



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004152

First-tier Tribunal Nos: PA/53077/2022
IA/07541/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 21st of May 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

ZX
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms J Pratt (Counsel)

For the Respondent: Mr P Lawson (Senior Home Office Presenting Officer)

Heard at Birmingham Civil Justice Centre on 14 April 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant 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. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Chohan, promulgated on 4th September 2023, following a hearing at Nottingham Justice

Centre on 17th August 2023. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of China, who was born on 4th August 1983. He appealed against the decision of the Respondent, denying him asylum and humanitarian protection in a decision dated 27th September 2022.

The Appellant's Claim

3. The Appellant's claim is that in China he practised Falun Gong. He came to the attention of the authorities. He left China and arrived in the UK on 11th September 2005. He then claimed asylum. That application was refused and he absconded. It was not until 20th March 2012 that he was encountered whilst leaving the UK voluntarily. In China he had problems with the authorities and with Falun Gong. On 1st January 2017 the Appellant left China illegally and came to the UK on 1st May 2017. On 5th October 2018 the Appellant was encountered working illegally during an enforcement visit. On 23rd October 2018 he claimed asylum. That application too was rejected. He appealed that decision. On 24th October 2018 an NRM conclusive grounds decision found that the Appellant had been a victim of modern slavery. He now claims that if he were to be returned to China he fears both the authorities in China and the Falun Gong.

The Judge's Findings

4. The judge had regard to the expert report by Mr Joshua Kurlantzick and noted, "that the expert finds the appellant's account plausible, which does not necessarily equate to the account being credible" (paragraph 9). The judge found there to be a discrepancy between the Appellant's screening interview and the asylum interview and when this was put to him at the hearing he said that it was a long time ago that he went through the events described and so could not fully recollect. The judge did not find the Appellant to be a member of the Falun Gong "or that he practised that organisation's teachings" (paragraph 13). Accordingly, the judge found that he would not have come to the attention of the Chinese authorities on that account.
5. The judge also found that the Appellant's return back to China in March 2012 did not make sense if he feared persecution for membership of the Falun Gong by the Chinese authorities. The judge recorded that "the appellant's explanation is that the leader of Falun Gong had asked him to return and help them distribute books and guides and to sell some medication" (paragraph 16). That account was not held to be credible. The judge had regard to the Appellant's family and private life and noted that he was in a genuine and subsisting relationship with his partner (paragraph 22) but that "no evidence has been placed before me as to why the appellant's partner could not go to China with the appellant and continue their family life in that country" (paragraph 24), given that she also had no right to remain in the UK. The appeal was dismissed.

Grounds of Application

6. The grounds of application state that the judge fails to note that the screening interview is a summary and not a verbatim record when making his assessment (at paragraphs 10 to 12) and at paragraph 14. It is a substantive asylum interview, which is intended to clarify the screening interview. Therefore, the findings on credibility are erroneous. Moreover, the judge's factual account was incorrect because he observed (at paragraph 16) that the leader of the Falun Gong (who is based in the United States) was the one who asked him to return to China to distribute Falun Gong materials, which was not true because it was the Appellant's immediate leader, Zheng Hui Zheng, as set out in the asylum interview, who was the one who had asked him to do so. This led directly to the finding on credibility by the judge being adverse to the Appellant. The judge also did not have regard to the decision of the Upper Tribunal, albeit unreported, handed down recently by UTJ Grubb of **SSHD v FYH [2020] UKAIT UR** where the report of Mr Joshua Kurlantzick had been found to be decisive in a similar case. The judge was asked to give this decision consideration, but did not do so. This would have enabled the judge to depart from the country guidance case of **HC & RC (Trafficked women) China CG [2009] UKAIT**. Finally, the judge gave a cursory consideration to the expert report of Mr Joshua Kurlantzick.
7. Permission to appeal was granted on 27th September 2023 by the First-tier Tribunal on the grounds that it was arguable that the judge had not adequately assessed the risk of being re-trafficked and the expert evidence in relation to that issue.

Submissions

8. At the hearing before me on 14th March 2024, Ms Pratt submitted that the decision by the judge was one sided and failed to consider the high risk of the Appellant being re-trafficked, which the judge had described as "speculative", when the expert report was to the contrary. For his part, Mr Lawson submitted that the Appellant had been accepted as being a victim of human trafficking, but that this did not necessarily mean that he would succeed in an asylum claim where different standards of proof applied. The fact was that the judge was right in saying that it did not make sense for the Appellant to return back to China if he feared ill-treatment on account of his membership of the Falun Gong. Whilst it was being maintained that the Appellant's mental health was such that he could not accurately recollect details from the past, there was no medical report attesting to such mental health deficiency.
9. In reply, Ms Pratt submitted that the expert report had looked at the Appellant's witness statement and concluded that the reason why the Appellant returned back to China was that he was a person of low education and was single-minded, with there being reasons why he felt he should go back. This was not adequately looked at by the judge. The expert report addressed the predicament of people who have psychological problems (paragraphs 69 to 71) and the fact that men who return to China are ostracised and left destitute. The Appellant had expressed suicidal ideation and this too was not addressed by the judge.

Error of Law

10. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law. My reasons are as follows. This is an appeal where

the Appellant has been found to have been a victim of human trafficking. There is the issue of his account in relation to his having been a member of the Falun Gong, on account of which he claims to have been ill-treated in China, but then to have returned back to his country. The judge did not find this to be credible. However, there are factual errors here because the Appellant claims to have gone back for specific reasons and his instruction to assist in the dissemination of materials came from Zheng Hui Zheng, and not from the overall leader of the Falun Gong, who is based in the United States.

11. Second, however, there is the more salient issue of the Appellant having been subsequently trafficked to the United Kingdom after he had voluntarily returned back to China, and it is this that needs a proper analysis on the basis of the expert report of Mr Joshua Kurlantzick. The judge does not engage with this report as much as he could have done. This is despite the fact that the expert report is addressed right at the beginning of the judge's decision. He notes that "the expert finds the appellant's account to be plausible", but then adds that this "does not necessarily equate to the account being credible". He also notes that the "expert's conclusions are based on what he has been told by the Appellant". This minimises the full impact of the entirety of the expert's report and does not sufficiently address the risk of re-trafficking that the expert is concerned to highlight.

Notice of Decision

12. The decision of the First-tier Tribunal involved the making of an error on a point of law, such that it falls to be set aside. I set aside the decision of the original judge. This appeal is remitted back to the First-tier Tribunal under Practice Statement 7.2.(b) because the nature or extent of any judicial fact-finding which is necessary in order for the decision in the appeal to be remade is such that, having regard to the overriding objective in Rule 2, it is appropriate to remit the case to the First-tier Tribunal. This appeal will be reheard by a judge other than Judge Chohan.

Satvinder S. Juss

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

13th May 2024