



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

Appeal Number: PA/14047/2018

THE IMMIGRATION ACTS

Heard at Field House

On 2nd May 2019

**Decision & Reasons
Promulgated
On 16th May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

**MR C L
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Ms S Jones, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a citizen of China, appealed to the First-tier Tribunal against a decision made by the Secretary of State on 4th December 2018 to refuse his application for asylum and humanitarian protection. First-tier Tribunal Judge Watson dismissed the appeal in a decision promulgated on 5th March 2019. The Appellant now appeals to this Tribunal with permission granted by First-tier Tribunal Judge Bibi on 9th April 2019.

2. The background to this appeal is that the Appellant entered the UK on a Tier 4 Student visa in April 2010. He was encountered by Home Office officials on 20th February 2013 after a traffic accident. On 23rd May 2018 he was again encountered and detained and served with removal directions and on 6th June 2018 he made a claim for asylum. His wife and son, who was born in March 2017, are treated as dependants on his claim. The Appellant's case is that he cannot return to China because he fears loan sharks. He claims that he was involved in gambling and borrowed money from loan sharks to fund some losses which he was unable to repay. He further claims that he has an elder child in China and a child in the UK and that he fears that he would be persecuted because he is in breach of Chinese family planning laws.
3. The First-tier Tribunal Judge found the Appellant's claim to have been threatened by loan sharks was not credible. The judge found that the Appellant is not at risk of persecution in light of the fact that he has two children. The judge found that the Appellant had not established that his removal would breach his rights under the European Convention on Human Rights.

Grounds of appeal

4. It is contended in the Grounds of Appeal that the judge materially erred in holding that the failure to adduce corroborative documentary evidence discredits the credibility of the Appellant and it is submitted that the judge applied a standard of proof higher than that applicable. It is further contended that the judge erred at paragraph 26 in holding that the absence of witnesses to corroborate his statement necessarily meant that the Appellant's account was not true. It is further contended that the judge erred in holding that the internal flight alternative would be available to the Appellant given that he tried relocating in the past but the loan sharks found him then. It is contended further that the judge erred in the assessment of the Appellant's private life because she failed to take account of the length of his residence in the UK.

Error of law

5. At the hearing before me Mr L, who represented himself, submitted a copy consultation with his GP on 19th February 2019 and submitted that he was ill on the day of the hearing and had requested an adjournment which had been refused and that he had been forced to proceed with the hearing. Although this issue was not raised in the grounds I considered the document produced by the Appellant and the way in which the judge considered this matter. At paragraph 4 the judge said that the Appellant indicated that he had a headache and a cough and that he had brought medication to show the Tribunal. The judge noted that this was not a new condition. The judge concluded that, in the absence of medical evidence that he was not well enough to give evidence, it was not in the interests of justice to adjourn and that she would keep the Appellant's ability to give

evidence under review throughout the hearing. The judge noted at paragraph 22 (where the oral evidence is recited) that the Appellant had no difficulty understanding or answering questions asked and that his medical condition did not prevent him from fully engaging in the hearing.

6. The record of consultation produced by the Appellant at the hearing before me was dated 19th February 2019, the day before the hearing. That record indicated that the Appellant was in receipt of prescribed medication but that he still gets headaches, it notes that it was agreed that there would be prescribed painkillers and he was advised to see the optician. There is nothing in that note to indicate that the Appellant was not fit to give evidence on 20th February 2019. I find no error in the approach taken by the judge to this matter at paragraph 4.
7. The grounds take issue with the judge's apparent requirement for corroborative evidence. At the hearing before me Ms Jones accepted that it could appear that the judge placed undue reliance on the requirement for corroboration, but in her submissions there were adequate other findings to justify the decision made and the corroboration referred to could have been produced in accordance with Rule 339L of the Immigration Rules.
8. The judge referred to corroborative evidence at paragraphs 23, 24 and 26. The judge also gave other reasons for rejecting the credibility of the Appellant. These include the fact that he only made a claim for asylum after he was arrested and had given a false name to the arresting officers. The judge took into account that this was a number of years after the claimed incidents with the loan sharks occurred. The judge took into account that the Appellant had been in the UK without any sort of leave since 2012 and that he said in oral evidence that he was perfectly aware that his leave had expired. The judge considered the Appellant's responses in his asylum interview to be vague and lacking in detail about the way in which he claimed to have lost his money playing poker. The judge found not credible the Appellant's claim that as a poor man he was borrowing such large amounts of money and attending a casino with three times his annual salary in cash on one occasion. The judge took into account that there had been no threats against any other family members and that the Appellant had not been traced or threatened since leaving China. The judge found it not credible that a powerful gang who were owned a significant amount of money would not pass threats to or through the family members if they wanted to pursue the Appellant. The judge also took into account that the Appellant did not approach the authorities for protection. In my view these are all adequate reasons for the finding that the Appellant's claim was not credible.
9. On top of those findings the judge found at paragraph 23 that the Appellant had not produced any documentary evidence to support his claim to have sold his house, paid off some debts and that his friend had

died at the hands of the loan sharks or any evidence of reporting any incidents to the police.

10. The Appellant said in his asylum interview that he had sold his house before coming to the UK. When this was put to him at the hearing before me he said that there should be some documents in relation to a house sale but that he was not sure if he could get them. He said that his parents still live in their own home in China and that his house which was separate to theirs had been sold. In my view the judge was entitled to consider that this is evidence which could easily have been obtained and that it could have been produced to corroborate the Appellant's claim under paragraph 339L of the Rules.

11. I also note the decision in **TK (Burundi) [2009] EWCA Civ 40** paragraphs 15 and 16:-

“15. The task of the Immigration Judge was in the circumstances no different to that of any other Judge being asked to make a finding or series of findings where there was before him a party who had been disbelieved in an earlier part of the proceedings, had provided no independent evidence to support his account and was putting forward explanations of his failure to call supporting evidence that did not appear sustainable.

16. Where evidence to support an account given by a party is or should readily be available, a Judge is, in my view, plainly entitled to take into account the failure to provide that evidence and any explanations for that failure. This may be a factor of considerable weight in relation to credibility where there are doubts about the credibility of a party for other reasons.”

12. In my view the judge has made adequate findings. Whilst it appears that there may have been some undue reliance on a requirement to produce documentary evidence, some of the evidence referred to is evidence which could readily and reasonably have been obtained by the Appellant. When the decision is read as a whole, it is clear that the judge has given sufficient reasons for rejecting the credibility of the Appellant's claim and was entitled to conclude that the absence of documentary evidence which could have been obtained was a factor which could be weighed against the Appellant in terms of his credibility. For these reasons, in my view, there is no material error in the decision of the First-tier Tribunal Judge.

Notice of Decision

13. The decision of the First-tier Tribunal does not contain a material error of law. The decision of the First-tier Tribunal will stand.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 14 May 2019

A Grimes

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT

FEE AWARD

The appeal has been dismissed therefore there can be no fee award.

Signed

Date: 14 May 2019

A Grimes

Deputy Upper Tribunal Judge Grimes