



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2023-001398**  
**First-tier Tribunal No:**  
**PA/52149/2022**  
**IA/05680/2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 05 September 2023**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SYMES**

**Between**

**LL**  
**(ANONYMITY ORDER MADE)**

**And**

Appellant

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms D Revill

For the Respondent: Mr E Terrell

**Heard at Field House on 22 June 2023**

**DECISION AND REASONS**

**Anonymity order**

*Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) The Tribunal has ORDERED that no one shall publish or reveal the name or address of LL who is the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of him or of any member of his family in connection with these proceedings.*

***Any failure to comply with this direction could give rise to contempt of court proceedings.***

1. This is the appeal of LL, a citizen of Vietnam born 22 January 1988, against the decision of the First-tier Tribunal of April 2023 to dismiss his appeal (itself brought against a refusal of his asylum and human rights claims of 30 May 2022).

### **Background to appeal**

2. The Appellant's material immigration history is essentially that he entered the UK as a visitor on 8 May 2018, claiming asylum on arrival; he was interviewed on 14 August 2020. His case having been referred to the National Referral Mechanism he was assessed as a victim of modern slavery by way of forced labour to the conclusive grounds standard on 30 December 2022.
3. The Appellant's asylum appeal was brought essentially on the basis that his father had incurred gambling debts and was unable to repay a debt to loan sharks around May 2017 and the Appellant became a target of interest to them as he was the only family member still working. They threatened to kill him and the contents of the family home were smashed when the loan sharks' henchmen visited. The police declined to assist him. The loan sharks eventually insisted that he travel to the UK and work to pay off his father's debts; he left China by air arriving in the UK on 8 May 2018. He was forced to live and work at a construction site under surveillance by the agents' men and unable to leave the property; he did not earn enough money to send any back to his family. He managed to escape from his captors in March 2019. He claimed asylum in July 2020, attributing the delay to his lack of knowledge as to how to claim asylum and his insomnia and depression. He had spoken to his mother three times since arriving in the UK; she informed him that the loan sharks regularly came to the house and harassed and intimidated her.
4. The Appellant relied on evidence including an expert report by Dr Tran Thi Lan Anh of July 2022, which includes the heading "The country information on the operation of loan shark in China; the risks to victims of loan shark in China and the plausibility of [LL's] general account of events". That section of the report sets out that the rural poor see high interest loans from loan sharks as an easy option due to the unavailability of banking facilities, often fundamentally misunderstanding the dangers they would face notwithstanding the prevalence of media stories about the victimisation of debtors; loan sharks used a variety of violent methods to secure repayment, from threatening messages to direct physical violence, using information technology including an App to track down their debtors, a combination of circumstances which led to many victims committing suicide. Overall

Dr Anh considered that the Appellant's account "was entirely consistent ... with the external sources".

### **First-tier Tribunal decision**

5. The First-tier Tribunal found that the Appellant's account was not credible because
  - (a) He had failed to send money back to China notwithstanding that he had earned significant sums, inconsistently with the proposition that he was under pressure to repay a debt. His parents had remained in the family home farming their land, inconsistently with the country evidence that loan sharks would violently enforce debt repayment. Nor was it clear how his father could have accrued substantial debts if he was housebound.
  - (b) He had left China on his own passport with some agency of his own, as shown by the fact that an entry clearance application was made as an overseas domestic worker. Thus it was more likely that he left China voluntarily to work and earn money abroad than that he was kept in conditions amounting to modern slavery.
  - (c) He had waited more than a year before claiming asylum having allegedly escaped his traffickers.
6. The First-tier Tribunal concluded that Dr Tran had not engaged with the Appellant's evidence that he had not sought to reduce his debt by sending more money to China and that the "rest of the expert report" was not relevant as it was predicated on acceptance of his being a loan shark victim. Thus the Appellant lacked a tenable international protection claim; and his expulsion from the UK would not disproportionately infringe his private life or present very significant obstacles to integration given that he had lived here for only a short time, had a house, land, family and an employment history in China, and suffered from no serious medical problems.

### **Permission to appeal**

7. Grounds of appeal contended that the First-tier Tribunal had erred in law because it had
  - (a) Failed to address the element of his claim based on re-trafficking risks, which was essential given the positive conclusive grounds decision as to his victim status.
  - (b) Criticised Dr Tran's report on irrelevant grounds (ie referring to her approach to aspects of the Appellant's account that were beyond

the proper scope of her opinion evidence, such as his conduct in the UK) and failed to take account relevant considerations from her report such as her express opinion evidence that aspects of his account were plausible read in the light of the country evidence (including his father's resort to loan sharks, the tactics used by them, and the police's conduct in detaining the Appellant).

- (c) Made a material error of fact in predicating its findings on the Appellant having entered the UK on a overseas domestic worker visa: that conclusion appeared to be based on a statement to such effect in the NRM decision making but that was simply wrong, the parties below having proceeded on the basis that the Appellant entered the UK as a visitor.
- (d) Wrongly concluded that there was an inconsistency between the Appellant having had some agency in his journey to the UK and his being a victim of trafficking (and thus potentially facing the danger of re-trafficking). The facts recounted by the Appellant, if accepted, required a finding as to whether he was recruited by means of coercion (or fraud as to the conditions in which he would be working) for the purpose of exploitation through forced labour.

8. Judge Barker granted permission to appeal for the First-tier Tribunal on 4 May 2023, placing particular emphasis on the lack of attention to the positive conclusive grounds decision.

### **Upper Tribunal hearing**

9. Before the hearing the representatives had liaised with welcome efficiency and Mr Terrell indicated that it was clear that one element of the Appellant's claim advanced before the First-tier Tribunal, that relating to re-trafficking risks, had not been determined. Accordingly that element of the case required re-hearing. That matter aside, the Respondent maintained her defence of the decision below.
10. Ms Revill made submissions consistently with the grounds of appeal, emphasising that the expert had clearly addressed the plausibility of the Appellant's claim, a matter which demanded distinct attention, and emphasising that the links between the Appellant's experience of forced labour in the UK and his original problems in China were sufficiently close to render the conclusive grounds decision a matter that demanded specific attention.
11. Mr Terrell submitted that in reality the Judge had addressed the report to a sufficient degree to render her reasoning lawful. The real point of her decision was that on his own account the Appellant had not begun repaying the debt and this was an ostensible implausibility given the seriousness of his family's situation which the expert had not addressed. As to the visa, the point being made was that the Appellant

had some degree of agency when departing the country rather than having been coerced and forcibly transported to the UK; this was not a decisive consideration in any event.

### **Decision on error of law**

12. The parties were correct to agree that the re-trafficking risks faced by the Appellant require lawful adjudication. The matter was clearly raised below but not determined. As to the other grounds of appeal, I conclude that the Appellant has the better arguments.
13. Firstly, the Appellant's account was such that it had to be considered whether there was a distinct link between the loan sharks in Vietnam and the gang which held him captive in the UK. His evidence was that the agents of the loan sharks had arranged his travel here. Accordingly the "conclusive grounds" finding as to his victimhood by the NRM, who are the expert body charged with determining modern slavery claims and who have institutional expertise in that regard, demanded distinct attention. Indeed the Judge below expressly stated that the summary of the NRM's finding suggested "a connection with whoever brought him to the UK". However this potentially corroborative evidence received no attention whatsoever in the Judge's further reasoning.
14. Secondly, Dr Anh identified a number of features of the Appellant's account that were specifically plausible in the light of the country evidence. Credibility is ultimately a matter for the Tribunal, of course, but expert opinion evidence on plausibility specific to material aspects of the account at hand demands reasoned adjudication. I accept the Appellant's submissions that it was not for the expert to comment on matters of plausibility divorced from the country evidence context and that the Judge below took account of an irrelevant matter when reasoning to the contrary.
15. Thirdly, the Judge repeatedly referred to the Appellant's perceived immigration status as an overseas domestic worker when the immigration history supplied by the Respondent, and confirmed by Mr Terrell before me as accurate, indicated he had entered on a two-year multiple entry visa as a visitor (which would presumably have conferred six months' leave to enter each time he actively relied on it, though the refusal letter does not make that clear). That perception of the Appellant's immigration status was relied on by the Judge for her conclusion that he departed China with some degree of agency. It is important to keep in mind the definition given by the Council of Europe Trafficking Convention at Article 4(a):

"Trafficking in human beings" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to

achieve the consent of a person having control over another person, for the purpose of exploitation.”

16. So the fact a person has, in the First-tier Tribunal’s words, “some agency” in their travel to the UK is not inconsistent with their having experienced trafficking or modern slavery. This is important given the close connection between the Appellant's accepted modern slavery victim status and the facts of his asylum claim.
17. In conclusion then I find that the First-tier Tribunal materially erred in law in several respects. As those errors are central to the facts it ultimately found, the appeal will have to be re-heard. The nature and extent of the fact-finding is such that the First-tier Tribunal is the more appropriate forum and so the appeal is remitted for that purpose.

Decision:

- (1)The First-tier Tribunal decision made material errors on points of law.
- (2)I set aside the decision.
- (3)I remit the appeal for hearing afresh before the First-tier Tribunal.



Deputy Upper Tribunal Judge Symes  
Immigration and Asylum Chamber

**29 August 2023**