



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04481/2016

THE IMMIGRATION ACTS

Heard at Glasgow
On 8 May 2017

Determination issued
On 10 May 2017

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

[X L]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr K Katani, of Katani & Co, Solicitors
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant identifies himself as a citizen of China, born on [] 1991. He says he entered the UK on 18 October 2007. He sought asylum on 9 November 2015.
2. The appellant claimed that in 2008 his father borrowed money from loan sharks to expand his shrimp and eel farming business. In 2010 the business was destroyed by typhoon. His father was unable to keep up repayments. As a result, his father and brother were attacked and his brother was killed. Warrants were publicised for the arrest of the appellant and his father for the outstanding debt. If he returned, he would be attacked.

3. The respondent refused the claim by letter dated 20 April 2016:

‘The claim was incredible.

¶15. The appellant’s name would not have been on a warrant for debt incurred while he was in the UK. It was also inconsistent that he would be targeted over the debt but not his brother who still lived in China. As he did not know from whom his father had borrowed the money, it was not substantiated that the loan sharks had influence over the state.

¶16. The appellant was unable to give names and dates regarding the loan.

¶17. Even if in fear of loan sharks or “snakeheads” (which he had not directly claimed) he left China legally on his own passport and did not face risk on return.

¶19-20. The appellant claimed to have been aware of the problems since 2010 but had not claimed until 9 November 2015, which was adverse to credibility under section 8 of the 2004 Act.

¶23-26. The appellant had not raised any concerns regarding his status as the father of a child born to his Chinese national partner in the UK, but in any event there was not accepted to be any risk arising from that situation.

¶27-32. Sufficiency of protection and internal relocation were both available.

¶33-59. The claim was rejected with reference also to humanitarian protection, articles 2 and 3 ECHR, family and private life and out of the immigration rules, exceptional circumstances, and discretion.’

4. FtT Judge Gillespie dismissed the appellant’s appeal by decision promulgated on 2 December 2016.

5. The appellant sought permission to appeal to the UT on these grounds:

‘1. At ¶37 the judge said that the typhoon must be verifiable. This erred by requiring corroboration; by speculating; and by requiring evidence from someone with “no specialist knowledge of how to look for traces of typhoon in China”.

2. At ¶39, the judge had no rational basis for stating that the death of the appellant’s brother and mother “had been faked”.

3. At ¶41, the judge said that not all Chinese police were corrupt and that the murder of three people in “extracting money owing to loan sharks must be so threatening to the social order that in my judgment it is highly unlikely that these events occurred”. This was perverse.


4. The appellants’ partner had an outstanding appeal. The judge failed fully to consider article 8.’

6. The FtT refused permission. The appellant applied to the UT, which granted permission on 4 April 2017 in these terms:

1. The appellant was legally represented. The judge was entitled to expect background evidence.
 2. This finding was misrepresented. The judge's main conclusion was that the appellant was not responsible for his father's losses.
 3. ¶41 was "arguably too extreme as it stands. The appellant's solicitors must file and serve whatever background evidence they can ...".
 4. Unarguable.'
7. The further points which I took from Mr Katani's submissions were as follows. Permission was granted on grounds 1 - 3. Only ground 4 was excluded. At ¶41, the judge set up a mental block. He irrationally declined to accept that such events could possibly happen. That was enough to require a re-hearing. Evidence was now produced that there was a typhoon in the South China Sea in July 2010. Country guidance on the power and reach of criminal gangs is outdated. They control the machinery of the state, which excludes internal relocation. The appellant's position on events claimed and their consequences was now supported by an expert report by Professor C Bluth who concluded that in view of objective evidence the appellant's account was plausible and he was unlikely to receive protection from the authorities. Consideration should be given to convening a further hearing with a view to updating country guidance.
 8. The submissions for the respondent were on these lines. Permission was granted on ground 3 only. In any event, none of the grounds showed legal error. Although the grant of permission encouraged the appellant to look for further evidence, this is an error of law jurisdiction, based on the case put to the FtT, not further materials. The adverse credibility finding was not based only on the issue criticised at ground 3 but on several other issues e.g. ¶30, 34, 35 and 39. ¶36 gave a powerful reason, related to the long delay in the claim. Even if further evidence was admitted it failed to disclose error. The expert report did not justify rejection of the judge's reasoning. The judge did not say that no such event could ever possibly occur, but found it highly unlikely. That was sensible, and consistent with examples cited by the expert, where such occurrences were major news items and plainly were investigated. The evidence of a typhoon did not show any effect on the appellant's home area in Fujian province, 1137 kilometres away from the nearest point shown of the typhoon's impact. The appellant made no challenge to the alternative finding on internal relocation at ¶43-45, adopting ¶30 of the refusal decision. That by itself was fatal to his case.
 9. I reserved my decision.
 10. The grant of permission is plainly restricted to ground 3.
 11. In any event, none of grounds 1, 2 and 4 disclose legal error.
 12. None of the three errors alleged at ground 1 is substantiated - there was no unlawful requirement of corroboration; the point was not speculative, but based on the state of

the evidence before the judge; the appellant was represented, and no specialist skill is required to trace news reports.

13. The evidence later advanced does not show that the typhoon came anywhere near the appellant's home area.
14. Even if there was a typhoon which hit his home area, that would not by itself advance the claim very far.
15. Ground 2 takes a point out of context, and is no more than selective disagreement.
16. Ground 3 similarly exaggerates the judge's point and takes it out of context. The judge did not erect a mental block or decide the case on that issue only. He gave it no more importance than was within rational scope.
17. The respondent was correct in arguing that the point survives scrutiny even in light of the later expert report.
18. The appellant had no viable claim based on family and private life, and in any case it was common ground that the claim advanced by his partner has now been exhausted.
19. The appellant's grounds and submissions do not show that the making of the decision by the FtT involved the making of any error on a point of law.
20. The determination of the First-tier Tribunal shall stand.
21. No anonymity direction has been requested or made.



9 May 2017
Upper Tribunal Judge Macleman