AIT-AH- -V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/05294/2014

THE IMMIGRATION ACTS

Heard at STOKE ON TRENT	**Determination Promulgated**
On 18th December 2014	**On 16th March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

MR XIAOWEN ZHAN

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Tetty
For the Respondent: Mr Mc Veety, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a Chinese national born on 2nd May 1978.

2. He claims to have entered the UK on 5th March 1999 and claimed asylum using false details having spent “about six months” in France. His claim was rejected on 6th March 2001. Later submissions on his behalf in 2011 were also rejected by the respondent. On 4th July 2014 the respondent considered those representations but rejected the appellant’s application for leave to remain on human rights’ and other grounds. She also refused

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to give discretionary leave to remain, explaining that the delay in considering the appellant's status was due his failure to make an application to regularise his long stay in the UK. On 7th July 2014 the respondent served the appellant with notice that he would be removed from the UK as an illegal entrant.

3. On 29th July 2014 the appellant appealed to the First-tier Tribunal (FTT) against the respondent's decision to remove him, claiming it would breach the UK's obligations under the UN Convention relating to the Status of Refugees (Refugee Convention) European Convention on Human Rights (ECHR). The appellant also claimed the respondent's decision was not in accordance with Council Directive 2004/83/EC (Humanitarian Protection) and the decision was not in accordance with the Immigration Rules.

4. The immigration judge who considered his appeal, Judge Brookfield (the Immigration Judge) decided that the appellant did not qualify under any of those international instruments, dismissed the appeal on all grounds that had been argued before him and made no anonymity direction or fee award.

5. Judge of FTT Reid decided that there may have been material errors of law in that decision in that there was a lack of reasons for material findings which, in any event, appear to have been by the evidence. The Immigration Judge had not fully reconciled conflicts in the evidence. There were also some potential factual errors.

The hearing

6. At the hearing I heard submissions by both representatives. Mr Tettey for the appellant pointed out that was a minor error in the date the Immigration Judge had given for the appellant's admission into the UK. It seems that the Appellant first made his claim in 1999. Mr Tettey was unable to explain where the reference to 1998 had come from. More important errors appeared in the determination, he said. In particular several of the Judge's findings in relation to the appellant's support for Falun Gong needed to be reconsidered. The Immigration Judge had summarised evidence at paragraph 9 (iv) of his determination in relation to "people from the Central Military Commission (having) called looking for him" which should have been properly considered against the background material. In the light of that background evidence the conclusion at paragraph 10(iii), where the judge had indicated that the delay in the authorities contacting him was incredible, was unsustainable. The Immigration Judge had referred to the issue of a summons against him in paragraph 10 (iv) but not examined the evidence in relation to that adequately before rejecting it. It was also pointed out that the Immigration Judge made a bad point at paragraph 10 (vi) when he suggested that the appellant had been able to leave China to travel to Japan without incident. The point that the judge had missed was that at that stage the appellant was not a wanted man. His departure had been dependent on "snakeheads" who would remove him when it suited them in any event. Mr Tettey also pointed out that the appellant had not been properly represented before the FTT in that Titus Miranda, the firm which had

represented him, had run into regulatory difficulties and they may not have put all relevant matters forward.

7. Mr Tettey then referred to the report from Dr Sheehan who drew attention to many of the features of the Chinese state’s relationship with Falun Gong. There is a long history of confrontation between the Chinese state and that organisation. Again the Immigration Judge had demonstrated that he was aware of this evidence but then, it was argued, failed to give adequate weight to it. There was clear evidence in the expert’s report that Falun Gong demonstrators were subject to harsh treatment by the authorities.

8. Mr Tettey concluded by saying that the adverse findings were not sustainable and the Tribunal ought to set them aside and re-make the decision or remit the appeal to the FTT for it to make fresh findings.

9. Mr Mc Veety for the respondent submitted that the criticisms of the Immigration Judge were not justified. The immigration Judge had made detailed findings which were sustainable. Those findings incorporated proper consideration of the expert evidence and included drawing adverse inferences where justified. The expert’s report was based on the appellant’s case that he had attended a demonstration at which he had been fired on but there was in fact no evidence that he had taken part in that demonstration. The expert had not looked sufficiently critically at the appellant’s account and had therefore reached incorrect conclusions. The Immigration Judge had found, contrary to the appellant’s case that he would not have become involved with Falun Gong and this was a finding the expert should have taken on board. If there were a serious incident involving 300 police officers opening fire on demonstrators why, the judge had been entitled to ask, had there been no adequate record of this? It was open to the judge to conclude that it would have come to light, and the appellant would have become a wanted man, in less than eight months. The appellant would have been expected to produce some documents to support his claim. The poor representation at the hearing had not prevented the case for the appellant being forcefully presented before the Immigration Judge. The judge had regard to the wider picture and reached conclusions that were entirely open to him.

10. Mr Tettey replied to the respondent’s submissions. He said round ups of Falun Gong supporters were a regular occurrence and the Appellant would be in serious trouble if he breached the cordon put around by the police. The extent of unrest and consequences for demonstrators were to some extent hidden from the outside world. It was unsurprising that there were few documents to support the appellant’s case therefore. Further, in addition to the appellant’s asylum claim and humanitarian protection claim the appellant wished to claim for an infringement of his human rights. Amongst the articles he relied on was article 8 but it was accepted on his behalf that he would only be entitled to claim that he had established a private life in the UK as he had not established any family life.

Conclusions

11. The appellant is a Chinese national who first came to the UK in 1999. He admired Falun Gong and claims that as a member of special armed forces in Xin Xiang he decided to disobey commands when forces were unleashed on demonstrators. After he arrived in the UK he advanced an asylum claim which was rejected in March 2001. This claim was made after he had spent six months in France, a country where he could have safely claimed asylum if he wished. His explanation for this was the control over him of “snakeheads” but this account was clearly not accepted by the Immigration Judge. He waited until 2011 before making further submissions and forwarding evidence to support his claim to being a refugee here. The respondent did not regard his claim as credible and the Immigration Judge agreed with her. Nevertheless the appellant maintains he would be arrested and “sentenced to death” if he returned to China. Judge Reid thought his grounds, which seem to be of inordinate length, were at least arguable.

12. The respondent did not accept the appellant’s account and nor did the Immigration Judge. The Immigration Judge had to consider the appeal to the lower standard which applied to asylum and human rights’ claims of this type-the claim had to be no more than “reasonably likely to be true” or there had to be substantial grounds for believing his claim to Humanitarian Protection. There was an additional claim based on Article 8 of the ECHR which relied on the private life he had established in the UK.

13. The Immigration Judge made comprehensive findings and gave more than adequate reasons for upholding the respondent’s decision. I note in particular the following points:

    1) He comprehensively rejected the credibility of the appellant’s account (see for example paragraph 10 (ii)). Part of this finding was based on the inherent improbability of the appellant remaining in Xin Xiang after he allegedly disobeyed orders and the fact that it did not appear reasonably likely to the judge that the authorities would have taken eight months to discover the appellant’s disobedience (see paragraph 10 (iii));

    2) The respondent was not bound to accept documents submitted late and the appellant’s account of having been informed by his mother of the summons did not appear likely to the judge without any detail being supplied. In any event such documents were to be judged by the same standard as the oral evidence;

    3) The appellant claims that the reasoning was inadequate but when read as a whole the Immigration Judge’s findings amount to a comprehensive rejection of the appellant’s case;

    4) The conclusions were not speculative as has been suggested and the Immigration Judge had sufficient regard to the objective evidence placed before him;

5) The expert evidence by Dr Sheehan, although helpful in providing background material, assumed the truthfulness of the appellant's account which was found wanting by the Immigration Judge. The role of the expert is not to displace the role of the judge who has to decide issues of fact but this expert's report, arguably, went further than that in venturing an opinion as to the credibility of the appellant's account (see paragraph 4);

14. The rejection of the appellant's case lead the Immigration Judge to the justified conclusion that the appellant had not given a truthful account that could be relied on and he would not be at risk on return. There were in truth no substantial grounds for believing the appellant would suffer serious harm.

15. The appellant's claim was also considered under Articles 8 of the ECHR but the interference with the appellant's private life (he did not claim to have established any family life in the UK) was justified by the legitimate aim of enforcing proper suitability requirements for immigrants which are now reinforced by the changes introduced by the Immigration Act 2014. It was not accepted by the respondent that the appellant had no family ties in China and his claim raised no issues which were not adequately covered by the Immigration Rules. No reason was placed before the Immigration Judge for exempting the appellant from the requirements in the Immigration Rules that other immigrants must fulfil. Although the appellant had been in the UK for about 15 years at the date of the hearing before the FTT he had not been here for the period specified in those rules (20 years).

Decision

16. The decision of the FTT does not contain a material error of law and the decision of the respondent to refuse asylum and the other claims was lawful.

17. No anonymity direction or fee award was made by the FTT.

Signed W.E.Hanbury
Deputy Upper Tribunal Judge

Date 13th March 2015