Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/07439/2014

THE IMMIGRATION ACTS

Heard at : Manchester Crown Court	**Determination & Reasons Promulgated**
On : 17th March 2016	**On : 11th April 2016**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

[H W]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr K J Wood of Rochdale Law Centre
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to remove him from the UK, following the refusal of his asylum claim.

2. The appellant is a national of China, from Fujian Province, born on [ ] 1978. He claims to have entered the United Kingdom in April 2005. He applied for asylum on 23 April 2014. His claim was refused on 9 September 2014 and a decision was made on 12 September 2014 to remove him to China.

3. The basis of the appellant's claim is that he is at risk on return to China as a result of an incident which occurred during his former employment. He claims to have worked for a gaming facility in Fuqing city centre for only one day, as a cleaner and general helper and that during that day a fight broke out over gambling issues between Triad members and staff. He poured hot water or tea over a Triad member during the fight. The police arrived and he was arrested with two other staff members and five or six Triad members and he was taken to Fuqing police station where he was detained for three months and beaten and verbally abused. The police demanded payment for his release. His parents paid his bail to get him out. He was not formally charged because the police wanted to continue blackmailing him into paying more money to drop the charges. He was released in January 2005 and reported every two weeks. He was beaten by the Triads. After reporting twice he left China with the help of an agent and he came to the UK and claimed asylum. The appellant also claims to be at risk on return because his partner was pregnant with their second child, which was in breach of the one-child policy in China.

4. The respondent, in refusing the appellant's claim, did not accept his account of having worked in a gaming arcade and rejected his claim to have been arrested and blackmailed by the police and to have been threatened by Triad members, noting various inconsistencies in his evidence. The respondent also rejected the appellant's claim to be at risk as a result of the one-child policy, since that was contrary to the background information in relation to family planning regulations in Fujian province. The respondent considered that the appellant would be at no risk on return to China and that his removal would not breach his human rights.

5. The appellant appealed against that decision. His appeal came before First-tier Tribunal Farrelly on 10 December 2014. The judge found that the actions of the police in demanding money were opportunistic and that the appellant would be at no risk on return as there would be no record of him, having never been formally charged. He found there to be no risk on return from the police or the Triads and that there would be no risk on account of having a second child. The judge dismissed the appeal on all grounds.

6. Permission was sought on behalf of the appellant to appeal to the Upper Tribunal, on three grounds: that the judge had failed to make a finding on whether the appellant had been arrested and whether any remarks had been made on his file; that the judge had applied the wrong standard of proof; and that the judge's finding about enforced birth control was contrary to the expert evidence.

7. Permission to appeal was granted on 2 February 2015 on all grounds but primarily on the second ground.

8. Before me, Mr Wood relied and expanded upon all three grounds. Mr McVeety responded to the grounds and submitted that there were no errors of law in the judge's decision.

Consideration and findings.

9. The third ground, addressed by both parties as the first issue, challenged the judge's rejection of the appellant's claim that his wife would be subjected to forced sterilisation, having had two children, on the basis that it was contrary to the opinion of the expert whose report was before him. It is asserted that his finding of fact in relation to enforced birth control is irrational.

10. It is relevant to mention at this point that the expert agreed with the respondent, at [46], that the appellant was able to have two children, according to the family planning regulations of Fujian Province, his first child being a girl. The matter in issue, however, was whether the appellant's wife would face forced sterilisation, having had two children. Mr McVeety agreed that the judge's comment that Fujian Province was one of the more liberal, was not cross-referenced to any supporting evidence. However he submitted that the judge's findings on forced birth control were consistent with the country guidance in AX (family planning scheme) China CG [2012] UKUT 97 and that the judge was entitled to follow that country guidance. I find myself in agreement with that submission. The judge considered the expert's views in some detail and at [35] gave cogent reasons for placing little weight upon those views in relation to forced sterilisation. His findings, at [37], reflect the findings in AX, in particular at paragraphs 182 to 185. He was entitled to conclude as he did and I find no errors of law in his decision in that respect.

11. Turning to the second ground, asserting that the judge applied the wrong standard proof, I find that the passages of the judge's decision referred to in the grounds do not demonstrate a misapplication of the burden of proof but are simply an indication of the judge's acceptance that the basis of the appellant's claim was plausible. The findings were in the appellant's favour and make it clear that the judge proceeded on the basis that he was prepared to accept the appellant's account of the incident at the gaming facility and his arrest, owing to the plausibility of such an account. It is clear from the judge's findings elsewhere, and in particular at [30] and [39], that he applied the correct standard of proof to the appellant's claim and again I find no error of law in his decision in that respect.

12. Mr Wood submitted, with regard to the first ground of appeal, that the judge failed to make any findings as to what would be recorded in the appellant's file, which was a separate matter to the hukou, and that that was a material error of law. However, whilst the judge's findings were perhaps not expressed in the clearest of terms, what is plain from a reading of [24] to [30] is that he considered the actions taken by the police following the incident at the gaming facility, in demanding money from the appellant, were simply the opportunistic actions of rogue officers who did not formally charge him since that would have revealed their own corrupt behaviour. It is clear from his findings that he did not believe that there would be any record of the incident on the police files or elsewhere and that accordingly there would be no interest

in him some ten years later. The judge took the expert's views into account when making his findings, as is evident at [25]. The conclusion that he reached as to the lack of any ongoing adverse interest in the appellant, either by the police or the Triads, is one that took full account of all the evidence, including the expert report and the country guidance, and was fully and properly open to him on the evidence before him.

13. For all of these reasons I find no errors of law in the judge's decision.

DECISION

14. 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.

Signed

Date

Upper Tribunal Judge Kebede