



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/06854/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Newport
On 25 January 2018**

**Decision & Reasons
Promulgated
On 8 February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

**JFK
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. T. Lay, Counsel instructed by Migrant Legal Project
For the Respondent: Mr. I. Richards, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Frazer, promulgated on 7 March 2017, in which she dismissed the Appellant's appeal against the Respondent's decision to refuse a grant of asylum.
2. As this is an asylum appeal, I make an anonymity direction.
3. Permission to appeal was granted as follows:

“It is arguable that the Judge did not have proper regard to the evidence of Ms Flint’s report, including the failure to apply the trafficking definition where the reality of the Appellant’s “consent” was challenged. She also arguably erred in characterising Ms Flint’s view that the Appellant was intended for exploitation in the UK as “speculative”. Ms Flint arguably gave reasons as to his likely exploitation.”

4. The Appellant attended the hearing. I heard submissions from both representatives following which I reserved my decision.

Submissions

5. Mr. Lay relied on the grounds of appeal. He submitted that the Judge had not applied the law on the definition of trafficking correctly to the facts in the Appellant’s appeal. She had not considered the sufficiently nuanced definition of trafficking when an individual is smuggled. The definition of “trafficking” in the decision was too narrow. There were differences in the approach taken by the expert and the Judge due to the definition applied. The Judge accepted the Appellant’s account of his journey to the United Kingdom. Having accepted that, she should have made a finding that the Appellant had been trafficked. Following her finding that the Appellant had not been trafficked, the Judge erred in finding that he was not at risk of re-trafficking on return to China.
6. I was referred to Ms Flint’s report, [130] onwards. The law is not in dispute – the Respondent shares the same definition of trafficking. There was no engagement by the Judge with this undisputed definition of trafficking. She had not engaged with the main thrust of the Appellant’s case which was that he had been trafficked to the United Kingdom. Her finding that he was not at risk of re-trafficking depended on her finding that he had not been trafficked to the United Kingdom, and was therefore wrong.
7. The Judicial Review of the Reasonable Grounds decision was still stayed. However the Judge was entitled to come to a different decision to that of the competent authority. The Judge’s treatment of Ms Flint’s report was inadequate. She considered the case of a voluntary economic migrant for whom something went wrong thereafter. The Judge had accepted the account of the journey, which included the harm suffered by the Appellant. He had been pushed over the line from someone who had been smuggled to a victim of trafficking along the journey. He was still in debt bondage now. There was a risk of being re-trafficked on return to China either from the same people who had trafficked him here, or because he was vulnerable. The expert report had considered this. The caselaw and principles of asylum law pointed to previous trafficking leading to an increased risk on return.
8. In response Mr. Richards submitted that the Judge had regard to the report of Ms Flint. I was referred to [50]. It was a matter for the Judge how much weight to attach to the report. She found that the Appellant was an economic migrant. He had come for employment and was able to return to China at any time. He had not been trafficked. Even if it was possible

to fit the facts to the definition of trafficking, there was no material error of law as the Judge had considered at [53] the risk of the Appellant being re-trafficked. She found that the Appellant had not been pursued by the snakeheads in the United Kingdom. The terms of payment could be renegotiated as they had been before. The Appellant's sister had come to no harm as a result of the debt. There was no evidence of threats to the Appellant's family. Whether or not the Judge had found that he had been trafficked to the United Kingdom, the crucial issue was whether he would be at risk on return.

9. The Judge had conducted a thorough analysis and had come to a properly reasoned conclusion that the Appellant would not be at risk on return. He had no well-founded fear of persecution. The findings were open to the Judge and the decision was adequately reasoned. There was no material error of law.
10. In response, Mr. Lay referred me to [50] of the decision which he submitted formed the basis of the error of law. The work undertaken in Weymouth was not the point in relation to being trafficked to the United Kingdom. I was referred to [175] of the expert report. The expert had addressed the issue of the snakeheads not pursuing the Appellant in the United Kingdom and had noted that the Appellant's sister was now living in Canada. The Judge had found there was no risk to the Appellant because he had not been trafficked in the first place. He referred me footnote 3 of the grounds for the definition of trafficking.

Error of law

11. The Judge found that the Appellant had not been trafficked to the United Kingdom. Ground 1 asserts that she erred in law in so finding, and gives reasons with reference to the definition of trafficking. Ground 2 alleges that there was a failure to give reasons for rejecting the expert views of Ms Flint. These two grounds are bound up together, and Ground 3 follows on from them, given that it relates to the future risk to the Appellant both on account of the fact that he has been previously trafficked, and also due to the failure to take into account the expert's opinion on this. I will consider all three grounds together, given how closely they are linked.
12. The Judge accepts the Appellant's account of his journey to the United Kingdom. At [42] she states:

“I find that his account of his journey is credible. It is a detailed account which is internally consistent.”
13. In her report, from [130] to [188], Ms Flint considers “whether J's experiences would fall within the Convention definition of trafficking”. At [132] she states:

“In sum, based on my knowledge and experience together with my analysis of J's case, I am drawn to the conclusion that it is more likely than not J was a victim of trafficking from China to the UK for the purposes of financial exploitation”.

14. From [134] to [139] she considers his journey to the United Kingdom. She gives detailed reasons setting out the “acts, means and purpose of trafficking to the UK”. She goes through his journey in detail with reference to his statement. This account was accepted by the Judge. At [165] to [167] she specifically addresses whether the fact that he chose to travel excluded him from falling within the definition of trafficking. She refers to Article 4(b) of the trafficking Convention. She concludes that his consent to travel was “irrelevant”.
15. The expertise and experience of Ms Flint is not questioned by the Judge, and she does not give limited weight to the report because she finds that Ms Flint does not have the expertise to produce such a report. Her reasons for attaching little weight to the report are first by reference to [105] of the report, which covers the Appellant’s work in Weymouth. However, even had he been working of his own volition in Weymouth, this does not have any bearing on his journey to the United Kingdom.
16. Secondly she states that she found “a number of the expert’s opinions to be speculative in nature”. She gives examples of [141] and [146]. I have carefully considered these paragraphs. Ms Flint’s opinion that he was intended for exploitation at [141] is with reference to “his history of deception, coercion, threats, force and financial exploitation en route to the UK” which she has detailed in the preceding paragraphs, with reference to his statement which forms part of the evidence accepted by the Judge. It cannot be said that her opinion is speculative given her detailed analysis and the reasons which precede it. The same is true in relation to her opinion in [146]. She has given reasons for this in [145].
17. I find that the Judge has given insufficient reasons for attaching limited weight to the report of Ms Flint, and her classification of her opinions as speculative is wrong. She has not doubted Ms Flint’s ability and expertise to produce such a report. Her statement that some of Ms Flint’s opinions are speculative in nature indicates that she has not properly considered the report, or the reasons given by the expert for her opinions. Further, she has not given any full or proper consideration to the expert’s reasons for concluding that the Appellant was trafficked to the United Kingdom as set out at [134] to [139], despite stating that she has had regard to the report “insofar as she deals with the issue of trafficking”. She has not dealt in her decision with that part of the report which deals with trafficking to the United Kingdom.
18. The only other reference to Ms Flint’s report is at [53] when again she states that her “contention that he may be perceived as having betrayed his traffickers is highly speculative”. This is addressed by Ms Flint at [224], and again she gives reasons for why she considers this to be the case.
19. I find that the Judge has erred in her failure to have proper regard to the report of Ms Flint, having erred in her assessment of Ms Flint’s opinions as “speculative”, and having failed to give adequate reasons for attaching

limited weight to the report. There is nothing in the decision to suggest that she has given any consideration to the expert's analysis and assessment of the Appellant's journey to the United Kingdom.

20. This links in with both Grounds 1 and 3, insofar as the expert's opinion is important to both whether or not the Appellant was trafficked, and whether he will be at risk on return.
21. At [48] the Judge considers the fact that the Appellant consented to enter into the debt of 230,000 prior to taking the trip to the United Kingdom. Reference is made to the Convention definition of trafficking. Apparent consent is irrelevant where means of deception or fraud are used. The grounds set out how the Appellant was deceived as to the route of travel, the amount of money he would have to repay, the time he would have to repay it, and the conditions and remuneration he could expect from employment in the United Kingdom. This is all addressed in Ms Flint's report [134] to [139]. Not only does the Judge make no reference to Ms Flint's report, but she also makes no reference to the definition which means that his consent would be irrelevant, given that she has accepted the Appellant's account of his journey.
22. At paragraph 9(ii) of the grounds it is submitted that the Judge failed also to engage with the evidence of the other means used by the traffickers relating to the Appellant's position of vulnerability, abduction, threats of serious harm and coercion. These are also addressed by Ms Flint, [134] to [139]. The Judge has not referred to these aspects of the Appellant's situation.
23. The final limb of Ground 1 relates to the finding that the definition of "exploitation" does not include debt bondage. Reference is made to Article 4(a) of the Convention, and how working under a debt bond is a "slavery-like practice". There is no reference to the Appellant's being under debt bondage being part of the definition of exploitation.
24. I find that the Judge has erred in failing properly to consider the definition of trafficking and apply it to the Appellant's circumstances, namely his journey to the United Kingdom. I find that, had she given proper regard to the expert report, she may have considered more fully whether or not the Appellant met this definition.
25. In relation to Ground 3, the finding that the Appellant would not be at risk on return is directly affected by the finding that he was not trafficked to the United Kingdom in the first place. The Judge failed to engage with the expert report which addressed this. Further, she accepted that he would be in debt to the loan sharks on his return to China. However, she did not consider how this might affect his risk on return of being re-trafficked. Neither has she considered his vulnerability, a factor which she also did not consider when considering whether he was trafficked initially.
26. I find that the decision involves the making of material errors of law in the failure properly to consider the expert report, and the failure properly to

apply the undisputed definition of trafficking to the accepted facts in the Appellant's case. I set the decision aside.

Remaking

27. The account of the Appellant's journey to the United Kingdom was accepted by the First-tier Tribunal [40] to [42] of the decision. I adopt those findings here.
28. I have taken into account the report of Ms Flint. As stated above, no objection was taken in the First-tier Tribunal to her expertise and experience, or to her ability to produce such a report. I have considered her experience and expertise as set out at pages 36 to 38 of the Appellant's bundle. I find that I can rely on her expertise. I find that the report itself is detailed and thorough. The factual basis on which the report was written is the same as was accepted by the First-tier Tribunal, and I have adopted those findings here. I find that I can rely on Ms Flint's report.
29. I have carefully considered the definition of trafficking as set out in the Convention and as accepted by the Respondent. I have set out above in the decision relating to the error of law how the Judge in the First-tier Tribunal was wrong not to take into account aspects of the Appellant's situation which are relevant to a finding that he was trafficked. I do not intend to repeat those here, but in remaking the decision I have taken account of my findings above in the error of law decision.
30. I have considered specifically whether the Appellant was trafficked from China to the United Kingdom. I have carefully considered Ms Flint's report, in particular from [134] to [139], but also the section where she deals with the "General NRM indicators of modern slavery" [24] to [125].
31. The definition of trafficking from Article 4(a) of the Council of Europe Convention on Action against Trafficking in Human Beings is as follows:

"Trafficking in human beings" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."
32. This is the definition used in the decision of the Competent Authority, and also in Ms Flint's report. I have also taken into account Article 4(b) in

relation to the issue of the Appellant's consent to come to the United Kingdom.

"The consent of a victim of "trafficking in human beings" to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used."

33. I find, in reliance on the report of Ms Flint, taking into account the Appellant's journey to the United Kingdom, and his vulnerabilities as set out in her report, that the Appellant was trafficked to the United Kingdom. In particular, considering the definition, I find that he was transported, transferred, and harboured by means of the threat or use of force, fraud, deception and the abuse of power, that he was in a position of vulnerability, and that as a result he was under the control of another for the purpose of exploitation. I find the fact that he consented to come to the United Kingdom is not relevant.

34. I have considered the Appellant's risk on return to China. In doing so I have considered the expert report of Ms Flint, in particular [222] to [236]. I have found above that he was trafficked to the United Kingdom. I have taken into account the case of HD (Trafficked women) Nigeria (CG) [2016] UKUT 454, in relation to the risk to the Appellant arising from the fact that he has already been trafficked.

35. Answering the question "Is there a risk J may come under the control of traffickers again if returned to China" Ms Flint states at [223]:

"In sum, yes, I think it more likely that not that J would come under the control of his traffickers again if returned to China because of his history of being trafficked especially by what appears to be a large, sophisticated, organized crime network/s of snakeheads with connections to triads and the authorities in a number of different countries so their reach, capacity and resources could be considerable. I think it is more likely than not that he would be targeted by his previous traffickers because he is now marked as vulnerable by dint of being a prior victim of trafficking with debts. He could be seen as someone who is easy to exploit as has been proven by the snakeheads tracing him in China Town for extortion."

36. At [228] addressing "whether J would be at risk of re-trafficking on return to China" she states:

"[...] it is my professional opinion that it is more likely than not that J would come under the control of traffickers again if returned to China and if so he is at risk of re-trafficking."

37. At [229] she states:

"Even if J did not come under the control of his previous traffickers and/or their associates he would also be vulnerable to being trafficked by others because his history of trafficking makes him vulnerable to further exploitation and because he has a number of push and pull factors that

make him susceptible to suggestion and/ or easily influenced by others. For example, if J were offered another opportunity on return to China to improve the quality of his life or to pay off his debts to the loan sharks I think it highly likely that he may accept such an offer despite his history of being deceived. His push factors include: a history of distrust of the authorities; a history of harm and ill-treatment at the hands of the authorities and a lack of protection from the authorities; a history of trauma, debt and fear for his own life at the hands of his previous traffickers; a history of exploitation.”

38. Ms Flint at [230] to [235] quotes from the Global Slavery Index, Country Study - China, and the 2016 US State Department TIP Report - China. The USSD Report is provided in the supplementary bundle (pages 110- 121). She states at [236]:

“Given the above shortfalls in protection and the 2016 TIP Report tier rating given to China this year, this points to some serious failings on the part of the Chinese government in terms of protecting victims of trafficking. These failings place J at heightened risk of re-trafficking in my opinion because he cannot rely on the authorities to protect him.”

39. I have also considered the country guidance case of HC and RC (Trafficked women) China CG [2009] UKAIT 00027. This states in the headnote:

“(1) Although the Chinese authorities are intent upon rescuing and rehabilitating women and girls trafficked for the purposes of prostitution, there are deficiencies in the measures they have taken to combat the problem of trafficking. The principal deficiencies are the lack of a determined effort to deal with the complicity of corrupt law enforcement officers and state officials and the failure to penalise as trafficking acts of forced labour, debt bondage, coercion, involuntary servitude or offences committed against male victims.”

40. I find that there would not be a sufficiency of protection for the Appellant given the deficiencies on the part of the authorities in dealing with the problem of trafficking. I find, given the risk of re-trafficking, that the Appellant would not be able to internally relocate. He is vulnerable to re-trafficking and exploitation for the reasons set out above including, significantly, that he is in debt bondage. For all the reasons set out above, and placing weight on the detailed and thorough report of Ms Flint, I find that the Appellant is at risk on return to China of being re-trafficked, either by those who have already trafficked him, or from others.
41. Considering all the above, I find that the Appellant has demonstrated that there is a real risk that he will suffer persecution on return to China, and so his claim succeeds on asylum grounds. As I have allowed his claim on asylum grounds, I do not need to consider his claim to humanitarian protection. Following my finding in relation to his asylum claim, I find that he would also be at risk of treatment contrary to Articles 2 and 3 of the ECHR such as to put the United Kingdom in breach of its obligations. The appeal is therefore also allowed on human rights grounds.

Decision

42. The decision of the First-tier Tribunal involves the making of a material error of law, and I set the decision aside.
43. I remake the decision allowing the Appellant's appeal on asylum grounds and human rights grounds, Articles 2 and 3 ECHR.

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 his 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

Date 5 February 2018

Deputy Upper Tribunal Judge Chamberlain