



IAC-AH-LEM-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/07120/2014

THE IMMIGRATION ACTS

Heard at Bradford

On 10 February 2016

**Decision & Reasons
Promulgated**

On 31 March 2016

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

[TT]

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Khan, instructed by Parker Rhodes Hickmotts Solicitors

For the Respondent: Mr Diwncyz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, [TT], was born on [] 1989 and is a male citizen of China. The appellant's application for asylum was rejected by the respondent on 2 September 2014 and a decision made to remove him from the United Kingdom by way of directions. The appellant appealed against that decision to the First-tier Tribunal (the late Judge Upson) which, in a

decision promulgated on 12 December 2014, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. Mr Diwncyz, for the respondent, accepted at the Tribunal hearing on 10 February 2016 that the late Judge Upson had made a material error of law and that his decision should be set aside. I agree and my reasons are therefore brief. The First-tier Tribunal failed to deal with a material part of the evidence of the appellant. The appellant had produced email correspondence between himself and a Ms [R], who lives in Australia. In her written evidence, Ms [R] claimed that she had known the appellant since 2006 and his family since 2001 and was able to confirm his place of birth and also corroborate parts of the appellant's account, especially that he had been born in Tibet and had an unlawful immigration status in India. The Tribunal referred to Ms [R]'s evidence [20] but otherwise did not discuss that evidence and, most significantly, made no findings in respect of the reliability of it. Given that Ms [R]'s evidence was *prima facie* capable of supporting and corroborating the appellant's account, that omission amounts to a significant error of law such that the decision of the First-tier Tribunal falls to be set aside.
3. There are other difficulties in the decision for example it appeared that the Tribunal failed to apply the country guidance of *SP and Others (Tibetan, Nepalese departure, illegal risk) People's Republic of China CG [2007] UKAIT 00021 (IAC)*. Notwithstanding the fact that the judge had found that the appellant is a Chinese of Tibetan ethnicity, he also concluded [40] the appellant had not left China unlawfully.
4. In the circumstances, I set aside the First-tier Tribunal decision and return the matter to the First-tier Tribunal for that Tribunal to remake the decision following a further fact-finding hearing. As regards the preparation for that hearing, I acknowledge that it would be helpful for there to be a Case Management Review (CMR) at which arrangements may be made inter alia for the witness Ms [R] to be cross-examined from Australia by Skype or other electronic means.

Notice of Decision

The decision of the First-tier Tribunal which was promulgated on 12 December 2014 is set aside. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision.

No anonymity direction is made.

Signed

Date 10 March 2016

Upper Tribunal Judge Clive Lane