



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11109/2016**

THE IMMIGRATION ACTS

**Heard at George House, Decision & Reasons Promulgated
Edinburgh On the 1 December 2021 On the 22 December 2021**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

**AFX
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Winter, Latta & Co Solicitors

For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DECISION ON ERROR OF LAW AND REASONS

Introduction

1. The appellant is a citizen of China (such is not disputed) who gives her date of birth as 23 September 1998. The appellant claims to have entered the United Kingdom in January 2015, she claims she was brought by traffickers. She claimed asylum on 2 February 2015. Although the Competent Authority decided, on 12 February 2015, that there were reasonable grounds to believe that she might be a victim of trafficking, the Authority concluded, on 4 August 2016 that she was not a victim of trafficking. On 30 September 2016 the respondent refused the appellant's

protection claim. In a decision promulgated on 27 July 2017, Judge Doyle dismissed the appellant's appeal, both on trafficking grounds and on the basis of her claimed homosexuality. In a decision promulgated on 29 May 2018, Upper Tribunal Judge Dawson allowed the appellant's appeal and remitted it to the First-tier Tribunal. In a decision promulgated on 14 December 2018 First-tier Tribunal Judge Mackenzie dismissed the appellant's appeal. In a decision promulgated on 17 September 2019, incorporating his earlier decision of 24 July 2019, Upper Tribunal Judge Macleman set aside the decision of the First-tier Tribunal and the appeal was again remitted to the First-tier Tribunal, to be considered afresh. In a decision promulgated on 2 December 2019, First-tier Tribunal Judge Buchanan dismissed the appellant's appeal on all grounds.

Background

2. The appellant maintains that she was trafficked to the United Kingdom as a child. Her parents had divorced when she was 2 or 3 years old and she had lived with her father until his death in September 2014, which also resulted in her eviction from her home. She claims she was homeless for some six weeks and was then approached by a woman who offered to help but who trafficked her to the United Kingdom. The appellant claims that when she realised, in the United Kingdom, that this was for sexual exploitation, she escaped and sought help from the Scottish Refugee Council. The appellant fears reprisals from the traffickers. The appellant, in May 2017, indicated that she was a lesbian and that she also fears return to China on the basis of her sexuality.

Error of Law Hearing

3. The appellant appealed with permission from the First-tier Tribunal on the following grounds (in summary),
 - (1) Failure to apply correct standard of proof in rejecting the appellant's trafficking claim, with reliance on peripheral matters not core to the claim;
 - (2) Reliance on speculation with no evidential basis in criticising the appellant's claimed escape from the traffickers;
 - (3) If grounds 1 and 2 are made out, failure to consider state protection or internal relocation in relation to trafficking;
 - (4) Failure to engage with the other objective evidence, over and above the expert report, in finding discrimination but not persecution of LGBT individuals in China;
 - (5) Incorrect assessment of undue harshness;
 - (6) Failure to consider the Scottish Guardianship Service letter dated 29 October 2019 when considering 276ADE when considering whether there were very significant obstacle to re-integration.

Preliminary Issue

4. Mr Winter confirmed, in response to my enquiry, that he was not aware of any outcome to the reconsideration request submitted by the appellant to the Competent Authority on 11 June 2019, despite Upper Tribunal Judge Macleman indicating in his decision and reasons promulgated on 17 September 2019 that he understood the parties would look further into this.
5. It was common ground that the respondent now accepted the appellant's sexuality and that her age and nationality had not been challenged.

Submissions

6. Mr Winter made detailed submissions and relied on his 238 page case law bundle. In summary, taking grounds [1] and [2] together, it was submitted that the judge had failed to limit his consideration to issues serious and significant in nature, or central elements, in rejecting the appellant's trafficking claim, but focused rather on minor/peripheral matters. It was submitted that whilst the judge recognised, at paragraph 9.8, that the appellant's account of her journey had been consistent, he then failed to focus on any of these consistencies, concentrating instead on peripheral matters, such as whether the girls she was with seemed worried or scared and exactly how long she was with the other girls. Mr Winter further submitted that the judge had imposed his own view of what might be reasonable on a number of occasions, using terms such as 'I find it difficult to understand', 'It is remarkable', 'far from persuaded' and the 'deepest of reservations'. The Tribunal was referred to a number of authorities on the assessment of credibility to support Mr Winter's contention that the judge was imposing both his own view and a higher standard of proof.
7. Having heard Mr Winter's submissions on the first two grounds, Mr Diwnycz conceded that the grounds were made out, such that the findings would need to be remade, that the First-tier Tribunal had focused on peripheral matters and that it was fair to characterise the First-tier Tribunal as incredulous.

Discussion

8. Although, as I indicated at the hearing, some of the criticism of the First-tier Tribunal was potentially unmerited, including that many of the phrases used were 'terms of art', considering the judge's credibility and plausibility findings cumulatively, it is difficult to argue with the concession made by the respondent, including that such error was material and the appellant's trafficking claim would need to be reconsidered. It is trite law that assessments of credibility should not generally be based on minor peripheral elements and that assessments of plausibility, whilst valid, require a certain degree of caution (see including **KB & AH (credibility - structured approach) Pakistan [2017] UKUT 00491 (IAC)**).

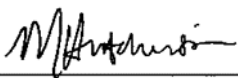
9. The respondent was also of the view that judge's the treatment of the appellant's credibility in respect of the trafficking claim potentially vitiated the remaining findings, which concerned both the risk on return on the basis of the appellant's sexuality and her Article 8 claim. Mr Winter made helpful submissions on both limbs, although it was clear that these amounted to little more than a disagreement with the judge's comprehensive consideration of both issues. I would not have set aside the decision on the basis of grounds [3]-[6] alone.
10. However, whilst those remaining grounds were not formally conceded by the respondent, given the impact of the material error conceded in the first and second grounds, such that both the credibility of the trafficking claim and risk on return generally to China will need to be considered afresh, I agree with the sentiment of Mr Diwnycz's global submissions, including that such consideration potentially impacts on the remaining findings made by the First-tier Tribunal in respect of risk on return and the appellant's Article 8 claim. I am satisfied therefore, albeit reluctantly, that the case will again need to be considered de novo.

Conclusion

11. I am satisfied that the decision of the First-tier Tribunal does contain a material error of law such that the decision of the First-tier Tribunal must be set aside in its entirety. No findings are preserved. Under Section 12(2) (b)(i) of the Tribunals, courts and enforcement Act 2007 and Practice Statement 7.2, the nature and extent of judicial fact finding necessary for the decision to be remade is such that it is appropriate to remit the case to the First-tier Tribunal to be heard by any judge other than Judge SPJ Buchanan, Judge Doyle, Judge Mackenzie or any other Judge who has made a previous decision in this case.

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 their 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 

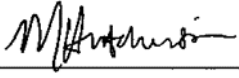
Dated: 14 December 2021

Deputy Upper Tribunal Judge Hutchinson

TO THE RESPONDENT **FEE AWARD**

No fee was paid or is payable. I therefore make no fee award.



Signed  _____

Dated: 14 December 2021

Deputy Upper Tribunal Judge Hutchinson