Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/01865/2020 (V)**

THE IMMIGRATION ACTS

Heard at: Field House
On: 22 March 2021

Decision & Reasons Promulgated
On: 8 April 2021

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

HL
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr K Mukherjee, instructed by Davjunnel Solicitors
For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing to which there has been no objection from the parties. The form of remote hearing was skype for business. A face to face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing.

2. The appellant is a citizen of China, born on 15 September 1994. She has been given permission to appeal against the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision to refuse her asylum and human rights claim.

3. The appellant claims to have arrived in the United Kingdom in May 2009. She claimed asylum on 18 April 2017 on the basis of being at risk on return as a result of having no papers and of having converted to Christianity. She claimed that her grandparents, with whom she lived, had converted to Christianity when she was 7 years of age and that she had become Christian herself. The appellant claimed that her grandparents died when she was 13 years old and she stayed with neighbours until the age of 15 when she was trafficked to the UK through Malaysia, leaving China in March 2009.

4. On 8 March 2018 a referral was made to the National Referral Mechanism in order for a Competent Authority to make a decision as to whether the appellant fell within the definition of a victim of modern slavery. A positive decision was made in that regard on 3 April 2018.

5. The respondent nevertheless refused the appellant's claim on 11 February 2020 on the grounds that her account of having converted to Christianity was rejected and that she would not be at risk on that basis in any event, that she was not at risk by reason of being undocumented and that her removal to China would not breach her human rights. The respondent noted that the appellant had had a child but it was considered that it was in the child's best interests to remain with her and that was not a reason for her to be able to remain in the UK.

6. The appellant's appeal against that decision was heard by Judge Cole in the First-tier Tribunal on 8 October 2020. The appellant's evidence before the judge was that she had been abandoned by her biological parents and had been taken in by an elderly couple whom she called her grandparents. She had no documentation and her grandfather had had to give gifts to the headmaster of the school to get her admitted. Her grandparents were Christians and took her to church in China. They died when she was 13 years old. When she was 15 years old the neighbours, who had helped her after her grandparents died, passed her on to a man who took her to Malaysia, Ireland and then the UK where she was held in an apartment with other girls and forced into prostitution. She escaped, was re-captured and then escaped again and was befriended by a Chinese woman who helped her. She met her partner, started a relationship and had a child. She feared being seriously harmed by the traffickers if she was returned to China.

7. The main issue before the judge was the risk to the appellant as a result of being trafficked to the UK and the question of her lack of documentation. The judge heard from an expert, Dr Elena Consiglio, who gave evidence via video-link from Italy. The expert gave evidence that the appellant would not be excluded from the "hukou" system and would be required to go to the place where she had her permanent registration in order to obtain a certificate from the police and so that she could apply to relocate in China. The expert opined that it would be very difficult to get a hukou registration if not already registered, that she would not be recognised as a victim of trafficking and that she would be at risk of being re-trafficked and of coming to the attention of the same criminal network which had previously trafficked her, as she had not paid her dues.

8. The judge heard from the appellant and her partner. The appellant's partner had come to the UK in 2010 to study but had been refused an extension to his visa in 2016, had been refused administrative review of that decision and had made an unsuccessful judicial review claim, following which he had been advised by his solicitor that the best course for them both would be for the appellant to claim asylum. The judge, having regard to the fact that the appellant had been found to be a victim of modern slavery, proceeded on the basis that the account of being forced to work as a prostitute and having escaped was accepted. The judge found, however, that the delay in the appellant claiming asylum and the timing of her claim, following the refusal of her partner's administrative review application, undermined her credibility and suggested that she was not genuinely in fear of persecution. The judge considered that the appellant's claim based on Christianity had been manufactured. As for the issue of the appellant's documentation, the judge concluded that the evidence suggested that she did in fact have hukou registration. The judge considered that the appellant's account of being trafficked demonstrated a sophisticated organised gang and accepted that she still owed a debt to the traffickers and was accordingly at risk of punishment from them in her home area, although not of being re-trafficked. The judge found, however, that the appellant could safely relocate to another part of China.

9. As to whether it would be unduly harsh for the appellant and her family to relocate within China, the judge found that the appellant's partner would be able to find a job and accommodation in another part of the country but acknowledged that it would be more difficult to relocate with the appellant and their child. The judge found, with reference to the country guidance in HC & RC (Trafficked women) China CG [2009] UKAIT 00027, that the appellant and her child could obtain registration, but that even if there were problems in doing so she would not end up in a marginalised and poor and deprived situation because her partner would be able to support her. The judge accordingly concluded that internal relocation to another part of China would not be unreasonable or unduly harsh for the appellant and her family and that she did not therefore qualify as a refugee. He found that her removal would not breach her human rights and he dismissed the appeal on all grounds.

10. Permission was sought by the appellant to appeal to the Upper Tribunal on the grounds that the judge erred by preferring the out-dated country guidance in HC & RC over the evidence of the country expert, in regard to whether she could relocate to another part of China and obtain hukou registration without first returning to her home area; and that the judge erred by finding that it would be reasonable for her and her daughter to relocate outside her home area without the correct documentation, as an illegal immigrant.

11. Permission was granted in the First-tier Tribunal on 25 November 2020. The matter then came before me for a hearing, by way of skype for business.

Hearing and submissions

12. Mr Mukherjee submitted, in relation to the question of the appellant being required to return to her home area in order to obtain an identity card under the hukou system, that

the judge's reliance on the case of HC & RC was misplaced in the light of the more current evidence and that the judge had erred by rejecting the expert evidence without giving proper reasons. The Tribunal's finding in relation to that question, at [53] of HC & RC, was based upon a Refugee Board of Canada report from February 2005 which in turn was based upon evidence dating back a few years. Even in that case the evidence was unclear as to whether someone without a hukou card would have to go back to their home area. The judge erred by relying on old country guidance rather than the current expert evidence and at [77] made speculative assumptions about the situation in China being more liberalised. As for the second ground, the judge erred in law by finding that the appellant could relocate without going back to her home area and live illegally, supported by her partner, when that was contrary to the Refugee Convention. That fall-back position was unsustainable in law.

13. Mr Tan submitted that the guidance in HC & RC was still applicable and a parallel could be drawn between the appellant's circumstances in that case and the appellant in this case. The findings in HC & RC were not solely based on the Refugee Board of Canada report, but also on expert evidence, and those findings were confirmed in subsequent cases, in AX (family planning scheme) China CG [2012] UKUT 97 and QH (Christians - risk)(China) CG [2014] UKUT 86. Mr Tan submitted that the reality was that 20 million people lived in China without formal documentation and so that was something the appellant would be able to do in the alternative.

14. Mr Mukherjee submitted that the country guidance was outdated and that the issue needed to be looked at again.

Discussion and conclusions

15. In the case of SG (Iraq) v Secretary of State for the Home Department [2012] EWCA Civ 940 the Court of Appeal held that:

> 46. "The system of Country Guidance determinations enables appropriate resources, in terms of the representations of the parties to the Country Guidance appeal, expert and factual evidence and the personnel and time of the Tribunal, to be applied to the determination of conditions in, and therefore the risks of return for persons such as the appellants in the Country Guidance appeal to, the country in question. The procedure is aimed at arriving at a reliable (in the sense of accurate) determination.
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> 47. It is for these reasons, as well as the desirability of consistency, that decision makers and tribunal judges are required to take Country Guidance determinations into account, and to follow them unless very strong grounds supported by cogent evidence, are adduced justifying their not doing so."

16. It is the appellant's case, in asserting that the judge's decision was not a sustainable one, that there were strong grounds for departing from the previous country guidance in HC & RC in relation to the issue of relocation and the hukou system. Those strong grounds were that the country guidance relied on outdated information and evidence and that there was fresh expert evidence confirming that a person such as the appellant would

have to return to her home area, where she would be at risk, in order to obtain a hukou book and a residence identity card. However, it seems to me that the judge was perfectly entitled to follow the country guidance, having given careful consideration to the expert report and provided cogent reasons for preferring the country guidance to the expert evidence.

17. The Upper Tribunal, in HC & RC, considered various pieces of evidence including expert evidence given in a previous case together with several human rights reports and provided reasons for rejecting the evidence of the expert before them, Dr Sheehan, whose views were similar to those of Dr Consiglio in the appeal before Judge Cole, in relation to the issues of internal relocation and registration. As far as I can see from her report, Dr Consiglio did not refer in the body of her report to any evidence of specific changes which had taken place in China to displace the findings reached by the Tribunal in HC & RC and did not address the Tribunal's contrary findings in HC & RC, but simply presented a different view. It is also relevant that, whilst Dr Consiglio confirmed in her oral evidence at the hearing that she was aware that the appellant had a partner and would be returning to China with her and that her report was prepared on that basis, as recorded at [32] of the judge's decision, the report does not appear to take that into account. Indeed, [65] of her report, at page 58 of the appeal bundle, refers to the appellant being without the support of family and considers her circumstances on that basis. On that basis alone the report did not provide a reliable source of information about the appellant's ability to relocate. Accordingly, it seems to me that the judge was perfectly entitled to rely on the country guidance in forming his conclusions on internal relocation.

18. Indeed, as Mr Tan submitted, the Upper Tribunal's guidance on the hukou system and the ability to relocate in China was fortified in the later decisions in AX (China) and QH (China), in which conclusions on the relevant issue were set out at [191(14)] of the former and at [137(4)(vi)] of the latter. Judge Cole's decision was consistent with the decisions reached in those cases, where reference was made to the relaxation in the hukou system and the ability of Chinese internal migrants to move around without having to return to the original hukou area. Contrary to the assertions made by Mr Mukherjee, there is no suggestion that the decisions advocate unlawful residence in China, but rather an alternative form of residence.

19. For all of these reasons it seems to me that the judge was perfectly entitled to conclude as he did and to dismiss the appeal on the basis that he did. I do not consider that the grounds disclose errors of law in the judge's decision and I uphold the decision.

DECISION

20. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Anonymity

The anonymity direction made by the First-tier Tribunal is maintained.

Signed: *S Kebede*
Upper Tribunal Judge Kebede Dated: 23 March 2021