



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/07920/2017

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice

**Decision &
Promulgated**

Reasons

On: 5 March 2018

On: 9 March 2018

Before

UPPER TRIBUNAL JUDGE SMITH

Between

Y L

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Vencatachellum, Counsel instructed by Linga & Co solicitors

For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity order was made by the First-tier Tribunal. As this is an appeal on protection grounds, it is appropriate to continue that order. 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, amongst others, to both parties.

Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

Background

1. The Appellant appeals against a decision of First-Tier Tribunal Judge Wylie promulgated on 2 January 2018 (“the Decision”) dismissing the Appellant’s appeal against the Secretary of State’s decision dated 8 August 2017 refusing his asylum, humanitarian protection and human rights claim.
2. The Appellant is a national of China. He applied for entry clearance to come to the UK from Beijing on 15 June 2016. That was refused on 29 June 2016 and the refusal maintained on 4 July 2016. The Appellant arrived in the UK on 16 October 2016 using a counterfeit Japanese passport. He was detained and then claimed asylum.
3. On 14 December 2016, the Appellant was convicted on two counts of possession/control of identity documents with intent and one count of obtaining or seeking to enter or remain in the United Kingdom by deception. He was sentenced to eighteen months in prison. On 19 January 2017 he was served with a stage one decision to deport. His asylum interview was on the same day. A deportation order was made and served on 8 August 2017 along with the refusal of the protection claim.
4. The Appellant’s claim is based on a fear of the authorities stemming from his opposition to those authorities by a refusal to give up land on which the Appellant lived with his father and son. The Appellant physically obstructed the demolition (in June 2016) and was injured in so doing. He fled before the police arrived.
5. The second part of the Appellant’s claim centres on the way in which he says he left China and came to the UK. He says that his father enlisted the help of a man known as “the boss”. The Appellant’s father agreed to pay “the boss” to help the Appellant leave China. It is said that the Appellant travelled with “the boss” to Austria and from there he travelled to the UK. The Appellant fears “the boss” because his father did not pay the sums agreed.
6. The Appellant also claims that after he left China, he was subjected to torture and made to engage in sex with older women for money. This was because “the boss” was demanding money which the Appellant could not pay. The Appellant relies on a decision made by the Competent Authority dated 14 September 2017 stating that there are reasonable grounds to believe that the Appellant is a victim of

trafficking. There is no Conclusive Grounds decision. The Appellant also relies on a Rule 35 report showing that his injuries are consistent with his claim of being tortured and on a medical report of Dr Suffling following a referral to Medical Justice which is also said to support his claim to have been tortured.

7. The Judge found the Appellant not to be credible. In any event, the Judge did not accept that the evidence showed that “the boss” had power throughout China and the Appellant could therefore relocate to another area if necessary.
8. The Appellant’s grounds seeking permission to appeal the Decision are that the Judge has failed to take account of the medical evidence and the decision of the Competent Authority that he has been trafficked, all of which evidence is said to be supportive of his claim. Ground one is in reality a recitation of the Appellant’s case. It is ground two which forms the basis of the grant of permission by Designated Judge Shaerf on 17 January 2018 which states as follows (so far as relevant):-

“... The grounds are lengthy and unfocused and at parts expressed in language which at best can be described as intemperate. They have been of limited assistance in identifying whether the Judge’s decision contains an arguable error of law. Out of the numerous repetitions of disagreement with the Judge, I have disentangled assertions that the Judge did not or did not adequately address the finding on reasonable grounds of the Competent Authority that the Appellant was a victim of trafficking and the expert psychiatric evidence of Dr Suffling and the physical medical evidence represented by the Rule 35 report.

At paras 5, 8 and 31 of her decision the Judge referred variously to the positive reasonable grounds finding of the Competent Authority and Dr Suffling’s report. There is no mention of the Rule 35 report. Crucially, in the part of the decision in which the Judge made her findings of fact and reached her conclusions she arguably failed to engage with any of these documents. This is an arguable error of law. Additionally, I note that a DVD was submitted in evidence but there is no reference to it or its contents in the Judge’s decision.

The Appellant may wish to consider providing some physical medical evidence. The Rule 35 report was prepared by female doctore and the Appellant has made claims that torture was inflicted on his genitalia. It may be that if such torture was inflicted it happened so long ago that there would no longer be any physical evidence. If that is the case, the Tribunal might be assisted in having expert medical confirmation on this point.”

9. The matter comes before me to decide whether the Decision contains a material error of law. The parties were agreed that, if I found an error of law, the appeal should be remitted for rehearing to the First-Tier Tribunal as the adverse credibility findings would be undermined if I accept that the Judge failed to have regard to the evidence.

Decision and Reasons

10. I can deal shortly with what Judge Shaerf says about the DVD. That point did not form part of the Appellant's grounds. There is no complaint that the Judge has failed to have regard to this evidence. That is perhaps unsurprising since, when I asked Ms Vencatachellum what the DVD is intended to show, she could not tell me. She did not ask me to watch it. There is no evidence stating what is said to be shown on that DVD. There is nothing to show that the Judge was invited to watch it or told what was on it. The Judge could not therefore be expected to deal with it.
11. I can also deal shortly with what Judge Shaerf says about the potential for further medical evidence. There has been no application to adduce any further evidence in that regard.
12. I turn then to the basis of the Appellant's ground two which is the subject of the permission grant. That turns on the Judge's consideration of the decision of the Competent Authority ("the Trafficking Decision"), the Rule 35 report and the report of Dr Suffling.
13. The Trafficking Decision finds mention at [5] of the Decision. The Judge notes at [6] of the Decision that there is no positive Conclusive Grounds decision even though one ought to have been made, it appears, at some point after 28 October 2017. Ms Vencatachellum confirmed that, so far as she knew, no Conclusive Grounds decision had been made. Mr Kotas likewise confirmed that there was no such decision on the Respondent's file. Although an earlier hearing of the appeal was adjourned in order for the Competent Authority to complete its investigations, it is not said that the Appellant has challenged the failure of the Competent Authority to make a further decision. He has taken no steps to produce any further evidence from that authority.
14. The Trafficking Decision itself is at [AB/14] of the bundle submitted on 18 September 2017. It asserts that the Competent Authority has concluded that there are reasonable grounds to believe that the Appellant has been the victim of modern slavery (human trafficking). In the absence of a Conclusive Grounds decision, however, there is no particularisation of the reasons on which that conclusion was reached or the evidence which the Competent Authority had before it.
15. The Rule 35 report and report of Dr Suffling first find mention at [8] of the Decision. The Judge confirms at [9] of the Decision that she has had regard to all of the oral and documentary evidence even when that is not specifically mentioned. The same applies to the Trafficking Decision.
16. The Rule 35 report is to be found at [AB/16] of the bundle submitted on 18 September 2017. It shows that the Appellant reported to an official at the detention centre on or around 7 September 2017

that he has been a victim of torture. He was interviewed by Dr Fowler via a telephone interpreter. He claimed to have been beaten with sticks containing metal in the course of the protest which formed the first part of his protection claim. He also claimed to have been beaten and subjected to cigarette burns as part of the second part of his claim, in particular the claim that he was tortured by “the boss”.

17. The Rule 35 report notes the following injuries:-

“He has 7 circular scars in a line down the left forearm, consistent with cigarette burns. There are several small irregular scars around these on the forearm. There is a linear scar with evidence of suturing above the left elbow. There is a diagonal linear scar on the right upper shin with evidence of suturing.”
18. The report concludes that “[h]e has a history of torture with scarring consistent with the history. He has psychological symptoms following this, with feeling ashamed, sad, ‘dirty’ and with subsequent nightmares. He has not deteriorated in detention feeling supported by other detainees”.
19. Finally, the report of Dr Suffling who examined the Appellant on behalf of Medical Justice is dated 21 November 2017 and appears at [AB/6] of the supplementary bundle lodged on 14 December 2017. The report is based on an interview of two and a half hours via an interpreter. Dr Suffling had before him the documents relating to the Appellant’s asylum claim, the Rule 35 report and the Trafficking Decision.
20. The Appellant’s account said to have led to his mental health problems centres largely on the account of what occurred whilst he was en route to the UK (ie the second part of his claim). Based on what Dr Suffling was told by the Appellant and his observations in interview, he concluded that the Appellant is suffering from Post-Traumatic Stress Disorder and Severe Depressive Episode. He noted that the Appellant had not received any medication previously for his mental health problems and that the Appellant did not want sleeping tablets but would consider taking anti-depressants. Dr Suffling also advocated that the Appellant undergo a brief course of cognitive behavioural therapy. I pause to note that there is no application to adduce further medical evidence to show what treatment the Appellant has received since this report.
21. Dr Suffling concluded that the Appellant would be able to give evidence although might experience anxiety if asked to recount his experiences and that the threat of forced return to China would “significantly worsen” the Appellant’s mental health problems, based of course on the Appellant’s account of what had caused him to suffer the symptoms observed.

22. Turning back then to the Decision, the Judge's findings in relation to the credibility of the claim begin at [48] of the Decision. At [52] to [55] of the Decision, the Judge says this:-

"[52]He had told the medical practitioner who had prepared the psychiatric report on 20 November 2017 that he had been told by the snakehead not to mention the conflict with the government officials when applying for asylum.

[53] This does not explain why he described the conflict in his substantive interview. In his witness statement he later claimed that the snakehead had told him not to tell the truth to the immigration officials else his father and son would be killed. This seemed to refer to his claim about actions of the snakehead.

[54] The appellant claimed that the scars on his body were due to torture and ill-treatment by the snakehead and the women to whom he was required to provide sex services. The linear scars on the right upper shin and above the left elbow were noted to have been sutured. He made no mention of medical treatment being provided to him when in the hands of the snakehead. He had previously said that he had sustained injury when the local government officials had come to demolish his home, and had been taken to hospital when in hiding with his friends.

[55] These scars were therefore not suffered by reasons of torture. On the appellant's evidence the scars consistent with cigarette burns would have been very recent at the date of his arrival in the United Kingdom. There is no evidence that they were noted at his first detention on remand. He is likely to have been medically examined on admission to detention, and was assessed by a prison nurse in HMP Bedford on 19 October 2016."

23. I accept that the Judge does not say in terms whether she accepts Dr Suffling's diagnosis although she does note the diagnosis at [31] of the Decision and does not say that she does not accept it. However, any error in that regard is in my judgement immaterial. Dr Suffling's diagnosis is that the Appellant is suffering from mental health problems. That conclusion might be undermined to some extent by what is said at [60] of the Decision to which I refer below. However, it was not necessary for the Judge to reach a finding about the Appellant's mental health problems because Dr Suffling's conclusions as to the reason for those mental health problems depends entirely on the Appellant's account. It was for the Judge to consider that account and to make findings about the credibility of it having regard to all the evidence including inconsistencies and implausibility in that evidence.

24. The Judge at [54] and [55] of the Decision quite clearly engages with the Rule 35 report. Although the doctor making that report found the injuries "consistent" with the claim, that was only one factor to be taken into account in the Judge's reasoning. The Judge has provided reasons within those two paragraphs as to why she disagreed that this evidence supported the Appellant's account.

25. Ms Vencatachellum took issue with the findings of the Judge in this regard for two reasons. First, she said that it was unfair to the Appellant to rely on evidence that the two scars had been sutured as being inconsistent with his case because he was not asked about this. Second, she said it was speculative to state that the cigarette burns would have been noted by the nurse when the Appellant was first seen by health services when detained.
26. Dealing with the first point, the Appellant has been legally represented throughout. As such, his representatives would be aware of the evidence put forward and should have considered whether there were internal inconsistencies in that evidence. Further, I am not clear that the scarring noted in fact relates to the second part of the Appellant's claim as opposed to the first (although the Judge obviously understood that it related to the second part). That makes no difference to the Judge's finding that the Appellant had not said that he was treated for any of the injuries which he is said to have suffered. In any event, that does not undermine the other findings made as to the credibility of the first part of the Appellant's claim which was not believed due to the Appellant's failure to mention it initially (for the reasons stated at [51] to [53] of the Decision).
27. As to the second point, it is not speculative to suggest that a medical practitioner might have noticed injuries on examination. Of greater moment, in any event, is the fact that the Appellant did not himself refer to the injuries (see in particular [60] of the Decision as cited below).
28. For those reasons, the Judge did not fail to take into account the medical evidence. Also of relevance to that submission is the Judge's treatment of the Appellant's claim to have been trafficked which takes into account also the Trafficking Decision. That is dealt with at [59] to [60] of the Decision as follows:-
- "[59]At a very late stage, after his asylum claim based on his fear of persecution from the authorities had been rejected, the appellant made a claim that he was the victim of human trafficking. This claim had been made after spending some nine months in prison and some weeks in immigration detention.
- [60] Prior to this he had had the benefit of legal advice and representation in the criminal court, and had legal representation in his asylum claim prior to this claim being made. He had been referred to mental health services just after his admission on remand, and assessed by a mental health nurse in January 2017 when he was discharged from mental health services. He made no mention of his claim of human trafficking to any of the legal or medical professionals. He had not been diagnosed with any mental health condition although initially he had been observed to have been of low mood."
29. That passage also has to be read with [49] of the Decision where the Judge says this:-

“[49]It would seem that he had had the opportunity of discussion and advice from legal advisors including any defence or mitigation which could be provided to the court in respect of the criminal charges. If the issue of exploitation was discussed with his legal advisors, it is surprising that the appellant did not, at the very least, make some reference to the serious threats of death he now claims were being made against his father and son by the snakehead. The line of seven circular scars on his left forearm found by the medical practitioner and noted in the Rule 35 report could have been easily shown to legal advisers to support a description of exploitation.”

30. Although I accept that the Judge does not make direct reference to the Trafficking Decision in those passages, it is clear from what is said at [59] of the Decision that she had the trafficking claim firmly in mind. She had already referred to the evidence of the Trafficking Decision. As I have already observed, the Trafficking Decision was scant in its detail as to the reasons for the conclusion reached. The Judge was not required therefore to deal with this evidence in any depth. In the absence of reasons for the decision by the Competent Authority, it was for the Judge to reach her own conclusions whether the trafficking claim was credible. She has provided reasons for her finding that it was not.
31. Finally, the credibility findings at [48] to [61] of the Decision have to be read as a whole. In particular, the Judge was entitled to reach the conclusion she did as to the Appellant’s credibility when the evidence is considered as a whole, having particular regard to the inconsistencies between the Appellant’s various accounts ([51] to [53]), the fact of the earlier unsuccessful entry clearance application which did not sit comfortably with the Appellant’s account ([50] and [58]), that the Appellant had significant sums of money in his possession when he arrived which was also inconsistent with his account to have been trafficked ([56],[57] and [61]) and that, even if he feared repercussions from “the boss”, he could relocate within China ([63]).
32. For the above reasons, I am satisfied that the Decision does not contain a material error of law. I therefore uphold the Decision.

DECISION

I am satisfied that the Decision does not contain a material error of law. I uphold the decision of First-tier Tribunal Judge Wylie promulgated on 2 January 2018 with the consequence that the Appellant’s appeal stands dismissed

Signed
Upper Tribunal Judge Smith



Dated: 8 March 2018