



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001657

FtT No: PA/52675/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 24 July 2023

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

ZHONGGUANG JIANG

Appellant

and

SSHD

Respondent

Heard at Edinburgh on 12 July 2023

For the Appellant: Mr K Forrest, Advocate, instructed by Katani & Co, Solicitors
For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

DECISION AND REASONS

1. FtT Judge Gillespie dismissed the appellant's appeal by a decision dated 18 March 2022.
2. The appellant sought permission to appeal to the UT on these grounds:

Ground 1- loan sharks.

The FTT erred in law for the following reasons:

- (i) at paragraphs 42, 44 and 55 the informed reader is left in real and substantial doubt as to why the FTT reaches the findings it does when the FTT has not demonstrated any expertise as to the procedures of loan sharks in China. The informed reader is left in real and substantial doubt as to the basis of the FTT's reasons when a loan shark's entire purpose is to loan money to individuals in return for payment with interest and to chase the individual for any outstanding amount;

- (ii) at paragraphs 43 and 45 the informed reader is left in real and substantial doubt as to why the FTT finds the evidence vague and implausible and why the FTT does not believe that the appellant's friend would give the appellant guidance;
- (iii) at paragraph 45 the FTT has reached a conclusive adverse credibility finding prior to assessing the medical evidence at paragraphs 47-49 2 and 52 and as such has erred in law (*Mibanga v Secretary of State for the Home Department* [2005] EWCA Civ 307);
- (iv) at paragraphs 48 and 52 the FTT has erred by using the appellant's adverse credibility as an *a priori* reason to discount the medical reports (*AR v Secretary of State for the Home Department* [2017] CSIH 52 at paragraph 34 per Lord Malcolm);
- (v) at paragraph 48 the FTT erred by failing to explain what evidence was relied upon to reach the conclusion that the medical records were false documents. For example no expert report or evidence was offered to show that the medical reports were false (*AJ v Upper Tribunal* 2012 SLT 162 at paragraph 7 per Lord Clarke);
- (vi) at paragraph 49 the translations were certified by Global Languages. Global Languages are an established translation service in Glasgow. No criticism was made by the Home Office of that certification. As such the FTT acted in a procedurally unfair manner;
- (vii) the appellant stated in his statement with his parents-in-law had obtained the medical reports and posted them to him. As such the FTT erred at paragraph 49 when stating that the appellant has provided no explanation of who obtained the documents or how they came into his possession. As such the FTT has erred by failing to take account of this evidence or where the informed reader is left in real and substantial doubt as to why the FTT states this in light of the appellant's statement;
- (viii) at paragraph 51 relying on minor detail to undermine the appellant's credibility (*R (TVN) v Secretary of State for the Home Department* [2021] EWHC 3019 at paragraph 34(vi));
- (ix) at paragraph 54 the FTT has erred in law by failing to recognise that simply because it has not believed the appellant and his wife in terms of the reason for the delay in claiming asylum does not automatically mean they are telling lies in terms of how they have been supported (*R (TVN)*, supra at paragraph 29).

Ground 2- Falun Gong

The FTT erred in law for the following reasons:

- (i) at paragraph 58 the informed reader is left in real and substantial doubt as to why the evidence is described as vague on their actual practice of Falun Gong;
- (ii) at paragraph 58 the informed reader is left in real and substantial doubt as to how the FTT is able to come to a view on what can be easily learned and rehearsed in relation to Falun Gong when the FTT has not demonstrated any expertise in Falun Gong and what could be easily learned or rehearsed from that. *Separatim* the informed reader is left in real and substantial doubt as to why the appellant and his wife cannot be practitioners due to their knowledge being from what could be easily learned and rehearsed;
- (iii) at paragraph 59 the FTT has erred in law by failing to recognise that the events took place a number of years ago and failing to assess whether that might be a reasonable explanation for any omission (*R (TVN)*, supra at paragraphs 22-28);
- (iv) at paragraph 59 the informed reader is left in real and substantial doubt as to why the demeanour of the appellant and his wife results in the FTT being unable to place weight on it;
- (v) at paragraph 59 the FTT erred in law as simply because one claim is not accepted does not mean that the other claim cannot be accepted (*R (TVN)*, supra).

3. On 27 April 2022 FtT Judge Hatton found it arguable that the Judge erred by concluding on the loan shark element before considering all the evidence in support, and granted permission on all grounds.

4. Mr Forrest submitted thus:

There were 3 points to take from ground 1.

Sub-grounds (i) and (ii), taken together, disclosed inadequacy of reasoning. The Judge expressed incredulity but did not explain it, which was less than a judicial analysis.

Sub-grounds (iii) and (iv) also ran together. The Judge expressed a firm conclusion before turning to the medical evidence. He did discuss that evidence in some detail and the reasons for rejecting it were not those which had gone before, but that did not remedy the error.

Sub-ground (vii) showed an oversight of the appellant's evidence of receipt of the medial reports.

There was nothing to add on the other sub-grounds, or on ground 2.

There was a further point to raise, although not in the grounds. At [57 - 58] the Judge founded upon failure to mention Falun Gong at the screening interview. It is well established that Judges should be very cautious about drawing such inferences. Further, this aspect of the case related more to the appellant's wife (who was a dependant on his claim, not a separate appellant).

The case should be remitted to the FtT for a fresh decision.

5. I indicated that I saw no merit in sub-ground (vii) or in ground 2, and that the respondent did not need to address those matters.
6. Ms Ahmed submitted thus:

On grounds 1 (i) and (ii), the decision at [42, 44 and 45] was based on a clear analysis of plausibility and credibility which did not require expertise in loan sharking procedure in China.

On ground 1 (iii), the decision is detailed, careful, and consistent with the principles explained in *QC* (verification of documents; *Mibanga* duty) China [2021] UKUT 00033 (IAC) at [57] and headnote 3. The Judge followed his self-direction at [36] that he had to set out his reasoning "in some sort of order but it is the entire evidence in the round that is to be assessed".

On ground 1 (iv), the medical evidence was discounted for specific reasons which did not derive from the adverse findings previously stated.

On ground 1 (v), even if the Judge went a little far in suggesting the documents were false, his final view at [49] was simply to give them little weight, which was well justified.

Ground 1 (vi) is inaccurate. The respondent's decision did take the point of uncertified translations. In any event, this issue was immaterial.

Ground 1 (viii) was also misleading in criticising reliance on “minor detail”. Whether the appellant’s mother-in-law had her fingertip cut off is hardly trivial.

Ground 1 (ix) was inaccurate. The Judge did not say that general lack of credibility meant that the appellant and his wife were untruthful about how they were supported.

No objection was made to raising the “screening interview” point, although it was not in the grounds. However, the rule is not that all omissions must be ignored, and the Falun Gong issue was a major component of the case later put, which might sensibly have been expected to be mentioned at the beginning.

The decision should stand.

7. Mr Forrest replied:

On adequacy of reasoning, there was a lack of evidence to show impossibility of the borrowing from loan sharks.

A Judge might state his conclusion at the beginning or at the end of his reasons, but to state a definite conclusion in the middle, despite the self-direction, showed a failure to consider the evidence as a whole before deciding.

8. I reserved my decision.

9. Grounds 1 (i) and (ii) do not show that the reasoning at [42-45] about borrowing from loan sharks is inadequate or that expert evidence might have been required to justify the conclusion reached. There is no reason to doubt that the Judge had in mind the risks of over-rating inherent plausibility and of overlooking the strangeness of an alien environment. Of course lenders exist to lend and to recover, as the grounds say, but the Judge was not required to accept that an enormous loan was made in vague circumstances with no prospects of any success in the proposed business, or that against apparently substantial repayment there would still be merciless pursuit of the appellant and his family. This part of the grounds is only insistence and disagreement on the facts.

10. The high point of the grounds is at 1 (iii). The last sentence of [45], “I find he did not borrow 1 million yuan from a loan shark and did not go into business in the construction industry”, is more emphatic and final than it needs to be. However, if that sentence were to be excised, the decision would remain sound. I also consider that the Judge should be credited with following well known principles and with applying his self-direction at [36]. In whatever order he has expressed himself, he has not decided before taking the evidence as a whole.

11. Ground 1 (iv) asserts that the Judge used the finding at [45] to discount the medical reports, but does not say where that is to be found in the decision. I was not directed in submissions to such reasoning, and I do not detect it. The several reasons given at [48 - 49] are all distinct and sensible.
12. As to ground 1 (v), the Judge may again have gone rather far at [48] towards a finding that the documents are false, which the respondent did not set out to prove; but the overall approach is explicitly in terms of the governing doctrines derived from *Tanveer Ahmed*, and amply justifies giving the documents “little weight”.
13. Ground 1 (vi) - which Mr Forrest, correctly, did not press - is both inaccurate and immaterial, as pointed out by Ms Ahmed.
14. Ground 1 (vii) does not fairly represent the discussion at [49], which does record that the appellant said the documents were posted to him, and explains in detail why their provenance was not accepted.
15. Grounds 1 (viii) and (ix) were conclusively answered by Ms Ahmed, as recorded above.
16. Nothing in ground 2 rises above insistence and disagreement on the facts. The decision amply explains why the Falun Gong claim failed.
17. I thank both representatives for their assistance.
18. The appeal to the UT is dismissed. The decision of the FtT stands.
19. No anonymity order has been requested or made.

Hugh Macleman
Judge of the Upper Tribunal, Immigration and Asylum Chamber

13 July 2023