



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-005201

First-tier Tribunal Nos: PA/53460/2022  
LP/00060/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

**On 23<sup>rd</sup> of January 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON**

**Between**

**QJC**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**The Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr A Osman of Counsel, Lisa's Law Limited  
For the Respondent: Ms A Ahmed, Home Office Presenting Officer

**Heard at Field House on 11 January 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) 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 (*and/or other person*). Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. The appellant is a citizen of China born on 1 October 1989. The appellant most recently applied for asylum on 19 August 2019, which was refused by the respondent on 23 August 2022. His appeal against that decision was dismissed by Judge of the First-tier Tribunal Hussain ( 'the judge' on 17 October 2023 following a hearing on 21 September 2023.
2. Permission to appeal was granted by First-tier Tribunal Judge Curtis on 8 December 2023 on the basis that it was arguable that the judge's credibility assessment was flawed; that it was arguable that the judge's assessment of the risk of re-trafficking was in error; and it was arguable that the judge failed to give adequate reasons for his finding in relation to internal relocation and sufficiency of protection.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law and if so whether any such error was material and thus whether the decision should be set aside.

### **Submissions - Error of Law**

4. In the grounds of appeal and in oral submissions by Mr Osman, it is argued in short summary for the appellant as follows: Ground 1, in relation to credibility and behaviour to which section 8 of the Asylum and Immigration Tribunal (Treatment of Claimants) Act 2004 ('section 8') applies, the Tribunal must undertake a global assessment of credibility and section 8 did not inevitably damage credibility. Mr Osman in his written and oral submissions drew attention in particular including to paragraph 16 of **JT (Cameroon) v SSHD [2009] 1 WLR 1411**, specifically even though the judge had considered that he should take into account Section 8 as not determinative, there was a danger that it was given 'a compartment of its own.. Mr Osman also relied on **HK v Secretary of State for the Home Department [2006] EWCA Civ 1037** in relation to plausibility findings.
5. It was submitted that the judge fell into error at [43] in that he "deemed" the appellant's credibility as damaged by virtue of section 8(6) of the 2004 Act whereas there is no such thing as deemed damage.
6. Mr Osman further argued that the judge rejected the appellant's account of him being at risk of loan sharks improperly on the basis that his account was implausible. Secondly, the judge's reasonings were insufficient as the judge made a finding it was implausible for the appellant's parents to obtain the loan in the circumstances where they moved around and thirdly that the judge erred in making a finding at [44] that the appellant could simply work to repay the loan. That is not a reason which is capable of undermining the claim to protection because even if the appellant were to return to China and work to repay the loan, as the judge suggested, that would be in circumstances where the appellant claims that he would be doing so under threat of violence and without sufficient protection from the State. Finally, it was argued that the judge failed to give proper and adequate reasons when finding that despite what went before in [44] that he did not accept the appellant had given a truthful account and that the appellant's account was "a pretext to justify his asylum claim." No further reasoning was provided by the judge to support that conclusion.
7. In relation to ground 2 and the risk of re-trafficking, reliance was placed on **Demirkaya v SSHD [1999] Imm A R 498** and the established principle that past persecution will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of serious harm, unless there are good

reason to consider that such will not be repeated. It was accepted by the respondent that the appellant had been trafficked into the UK, a positive conclusive grounds decision having been made. Although the judge accepted this, it was submitted that the judge sought to undermine this concession by making negative credibility findings rather than making findings on the risk on return. It was argued that the judge was required to explain, given the accepted evidence of previous persecution/serious harm why, there was not a real risk that this would reoccur upon return.

8. With respect to ground 3, although the judge made findings at [44], [46] and [49], it was argued that internal relocation and sufficiency of protection were only briefly mentioned and that the judge had failed to give anxious scrutiny to the evidence before him and that there was a failure to give adequate reasons.
9. Although there was no Rule 24 response, in oral submissions Ms Ahmed argued in relation to ground 1 that there was no challenge to paragraph [41] where the judge found that there was little substance to the appellant's witness statement and the onus was on the appellant in relation to establishing his claim.
10. Ms Ahmed submitted that the judge set out that Section 8 was not determinative and in the context of the decision as a whole 'deemed' meant regarded as damaged. In relation to **JT (Cameroon)** Ms Ahmed submitted that the judge ultimately directed themselves correctly. She submitted that the remainder of Ground 1 amounted to no more than disagreement including, as the appellant was not accepted as truthful, and it was clear that the appellant had adduced insufficient evidence.
11. It was submitted that the grounds did not undermine the judge's findings. At [44] the judge took into consideration a number of matters including what the appellant said in his interview and noted that he did not understand that if repayment of the loan was still a requirement why it could not be done now and it should be noted that the judge made this point in considering the appellant's own evidence and that the appellant was referring to non-state actors. The judge concluded by not finding the appellant truthful and noted that the appellant did not reveal when the loan was taken out and it was a reasonable point to make that the loan givers may well be dead. In submitting in the grounds that no proper reasons for the findings were made, paragraph [44] needs to be considered, including that the appellant was not found to be truthful.
12. In relation to ground 2 and the risk of being re-trafficked, it was submitted that the judge was not going behind the findings of the National Referral Mechanism (NRM) and it was open to the judge to find that the appellant's position had changed over time in relation to his general credibility findings and paragraphs [47] and [49] needed to be read together. Paragraph [48] was concise but considered with the previous findings was sufficient in relation to re-trafficking and read in conjunction with [49], the judge's consideration that the appellant could internally relocate.
13. Ground 3 in relation to paragraph 22 of the grounds, in Ms Ahmed's submission, was a disagreement; the judge, having noted the Reasons for Refusal letter and the background country information, had considered the evidence and properly concluded at [49] that there was sufficiency of protection/availability of internal relocation.

## **Conclusions**

## Ground 1

14. I have considered the relevant authorities which set out the distinction between errors of fact and errors of law and which emphasise the importance of an appellate tribunal exercising judicial restraint when reviewing findings of fact reached by first instance judges. (see including **Volpi & Anor v Volpi [2022] EWCA Civ 464**). I have reminded myself that the First-tier Tribunal judge will have had regard to the whole of the sea of evidence presented, whereas an appellate court will only be island hopping (**Fage UK Ltd. v Chobani UK Ltd. [2014] EWCA Civ 5**).
15. There was no error in the judge's approach to credibility; this is not a case analogous to **JT (Cameroon)** in that it is evident the judge was not placing section 8 matters in a 'compartment of their own'. The judge set out the evidence before him and the relevant law, including reminding himself at paragraph [39] that great care must be taken before making adverse credibility findings on credibility in asylum cases. At [42] the judge considered section 8 and made findings that were open to him, that the respondent had made reasonable observations as to the appellant having made an asylum claim in 2008, and then not pursuing it until 2012 and then having made a claim in that year, withdrawing it, only to make a claim in 2019. The judge also properly took into consideration that the appellant's asylum claims in 2012 and 2019 'were against a background where the appellant had been apprehended by the authorities' rather than the appellant voluntarily coming forward.
16. It is in this context that the judge, at [43] then found the appellant's credibility to be damaged under section 8. Whilst the judge might well have used an alternative phrase, other than 'deemed damaged' it is evident, considered in light of the judge's findings, including at [42] that the judge was, in terms, seeking to apply the statutory wording in Section 8(1) that "a deciding authority shall take account, as damaging the claimant's credibility any behaviour". The grounds did not challenge the judge's findings at [42] that the appellant's behaviour engaged Section 8 and the judge was very clear that this was not determinative.
17. The remainder of ground 1 seeks to 'island hop' and amounts to a disagreement with the judge's reasoned findings on credibility. Read fairly and as a whole, the decision discloses that the judge was not satisfied to the lower standard that the appellant had established his account as a credible one (notwithstanding that the judge clearly accepted the respondent's concession in respect of the conclusive grounds to accept that the appellant was a victim of trafficking).
18. There was no challenge to paragraph [41] at the beginning of the findings of the First-tier Tribunal, that the appellant had the benefit of legal representation and an opportunity to provide details of his claim in his written statement. However, the witness statement 'contained very little of substance and did very little to assist his case'. This must be considered in the context of an appellant who was aware that the respondent in the reasons for refusal letter, had set out inconsistencies in the appellant's account which the respondent considered to be vague and inconsistent and the respondent rejected that account. Despite this the appellant provided what the judge was entitled to find was very little of substance in his witness statement and it was open to the judge to make the adverse findings he did.
19. The judge proceeded to consider the appellant's claim that he will be pursued by loan sharks. Whilst some of the judge's findings might have been expressed differently, that claim was rejected as not credible, including in light of the fact

his statement contained 'very little of substance', because in essence the judge did not find the account plausible or truthful. It was also open to the judge to take into account internal inconsistencies, including that the appellant had stated at interview that he was hit due to his parent's inability to repay the loan, whereas he did not repeat this in his statement. In rejecting the account, the judge also took into account that the claimed loan was taken out by his parents on an unknown date when the appellant, who is now 34, was a child and in essence the judge was not satisfied that the appellant had established that the loan giver/givers were still active and in a position to pursue the appellant for the loan.

20. Whilst Mr Osman sought to criticise the judge for suggesting that the appellant could repay the loan, when the appellant claimed to fear the loan sharks, the judge's consideration was in the wider context of not finding the appellant to have established that his claim, including his claimed fear of the loan sharks, was consistent or credible. There was no material error in the judge's approach to credibility. Whilst Mr Osman suggested that the judge's approach was unfair as the criticisms he made about the appellant's credibility were not issues raised by the respondent in the reason for refusal letter, there was no such challenge in ground 1 of the appellant's grounds of appeal. Even if this additional issue were before me, which it is not, it is without merit, as the appellant was aware that the respondent did not accept his account including due to his vague and inconsistent account. It was the judge's unchallenged finding that there was very little of substance in the appellant's witness statement that might, in effect, have addressed the respondent's concerns about his account. The judge cannot be criticised for highlighting further difficulties with that vague and inconsistent account.
21. The judge also made negative credibility findings at [45] in relation to the appellant's claim that he knocked down an official as part of a land dispute with no adequate explanation as to how 'a 12 year old managed to knock down an official and escape the scene with his parents and make his way to Beijing where he stayed for two years'. The judge found that the appellant's account in relation to the land dispute had also likely been manufactured. There was no specific challenge to that finding, which again must be seen in the context of the judge's findings in the round, which were that the appellant's account had not been established as credible to the lower standard (as set out by the judge at [39]).
22. No error of law is made out in Ground 1.

## **Ground 2**

23. Ground 2 sought to undermine the judge's findings on the risk of the appellant being re-trafficked, given that the respondent had accepted the appellant's account of having been trafficked in the UK, following a conclusive grounds decision, reached on the balance of probabilities, with the decision indicating that 'forced labour' had occurred.
24. The judge properly directed himself, including accepting that the appellant had been trafficked. However the judge had to consider, notwithstanding the respondent's concession on past trafficking and the effect of a finding of past persecution, whether the appellant was at risk of being re-trafficked on return. The judge noted at [24], submissions on behalf of the respondent 'that the appellant's fear of being either victimised or re-trafficked is unfounded' with submissions made on behalf of the respondent that the appellant who left China

in 2008 'was smuggled to this country by one person who has not managed to find him here and therefore will not be able to track the appellant back in China'.

25. The judge's findings must also be considered in the context of all the evidence before him, including that the judge recorded at [12] that when the appellant was asked how he would of adverse attention to traffickers on return, his account was vague, and when asked why he came to the UK, he initially made no mention of a fear of being re-trafficked, and made no claim that the traffickers took him from China to Russia, then Ireland, before the UK. The judge also set out, at [15] the respondent's summary of the appellant's claim at its highest, including that country information indicated that where the fear is of a non-state actor, there is sufficient protection and relocation was reasonable. The judge also noted, at [15] that country guidance stated that it was unlikely that a person, regardless of their gender would be subject to forcible re-trafficking on return.
26. The fact that the judge accepted that the appellant had been trafficked did not mean that he had to uncritically accept the appellant account, which he had found to be lacking credibility in relation to both the claimed loan shark and land confiscation risk on return, that he was at risk of being re-trafficked on return to China. There was no material error in the judge making adverse credibility assessments, in the context of considering the appellant's risk on return.
27. Whilst the judge's findings at [48] that there was no objective basis on which the appellant would be re-trafficked are brief, they are adequate. It was open to the judge to take into account as he did, in terms of not accepting that there was a risk of re-trafficking, that whilst the appellant states that he had not had any contact with the trafficker since 2008, he nevertheless now claims that he misled the Home Office 4 years later by stating he was from North Korea, out of fear of the trafficker who told him to make that claim. The judge also rejected the appellant's shifting account over time in relation to one trafficker becoming part of a group of traffickers. Whilst it was argued that this was not put to the appellant, again the appellant was aware, including as set out by the judge at paragraph [24] that the respondent, who had conceded past trafficking, maintained in preliminary discussions their respondent's review, including that the appellant 'was smuggled to this country by one person who has not managed to find him'. None of this detracts from the judge's acceptance that the appellant was a victim of trafficking but was relevant, in effect in establishing good reasons that such persecution/serious harm would not be repeated.
28. Whilst the grounds and submissions suggested that the judge had failed to give anxious scrutiny including to the background information that is a disagreement with the judge's reasoned conclusions; the judge was not required to set out every piece of evidence considered and was entitled to reject the appellant's claimed fear of re-trafficking having considered the totality of the evidence. No material error is made out in ground 2.

### **Ground 3**

29. In any event, even if the judge had erred in his credibility and/or re-trafficking findings, the judge went on to find that the appellant could avail of sufficiency of protection and/or internal relocation on return.
30. Whilst the grounds recite the stated difficulties with trafficking in China, including as highlighted in bundle page references in the grounds of appeal, that evidence was before the judge and it was open to him to reject it.

31. The judge, at [44] noted that the appellant had not explained why he could not live in a part of China where the loan givers were not present. The judge indicated throughout the decision that he had considered the totality of the evidence, and at [49] found in the alternative that he was wrong, that it was open to the appellant to relocate internally or seek protection from the authorities, both in respect of any risk of being re-trafficked and any risk in relation to loan sharks. The judge had also earlier relied on internal relocation, at [44] in the alternative, in relation to the claimed risk from the loan sharks.
32. Whilst the findings at [49] may be brief, they are adequate, encompassing as they do the judge's finding that he was persuaded by the respondent's arguments as set out in the refusal letter, that the appellant could relocate or seek protection, the judge having summarised those arguments in some detail at [15] to [19] of the decision (and the judge separately summarised the appellant's evidence at [25] to [35]), including setting out what was said in the respondent's country policy and information note and referencing country guidance case law.
33. For example, although the appellant's grounds, at 22(vi) and (vii) reference evidence in the respondent's bundle in respect of difficulties with hukou registration making relocation difficult, which it was said the judge had failed to take into account, reading the judge's decision in its entirety, paragraph [49] indicates that he preferred the respondent's evidence, which the judge summarised at [18], that although the Hukou registration may cause difficulties when relocating to a larger city, that did not stop a person from relocating to a smaller midsized town, or indeed a rural area, Equally, although the grounds at [22] set out from 22 (i) to (v) a number of arguments on re-trafficking which it was argued the judge failed to take into account, what the judge was saying at paragraph [49] was that he preferred the evidence of the respondent including as set out by the judge at [15] including relying on country guidance that there was sufficient protection from non-state actors and that it was unlikely that a person, regardless of their gender, would be subject to forcible re-trafficking on return.
34. No error is made out in ground 3.

*Summary of Decision*

35. The decision of the First-tier Tribunal decision did not involve the making of an error on a point of law.
36. I do not set aside the decision

**M M Hutchinson**

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**19 January 2023**