



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

Appeal Number: PA/00058/2019

THE IMMIGRATION ACTS

**Heard at the Royal Courts of Decision & Reasons Promulgated
Justice
On 24 June 2019** **On 26 June 2019**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

LP

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr T Melvin, Home Office Presenting Officer

For the Respondent: Ms F Clarke, Counsel, instructed by Fadiga & Co

DECISION AND REASONS

1. The Secretary of State for the Home Department (hereafter SSHD) appeals against the decision of Judge of the First-tier Tribunal Lal (the judge) who, in a decision promulgated on 25 March 2019, allowed the appeal of Mr LP (hereafter claimant) against the SSHD's decision of 13 December 2018 to refuse his asylum and human rights claim.

Background

2. The claimant is a national of China, born in 1965. He was first encountered by the British authorities on 28 November 2014. On this occasion he claimed to have illegally entered the UK in 2007. He was placed on reporting conditions but was recorded as an absconder in September 2017. He was then encountered on 29 September 2018 picking cockles along with several other men. On this occasion he claimed to have arrived in the UK 10 years previously. He lodged an asylum claim on 3 October 2018. Although an NRM referral was made in respect of trafficking claim, a negative reasonable grounds decision was made on 4 December 2018.
3. I summarise the salient features of the claimant's asylum claim. In early 2006 he was asked by TJ, a monk in charge of a temple in Yu Xi town, Fu Jian Province, to transfer money to a person called "A Da" who lived in Tibet. The claimant did this as a favour to the monk, whom he respected. Then around November 2006 the claimant was arrested by Chinese police and accused of supporting Tibetan independence. He was tortured and admitted to sending money for the temple but did not disclose the name of the monk. The claimant was bailed on payment of a bribe but told to report weekly. He subsequently left China without reporting under threat from the monk who was concerned that the claimant may expose him.

The Reasons for Refusal Letter

4. The SSHD rejected the claimant's account of events in China as incredible. At paragraphs 24 and 26 the SSHD identified an inconsistency in the claimant's account relating to his involvement in political groups. In his screening interview the claimant claimed to have been arrested because of his involvement in an "independent Tibet" riot, and he informed a GP during a Rule 35 assessment that he had been arrested and detained by the Chinese police at a riot. However later in his screening interview, and then in his substantive asylum interview, the claimant said he was not involved in any political group or activism. At paragraph 25 the SSHD identified an inconsistency in the claimant's evidence concerning his involvement in a "riot". In paragraphs 25 and 32 the SSHD noted inconsistencies in the claimant's account of when his problems with the Chinese authorities first began (in his asylum interview he said his problems first began in late 2006, but in his Rule 35 examination he said he was arrested and tortured in 2005). The claimant is recorded as having given inconsistent evidence relating to being detained (in his screening interview he claimed his detention in the UK was his "first time" but described being detained by the Chinese authorities in his substantive asylum interview and in his Rule 35 assessment). At paragraph 28 of the Reasons for Refusal Letter an inconsistency was noted in respect of whose idea it was to send money to Tibet, and at paragraph 29 an inconsistency was noted in respect of the amount of

time the claimant spent working at the temple. A further inconsistency was noted at paragraph 31 in respect of the date the claimant arrived in the UK. Based on these inconsistencies, and the late timing of the asylum claim, the SSHD concluded that the claimant's account was not credible and that he would not be at risk of persecution on return to China.

The decision of the First-tier Tribunal

5. The SSHD's decision attracted a right of appeal, which the claimant exercised. In his decision the judge set out the claimant's immigration history and the relevant law, and then summarised the claimant's evidence and the evidence from his brother (who was a recognised refugee based on his membership of the Chinese Democratic Party).
6. In the section of his decision headed "Findings and Decision" the judge first explained why he did not draw an adverse inference under section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004. At [21] the judge then stated,

"The Tribunal had an opportunity to assess the asylum interview and the [claimant's] own evidence. It accepted his account because it has remained consistent throughout that he has been implicated in an allegation that involved illegal funding in Tibet."
7. At [22] the judge found that the claimant's account was supported by the Rule 35 assessment as the physical marks on the claimant's body may be consistent with what he described. The judge stated that, "The central elements of his account has not changed." At [23] the judge noted that the evidence of the claimant's brother is accepted by the SSHD in his grant of status and found the brother's evidence to be clear and credible. At [24] the judge stated that he found the claimant to be an overall credible witness and was under the impression that he was trying to assist the Tribunal whenever he could. The judge then again said that the claimant's account given at interview was consistent with the witness and all evidence received at the hearing. The judge then went on to assess risk and concluded that the claimant would be at risk of persecution in China due to his relationship with his brother and an imputed political profile. The judge consequently allowed the asylum and human rights appeal.

The challenge to the judge's decision

8. The brief grounds contend that the judge's decision was "almost totally devoid of any reasoning and fails to address a single issue raised in the refusal letter." The judge had not addressed any of the credibility issues identified in the Reasons for Refusal Letter and failed to exercise the requisite anxious scrutiny.
9. In granting permission to appeal judge of the First-tier Tribunal I D Boyes stated,

“The judgement is extraordinarily brief and arguably fails to give any regard to any of the evidence.

Permission is granted as the grounds are clearly arguable.”

10. I am grateful to Ms Clarke for her considered and clear-headed approach at the ‘error of law’ hearing. She was open and upfront in accepting that the decision was devoid of adequate reasoning and failed to take into account or engage with the numerous inconsistencies identified in the Reasons for Refusal Letter. She accepted that the decision was unsustainable and that it had to be remitted for an entirely fresh hearing. I indicated at the hearing that I was satisfied the judge erred on a point of law and that the decision had to be set aside, and that it was appropriate, given the failure by the judge to lawfully deal with the adverse credibility points raised by the SSHD, for the matter to be remitted for a de novo hearing.

Discussion

11. In his statement the claimant denied having said he participated in a riot during his screening interview and during his Rule 35 assessment. He claims that he was misunderstood or that he was misinterpreted. The judge however found that the central elements in the claimant’s evidence was “consistent throughout”. This is clearly not the case. While it may have been open to the judge to accept the claimant’s explanation, there was no engagement with or assessment of that explanation. In his statement the claimant also maintains that that he may have made a mistake in respect of the time his problems started in China, that there may have been a misinterpretation about whose idea it was to send money to Tibet, and that, when asked in his screening interview whether he had been previously detained, he believed he was only being asked about detention in the UK. Once again the claimant has provided explanations for apparent inconsistencies in his account, but the judge had failed to deal with the inconsistencies and has not engaged with the explanations advanced by the claimant.
12. Whilst the claimant’s account of transferring money to Tibet has been consistent, at least since his substantive asylum interview, there were other inconsistencies in his account that required the judge’s consideration. The judge has effectively ignored the inconsistencies identified in the Reasons for Refusal Letter and has consequently failed to take account of relevant considerations. The evidence of scarring contained in the Rule 35 report and that fact that the oral evidence at the hearing was consistent with the evidence given by the appellant in his substantive asylum interview and with the evidence given with his brother is no answer to the failure by the judge to deal with the other inconsistencies. It cannot be said that the other inconsistencies were incapable of materially affecting the outcome of the decision.

13. There was agreement by both parties that the judge's decision could not stand and that it had to be set aside. Given the absence of lawful credibility findings it is appropriate for the case to be remitted back to the First-tier Tribunal to be determined at a fresh hearing, all issues open, by a judge other than judge of the First-tier Tribunal Lal.

Notice of Decision

The First-tier Tribunal's decision contains an error on a point of law requiring it to be set aside.

The case is remitted back to the First-tier Tribunal for a fresh hearing, to be heard by a judge other than judge of the First-tier Tribunal Lal.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant in this appeal 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: 24 June 2019

Upper Tribunal Judge Blum