



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

Case No: UI-2023-000812

First-tier Tribunal No: PA/53608/2022  
IA/08634/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 9 January 2024**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**XW  
(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Choudhury instructed by Duncan Ellis Solicitors.  
For the Respondent: Ms Young, a Senior Home Office Presenting Officer.

**Heard at Phoenix House (Bradford) on 13 December 2023**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) is granted anonymity.**

**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 (and/or other person). Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

**Background**

1. By a decision promulgated on 12 September 2023 the Upper Tribunal found material error of law in the decision of the First-tier Tribunal which allowed the appellant's appeal on human rights grounds.

2. The appellant is a citizen of China who it is accepted by the respondent is a victim of modern slavery (human trafficking), although there is no conclusive grounds decision notwithstanding the reasonable grounds decision letter being dated 24 October 2018.
3. Any issues in relation to the failure to provide a conclusive grounds decision has been discussed in the error of law determination and need not be repeated in this decision. The limited scope of this hearing was also defined in that determination as being the need to consider whether the appellant is entitled to remain in the United Kingdom on human rights grounds, both within and outside the Immigration Rules.
4. The rejection by the First-tier Tribunal of the appellant's claim for asylum, Humanitarian protection, and/or leave on Article 2 and 3 ECHR grounds are preserved findings. All other findings of the First-tier Tribunal which were not challenged are also preserved.

#### The refusal letter.

5. The Secretary of State's refusal letter is dated 25 August 2022 in which consideration is given to the appellant's claim under the Immigration Rules, Appendix FM and paragraph 276 ADE (1) to 276CE in addition to the European Convention on Human Rights (ECHR).
6. It was accepted the appellant's claim did not fall for refusal on grounds of suitability although the appellant was not found to meet the requirements of R-LTRP or R-LTRPT of Appendix FM as he has no partner, parent or dependent children in the UK.
7. In relation to his private life considered in relation to paragraph 276ADE(1), the author finds based upon his immigration history that the appellant had not demonstrated that he had lived continuously in the United Kingdom for at least 20 years and could not meet the requirements of paragraph 276ADE(1)(iii).
8. It was not accepted there were very significant obstacles to integration into China if the appellant had to leave the UK as he speaks the language, had previously worked in China, had lived there for the majority of his life, and reforms to the Hukou system allowed for free internal migration, leading to it being found the appellant could not meet the requirements of paragraph 276 ADE (1)(vi) of the Immigration Rules.
9. Having found the appellant could not succeed under the Rules the decision maker went on to consider the issue of exceptional circumstances as required by paragraph GEN.3.2 of Appendix FM to ensure the decision was compatible with Article 8 ECHR as it would not result in unjustifiably harsh consequences for the appellant, relevant child, or another family member. It is concluded on the information provided that no such exceptional circumstances existed sufficient to warrant a grant of leave outside the Rules.
10. It was also concluded there were no compassionate factors which the decisionmaker had been advised of sufficient to warrant a grant to leave outside the Rules, or anything to warrant exercise of discretion outside the Rules in the appellant's favour.

#### The appellants case.

11. In his witness statement the appellant set out his account of his experiences in China. He claims to be from a village located in north-eastern China. His mother and father live in China and the family owned the house that they lived in. He has an elder sister. The appellant claims he married but was divorced in 2011/12 and has no contact with his wife. He was employed as a chef in a

restaurant and lived what he describes as a happy life with respect in the community.

12. The appellant claims his sister, who married and left the family home to live with her husband, suggested that he opened his own restaurant for which she would provide support. He claims his sister advised him of premises that had been put up for sale, which with the assistance of his sister and brother-in-law was purchased enabling the appellant to set up and start running his restaurant.
13. The appellant claims that for three years everything worked out well until in 2013 or 2014 when the police turned up and arrested him as a result of it being said the tax due on the business had not been paid. The appellant claims his sister had been deceiving him whilst he was working as he believed that she had paid the tax. The appellant claims that he was forced to sell the business to pay the tax debt.
14. The appellant was, however, able to open another business after selling property and moving into rented accommodation. The appellant claims around that time he met an old classmate of his who spoke about opportunities in the UK. The appellant sold his assets in China and arrived in the UK on 16 October 2014 intending to open a restaurant with his friend here. The appellant claims he arrived at Heathrow airport where he was met by the friend and two others and taken to a restaurant. The appellant claims his friend recommended obtaining funds to buy the business from a loan shark, and necessary contacts were made. The appellant claims his friend ask for the money the appellant had brought with him together with his passport, claiming he would make the legal arrangements, which the appellant handed over to him. The appellant records in his statement having been deceived in that documents and his money were taken, he was left totally responsible for the money that had been borrowed, and that had been threatened by his friend's associates. The appellant claims two other people he had never met entered the room where he was and demand to be handed back the money that had been borrowed, and when he claimed he had no money he was beaten up.
15. The appellant claims as a result of being beaten and suffering over three consecutive days he agreed to work for the people and was taught to grow cannabis.
16. The appellant claims he was able to escape during the Chinese New Year celebrations of 2016, was able to reach a train station when he got on a train in which he travelled to London. The appellant eventually found a job at a restaurant in China Town but on 2 June 2016 was detained by immigration officers but later released.
17. The appellant claims that the owner of the restaurant he returned to after being released gave him a contract of a restaurant in China Town in Newcastle where he worked until he was again arrested by the immigration authorities which was when he claimed asylum.
18. The appellant claims to have suffered stress, depression, panic attacks, anxiety, memory losses, nightmares and loss of appetite, "being entertained by suicidal ideation is thinking about taking his life all the time". The appellant claims he has lived in the UK for nearly 10 years at the date of this statement, considers this country his home, and cannot return to China as he claims he risks being hunted down and killed by those involved in his initial experiences.
19. The appellant refers to a psychiatric report, and in his latest statement dated 31 January 2023 claims he should be granted status otherwise he will take his life in the UK.
20. The appellant was asked questions by way of cross-examination. He confirmed he was working in the UK, six days a week, claimed to have last had contact with his parents four years ago, and that although he tried he could not make

contact and claimed he was unable to speak to friends in China. He has started two businesses which he is running in the UK. The psychiatric report records that having been released from immigration detention in 2018 he worked towards engaging and starting new businesses and opened two restaurants in Middlesbrough, and that he was stabilising his life, focusing on work, and that he had entered a new relationship with a lady.

21. The psychiatric report is a report of Dr Avirup Gupta, a Consultant Psychiatrist in General Adult Psychiatry and Rehabilitation dated 20 January 2022.
22. The source information available to Dr Gupta was instructions received from Duncan Ellis Solicitors, an interview with the appellant on 15 December 2022 and what are described as relevant legal papers from the solicitors. Dr Gupta confirms he had not received information from primary care medical records supplied by Duncan Ellis Solicitors.
23. Having considered the evidence in relation to what occurred in China, and the appellant's experiences in the UK, Dr Gupta finds that the appellant's symptoms satisfy diagnostic criteria towards the diagnosis of a 'Reaction to severe stress - unspecified' (A type of Trauma associated with Stress Disorder) ICD-10 diagnostic code is F43.9.
24. The evidence provided shows the appellant is being prescribed appropriate medication in the UK with a lack of evidence of issues in relation to his mental health if he is permitted to remain.
25. Under the heading 'Risk of deterioration in mental health associated with deportation to China', Dr Gupta writes:

I explained to [the appellant] that following furnishing a medical report, a decision is likely to be reached by the Home Office regarding his appeal for a reversal of the refusal decision by the Home Office.

I asked him about whether he will be able to access appropriate treatment for his mental health, should his appeal be rejected. [The appellant] told me that if he was allowed to remain in the UK, he can receive medical treatments to improve his mental health and obtain the necessary psychiatric care and treatment to alleviate his trauma symptoms. He stated that now that he was aware that he is suffering with mental health difficulties, he felt fortunate to be in a country where he could receive mental health advice, reviews, assessments and complex treatments. He told me that he is unlikely to be able to seek and benefit from specialist mental health treatments in China both due to the lack of ease of availability of specialist trauma related psychiatric care in small towns, as well as due to difficulties in meeting high costs associated with these treatments.

[The appellant] told me that he would be willing to engage with appropriate mental health services and engage in therapy as appropriate in the U.K should they be offered to him. When I inquired as to why he didn't take efforts to address his mental health difficulties over the last few years, he told me that he felt a 'bit better' he believed that his past trauma no longer affects him. [The appellant] told me he thought that he would over time, forget his past, leave it behind and be able to feel 'normal' again.

I enquired about what his thoughts are regarding a negative decision to his asylum application appeal. [the appellant] told me that if he was refused asylum, he has little confidence in officials in China to protect him and does not believe that he would be safe if he was deported to China.

26. In relation to a negative decision concerning his asylum application Dr Gupta writes:

8. In the event of receiving a negative decision in relation to his asylum an exacerbation of anxiety and further deterioration in mood is likely. I would

recommend that there is a likelihood of potential risk of self-harm significantly. Therefore I would recommend that, in the event of a negative decision, the outcome of the immigration proceedings should be communicated to his legal advisors first rather than directly to him. It may be advisable for his legal advisors to inform his General Practitioner and his care coordinator in a secondary care mental health service/team to be informed of the same, so that plans can be drawn up to urgently review his mental health and assess the risk of harm to himself. Following such an assessment appropriate risk management planning can be beneficial to address risk concerns.

9. All the recommendations of care and treatment require active involvement of his general practitioner to either initiate care planning or refer to appropriate secondary care mental health services. I believe that [the appellant] will benefit from the presence of a mandarin interpreter during his consultations with his GP so that he can discuss his trauma and related symptoms without embarrassment or difficulty.
10. In my opinion, it is likely that [the appellant] may struggle to seek and engage meaningfully in specialist psychological therapy treatments for post-traumatic stress disorder if he is deported to China. The therapeutic efficacy of psychological treatment, in China is likely to be compromised if he remains in fear for his safety while receiving therapy. Lack of psychological treatments may result in a poor prognosis for [the appellant] including permanent debilitating changes leading to chronic vulnerability to re-emergent post trauma symptoms. Therefore [the appellant] remains at a higher than usual risk of increased vulnerability to other mental disorders like an anxiety or depressive disorder, with chronic dysthymia and suicidal ideations.
11. [The appellant's] General Practitioner may not be aware of the details of his psychological trauma. [the appellant] has concerns about his information related confidentiality. I would recommend that should information in this report be required to be released by a health care professional , it should only be released after obtaining [the appellant's] consent.

### Discussion and analysis

27. The First-tier Tribunal referred to the appellant giving evidence on that occasion of having opened two new businesses. He stated one was being run by a friend and the other by him and that he has a number of employees and had borrowed money from friends. It was found that the fact the appellant was running businesses which are open to the public in the UK was suggestive of his not being afraid of being tracked down by individuals who he claimed had previously harmed him in the UK and being indicative of no efforts being made to detect him. Although the judge on that occasion notes the business had only been open for a relatively short period there was no evidence before me to suggest any effort had been made to track down or harm the appellant since.
28. The First-tier Tribunal also noted that although dated 2022 Dr Gupta's report was in fact prepared in 2023. Comment is made in relation to the lack of reference as to how long the telephone appointment between the appellant and Dr Gupta lasted and lack of reference to GP notes. Those comment are still valid.
29. It is not an irrational observation by the First-tier Tribunal that as the appellant gave evidence that he was working from 12 noon to 9 PM six days a week in his new business, a 54 hour working week, this may be a likely source of some of the difficulties being experienced by the appellant. This was not referred to in Dr Gupta's report.
30. The core finding in relation to the appellant's medical condition by the First-tier Tribunal was that it was not accepted that he would face a real risk of being exposed to a serious, rapid and irreversible decline in his state of health, resulting in intense suffering or a significant reduction in life expectancy. That is

- the test now to be applied in relation to health issues following the decision of the Supreme Court in AM (Zimbabwe) [2020] UKSC 17.
31. That finding was not challenged by the appellant by way of a cross-appeal and is a preserved finding. The error of law challenge was made by the Secretary of State.
  32. The starting point in relation to a human rights claim is to identify the fundamental right an individual alleges will be disproportionately interfered with by the decision under challenge. The appellant has no family life in the UK and so this is a private life case.
  33. It is preserved finding that the appellant's claim for international protection is rejected.
  34. In relation to his claim to be a victim of modern slavery, which has been accepted in the reasonable grounds decision, the appellant had not established he faces any risk on return sufficient to entitle him to a grant of international protection. He has not established he will face a real risk of being trafficked or suffering harm from any individual connected with his experiences. It appears he was targeted by a former classmate as it was known that he had a successful business and therefore resources and wished to make use of the economic opportunities which existed in the UK, which he has clearly done by opening his businesses in the interim. There was no credible evidence that anybody has tried to locate him even through the Chinese community in the UK despite his not being in hiding and opening and running businesses in the north-east.
  35. The appellant has been in the UK since 2014. He lived in China prior to that and has not demonstrated a loss of connection to his home country such that he will be viewed as an outsider. He clearly speaks the language, having made use of a Mandarin interpreter, worked in his own businesses in China, and although he claims not to be in contact with his family members there does not appear to have made a great effort to have done so. It was not made out that if returned to China, and he wishes to contact his parents, he would be unable to do so either within the village or through contacts there.
  36. I do not dispute that it may be difficult for the appellant to return to China after this time and to re-establish himself in business, but he possesses a transferable skill as a chef and has worked for others as such in the past. I do not find it made out that objectively there are very significant obstacles to integration: Kamara v Secretary State for the Home Department [2016] EWCA Civ 813, Parveen v Secretary of State for the Home Department [2018] EWCA Civ 932 and Lal v Secretary of State for the Home Department [2019] EWCA Civ 1925 considered.
  37. At [25] of the recent decision of the Court of Appeal in NC v Secretary of State for the Home Department [2023] EWCA Civ 1379 it was found: *'It is not in doubt, based on these authorities, that (i) the decision-maker (or tribunal on appeal) must reach a broad evaluative judgment on the paragraph 276ADE(1) (vi) question (see Kamara at [14]), (ii) that judgment must focus on the obstacles to integration and their significance to the appellant (see Parveen at [9]) and (iii) the test is not subjective, in the sense of being limited to the appellant's own perception of the obstacles to reintegration, but extends to all aspects of the appellant's likely situation on return including objective evidence, and requires consideration of any reasonable step that could be taken to avoid or mitigate the obstacles (see Lal at [36]-[37])'*.
  38. The appellant has failed to identify any credible obstacles to his reintegration into China which will practically amount to insurmountable obstacles. I therefore dismiss the appeal pursuant to paragraph 276ADE of the Immigration Rules.
  39. Ms Chaudhury in her submission is focused upon the findings of the First-tier Tribunal at [58 - 59], arguing that they support the appellant's case and

establish the existence of exceptional circumstances sufficient to allow the appellant to succeed with his appeal.

40. In these paragraphs the First-tier Tribunal wrote:

58. In the Appellant's case he has referred to losing contact with his parents and that they were threatened by Wang Gang and his friends. He stated that when he was last in contact they stated that they were going to move. When I asked him how he knew that they had moved, he said that they were going to do this. He stated that this was as far as he knew and he confirmed that he was in touch by mobile. I note that the Appellant gave evidence that this last contact was three years ago but he made no mention of these threats against his parents in his interview or his latest statement. I am unclear why he would not refer to this as a concern when stating why he feared persecution in China. I do not accept that he is being straightforward on this issue. It is more likely that his parents would contact him if they were using a mobile from an alternative location rather than simply lose contact.

59. Wang Gang was someone from the Appellant's locality and the Respondent has referred to the internal relocation alternative as being a possibility for the Appellant. I note that the CPIN (modern slavery) addresses this issue at 8.2 in information which again postdates the case of HC and RC. The Congress Executive Commission on China (CECC) (2019) refers to the hukou system reforms being promoted but notes it continuing to disadvantage and marginalise internal migrants with the system exacerbating internal migrants' vulnerability to trafficking for the purpose of forced labour. The USSD report (2020) refers to the same issue and specifically states that this contributes to the vulnerability of internal migrants by limiting employment opportunities and reducing access to social services, particularly for PRC national victims returning from exploitation abroad. It was noted that the government continued to address some of these vulnerabilities by requiring local government to provide a mechanism for migrant workers to obtain residence permits. Overall, I was provided with limited evidence that the hukou system is flexible enough to make internal relocation a straightforward option for a victim of slavery such as the Appellant seeking to avoid relocation to his former home area. It is likely to cause difficulties for someone like the Appellant who would wish to relocate to avoid contact with Wang Gang or any of his associates locally. The external information does not suggest that internal relocation would result in unduly harsh consequences although I accept that there are likely to be difficulties depending on hukou reforms. There is limited information however to show that those who trafficked the Appellant and forcibly detained and mistreated him and made him work for them have the reach and influence to trace him in other locations outside his home area or that they would seek him out in his home area.

41. At [58] the First-tier Tribunal Judge in fact finds the appellant was not being as open as he would be expected to have been in relation to the issue of family contact. There is no clear finding that the appellant has lost contact with his family and in fact the conclusion appears to be that his claim to this effect was rejected.

42. At [59] the First-tier Tribunal accepts that the limited evidence provided in relation to the Hukou system was sufficient to show it made internal relocation a straightforward option for a victim of slavery such as the appellant seeking to relocate, but that the external information did not suggest that internal relocation would result in unduly harsh consequences although there were likely to be difficulties. The First-tier Tribunal specifically finds there was limited information to show those who trafficked the appellant, detained him in the UK, and made him work for them, have the reach and influence to trace him in other locations outside his home area, or that they would seek him out in his home area.

43. The findings of the First-tier Tribunal on these issues mirrors those on the evidence that I would find. I find it has not been established that even if the

- appellant faced a risk in his home area that it will be unreasonable or unduly harsh for him to relocate to another part of China on the facts.
44. Although the appellant appears to have a strong entrepreneurial spirit such that there is no suggestion he has been a burden of public funds in the UK that is a neutral factor so far as section 117B of the 2002 Act is concerned. The appellant may have some use of the English language after his time in the UK but, again, that is a neutral factor.
  45. In terms of the weight that can be given to the appellant's private life, his status in the UK has always been precarious. He was recognised as a victim of trafficking but, as noted in the error of law finding, there is no evidence that following the reasonable grounds decision the appellant had been approached or suffered consequences of his earlier experiences sufficient to warrant any grant of leave to remain in the United Kingdom. The appellant has chosen to remain as he clearly wished to come to the United Kingdom for the purposes of economic betterment.
  46. The finding in relation to mental health issues is as previously found by the First-tier Tribunal. It is not made out that the appellant would not be able to access the treatment required to meet any mental health needs, even upon receipt of an adverse decision, whilst in the UK especially if his GP was tipped off as to any adverse decision by his solicitors, as suggested by Dr Gupta.
  47. Insufficient evidence has been provided to show the appellant would not have access to the required medication in China to assist with any mental health issues upon return. There is no suggestion that the appellant will be denied treatment or that he has any issues with the authorities in China sufficient to justify, objectively, any claim he would not seek such assistance if the same was required. He has clearly done so in the UK.
  48. I do not find the AM (Zimbabwe) test satisfied in relation to the appellant's mental health needs.
  49. The burden of proving interference with a protected right is proportionate is upon the Secretary of State. I find that it has not been made out that there are exceptional circumstances, despite the appellant have been identified as victim of trafficking in the past, sufficient to establish that the respondent's decision is disproportionate. I find the Secretary of State has established that the interference in his private life is proportionate.
  50. I do not find it has been established that the appellant is entitled to a grant of leave to remain in the United Kingdom either within the Immigration Rules or on the basis of Article 8 ECHR. On that basis the appeal is dismissed.

### **Notice of Decision**

51. Appeal dismissed.

**C J Hanson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**2 January 2024**



