverse nor irrational.
- 37.** It was not made out there was any real risk to the appellant in making an application for the necessary documentation to the Chinese embassy in the UK.
- 38.** Although the appellant disagrees with the conclusions of the Judge the difficulty for the challenge is that it appears to be predicated on an allegation of perversity as a result of disagreement with the Judge's conclusion regarding any potential ill-treatment on return, which the Judge did not find to be sufficient to engage the refugee Convention or entitle the appellant to succeed on any other basis, and asserting that the appellant cannot return to China in any event, when he clearly has not undertaken the requisite steps to ascertain whether such a contention is true.
- 39.** Although Mr Muquit in his submissions suggested the appellant would not be entitled to any of the visas suggested by the Secretary of State in the refusal letter submissions are not evidence and the best evidence is a clear statement of the position of the Chinese authorities from them on this question.
- 40.** I find no material error of law sufficient to warrant the Upper Tribunal interfering any further in relation to this matter.

41. It is for the appellant to decide what further steps are taken but it may appear that the best option is for him, with the assistance of his solicitors who will be able to attest to the bone fide of any further enquiries if later challenged by the Secretary of State, to make proper enquiries and an application to the Chinese authorities to ascertain whether he is able to secure permission to re-enter China, even if on the same basis as before. If the appellant is not able to obtain such and has confirmation he will be denied re-entry to China he may have grounds for making a fresh claim on the basis that the only country to be considered will be Yemen in relation to which its already be conceded he may be entitled to a grant of Humanitarian Protection.

Decision

42. There is no material error of law in the Immigration Judge’s decision. The determination shall stand.

Anonymity.

43. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

Signed.....

Upper Tribunal Judge Hanson
Dated 28 July 2022