



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004910

First-tier Tribunal Nos: PA/53059/2022
IA/07503/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 21st of May 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

Y.L.
(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 Lawson (Senior Home Office Presenting Officer)

Heard at Birmingham Civil Justice Centre on 14 March 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 Row, promulgated on 13th August 2023, following the hearing at Birmingham on 7th 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 citizen of China, who was born on 24th April 1984, and is a female. She refused against the refusal of asylum and humanitarian protection in a decision of the Respondent dated 20th July 2022.

The Appellant's Claim

3. The essence of the Appellant's claim is that she is a victim of modern slavery who had been forced into prostitution and sexual exploitation for the period between March 2014 and April 2017 in the United Kingdom. On 14th June 2014, the Appellant was granted discretionary leave to remain in the UK until 14th June 2023.

The Judge's Findings

4. The judge considered the Appellant's claim that she would be at risk of ill-treatment from criminal gangs, the police and the authorities in China if she were to be returned back to her country. There was a real risk of being re-trafficked. The judge had before him the expert report of Mr Joshua Kurlantzick. In summary, as the judge observed, the expert had referred to the Chinese government as being corrupt, where the authorities work in collusion with criminal gangs, which would result in the Appellant being re-trafficked by the Snakehead gang which had previously trafficked her to the UK. The judge had misgivings about the expert's report because the solicitor's instructions to him "invite Mr Kurlantzick to assume that the appellant's account is correct", and that "Mr Kurlantzick goes on to do so" (paragraph 62). In the event, "he does not explain what the position would be if the appellant was not telling the truth" (paragraph 63). Moreover, the expert makes no attempt to explain why he reaches the conclusions he does" and that "he does not say what evidence he has considered in order to form these conclusions", so that "this is a serious defect in an expert report" (paragraph 64).
5. Second, the judge had regard to the Appellant's credibility. Her case was that she worked as a cleaner in a hotel in China. In October 2012, while she was cleaning a room, she knocked over a cardboard box, which contained money and photographs of dead bodies with organs removed and of abuse of children. Two male hotel guests then walked into the room and confronted her. The hotel manager entered the room. The police were called. The men accused the Appellant of theft. The police arrived and seemed not to believe the Appellant. The Appellant was taken away by the police. On the journey to the police station, the police stopped their car and handed over the Appellant to the two men who abducted her and took her to a building. However, when they got distracted she climbed out of a broken window and ran away. She stayed there for some time. Her friend then arranged for a Snakehead gang to take the Appellant to the United Kingdom in return for working for them when she got there. The judge did not find the Appellant's account to be credible. If her case was that she was standing in the room where a box of photographs and money had been taped over, then all she had to do was to ask the police to look into the box, which would confirm what she had said. Moreover, by the time of the asylum interview, she had decided, contrary to her screening interview, that she had not told the police what she had seen. In any event, if these two men were in possession of photographic evidence, which implicated them in the

murder and extraction of body organs from adults and children, then, “it stretches credibility that they would have left all these photographs and large amounts of money in a cardboard box in their room and then have gone out whilst the cleaner cleaned the room” (paragraph 51).

6. Finally, the judge had regard to the relevant country guidance case of **HC & RC (Trafficked women) China CG UKAIT [2009] 00027** which confirmed that women and girls in China do not in general face a real risk of serious harm from traffickers and concluded that this would apply here (at paragraph 69). The appeal was dismissed.

Grounds of Application

7. The grounds of application state that the judge either misunderstood the evidence or did not consider it properly. They also assert that the judge failed to accurately and appropriately consider the expert report. On 15th September 2023, permission to appeal was granted by the First-tier Tribunal.
8. First, that whilst the judge was entitled to place weight on apparent inconsistencies arising from the screening interview, it was not clear whether he considered the extent to which the summary recorded was accurate in that screening interview, or the purpose of that interview, or the circumstances in which it was conducted. Furthermore, it was not clear whether the judge had considered the Appellant’s vulnerability as a victim of modern slavery, who had been forced into prostitution, before reaching adverse credibility findings based on a delay in claiming asylum.
9. Second, given that it had been accepted by the judge that Mr Kurlantzick was an expert on China, it was arguable that the judge erred by failing to properly engage with the substance of that report, particularly on the risk of re-trafficking, bearing in mind that it was accepted that the Appellant is a victim of modern slavery, having been trafficked from China.

Submissions

10. At the hearing before me on 14th March 2024, Ms Pratt submitted that the judge had expressly been asked to depart from the country guidance cases of **HC & RC (Trafficked women) China CG UKAIT [2009] 00027** and of **HL (Risk – Return – Snakeheads) China CG [2002] UKIAT 03683**, but nowhere refers to being asked to do so. This was on the basis of the expert report, which made clear that conditions in China had changed to such an extent that the authorities colluded with traffickers and that there remained a real risk of re-trafficking were the Appellant to return back to China. All the evidence showed that China was no longer a safe place for victims of trafficking and there was a high risk of being re-trafficked. The snake gangs would seek the Appellant out and re-trafficked her. The expert clearly refers to the absence of sufficiency of protection. The Appellant was a vulnerable individual and this had not been taken into account.
11. For his part, Mr Lawson submitted that the NRM report had confirmed that the Appellant was a victim of human trafficking. Nevertheless it was a matter for the judge to decide. The judge had made allowances for the fact that the Appellant’s memory may not be accurate (see paragraph 44) and he had given balanced consideration to the evidence, nevertheless (at paragraphs 49 to 52). However, the judge had found that the Appellant was physically fit, there was an absence of medical evidence to suggest that she needed further support, and she was not receiving any treatment in any event (see paragraphs 35 to 36). And she had no

mental health impairment. Therefore, the findings were sound. The expert's report had been given proper consideration.

12. In reply, Ms Pratt submitted that given the credentials of the expert the judge had failed to properly engage with his report.

Error of Law

13. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law. This is a case where the Appellant has been accepted as a person who has been a victim of human trafficking, and who was subjected to sexual exploitation in this country. In the letter of instruction to the expert, he was referred to the relevant Practice Direction and the *Ikarian Reefer Guidelines* and provided with the Respondent's full bundle. The expert acknowledged his duty to the Tribunal (at paragraph 139 of the report). The judge failed to properly engage with the expert's report in stating that he ought to have presented a different position if the Appellant was not telling the truth (at paragraphs 63 and 73). The expert had expressed his own view giving reasons for why he found the Appellant's account to be plausible. More importantly, the expert explains why a person who had already been trafficked once by the Snakehead gangs was at significant risk of being re-trafficked if returned to China again. The expert also (at paragraph 64) makes it clear what evidence he had considered for his report and this is set out in the footnotes at pages 24 to 25. Finally, as far as the Appellant's own account is concerned, there does not appear to have been sufficient allowance made for the fact that the screening interview is a summary only of the Appellant's claim and that she is entitled to provide fuller details in the proper asylum interview.

Notice of Decision

14. 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. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal pursuant to 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, to be heard by a judge other than Judge Row.

Satvinder S. Juss

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

13th May 2024