



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

Appeal Number: PA/05953/2018

THE IMMIGRATION ACTS

**Heard at Birmingham CJC
On 5th July 2019**

**Decision & Reasons Promulgated
On 16th August 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**X Z
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss G Patel (Counsel)

For the Respondent: Mr D Mills (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge R D Taylor, promulgated on 19th June 2018, following a hearing at Manchester on 6th June 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of China, and was born on 22nd May 2002. He appealed against the decision of the Respondent dated 24th April 2018 refusing his claim for asylum and for humanitarian protection, pursuant to paragraph 339C of HC 395.

The Appellant's Claim

3. The essence of the Appellant's claim is that he had flown from China on 22nd July 2017 arriving at Heathrow Airport on an educational visit as part of an organised party. After a couple of weeks, he met his father who had been in the UK for two or three years. His father took him away from the organised group. He told him to contact the police. After that the Appellant was referred to social services. The Appellant then claimed asylum. The basis of the claim was that the Appellant had been the subject of physical abuse by his uncle, who lived nearby at a computer shop. He worked upstairs. The Appellant would undertake tasks for him. If the Appellant did not do as he was told, or if he was slow in working, he would be physically abused by his uncle. His mother was aware of this. However, she did not intervene because she took the view that this was culturally a necessary part of the Appellant's upbringing that he be physically disciplined. It was only after arriving in the UK, when the Appellant's father found out, that he took a firm view of this, and got the Appellant to contact the police as well as social services. Thereafter, a decision was made that the Appellant would not return back to China because there would be no protection available for him from the state authorities or from the family where he had already been abused before.

The Judge's Decision

4. The judge began by observing that it was accepted by the Secretary of State that the Appellant had indeed been the victim of physical abuse. He was 16 years of age. However, the situation now was different in that the Appellant had been in the UK for a year and that,

"There must inevitably have been discussions between the family members as to why he has not returned to China and as to the basis on which he is claiming to be able to stay in the UK relating to the physical abuse by the uncle. The grandparents were also inevitably keen for the Appellant to return". (Paragraph 15).
5. That being so, the judge did not accept that given what had happened in the past twelve months and the seriousness that was being attached to the uncle's treatment of the Appellant, that either the mother or the grandparents "would now simply treat the uncle's being as just ordinary discipline". Moreover, "domestic violence has been a neglected issue in China in the past" but that there was an Amnesty International Report which makes it clear that it is now being taken more seriously (paragraph 15).
6. In any event, the Appellant himself had stated (at question 55 of the SEF) that the authorities would be able to help with his problem if he did manage to get in touch with them. The judge recognised that,

“Of course the subject here is a minor is not at all determinative of the actual position but it is not inconsistent with the evidence just quoted. There is no evidence that there has been any previous attempt to revoke the protection of the authorities from the treatment by the uncle. This appears to be because the Appellant’s mother has not fully understood the nature of the treatment handed out by the uncle, regarding it as ordinary discipline”. (Paragraph 16).

7. Given that the fundamental premise of the Appellant’s mistreatment had been now changed, what was being said was that the Appellant would now get protection in China. The judge accordingly dismissed the appeal.

Grounds of Application

8. The grounds of application state that the judge had erred in law because there had been speculation that there would have been discussion between the family members in the UK with the family members in China as to why the Appellant had not returned, given that he had come for a short period of education in this country. Second, there was no evidential basis on which to find that the police would offer sufficiency of protection if the mother did not support the Appellant in his efforts. Also the judge had failed to consider adequately the question of reception arrangements because there was no evidence to show that he would be reunited with his family.
9. On 30th November 2018, the Upper Tribunal granted permission to appeal. It was stated that,

“It is arguable that the judge has made speculative findings regarding the position of the Appellant’s mother, and whether she would take action in the future, given the Appellant’s evidence that she did not think that the uncle beating the Appellant was a problem. It is arguable that he has erred in finding that ‘seriousness’ has now been attached to the uncle’s treatment of the Appellant in the light of the evidence or that the mother would now prevail on the uncle”. (Paragraph 2).
10. In granting permission, it was also stated that, “It is arguable that there has been inadequate consideration of the reception arrangements, and the return of the Appellant to a household where, it was previously accepted that he had been abused” (paragraph 3).

Submissions

11. At the hearing before me on 5th July 2019, Miss Patel relied upon the grounds of application. She submitted that the judge had speculated about what may happen in the future (at paragraphs 15 to 16) in a manner that was not open to the Tribunal to do. Secondly, there was a question about the availability of adequate reception arrangements, in circumstances where the Appellant had been the victim of abuse (see paragraphs 9 to 13 of the grounds), and it could not simply be assumed that he would meet with adequate reception arrangements. The reality

was that he was being returned to the same household. He would still be at risk.

12. For his part, Mr Mills submitted that the judge had accepted, as the Secretary of State had accepted, that the Appellant had been the victim of abuse in the past. However, what had changed now was that the Appellant had been in the UK for a year and the judge was entitled to infer from the circumstances (whereby the Appellant's initial entry was only on a short term basis and the expectancy back home certainly from the grandparents was that he would return) that there would be discussions between the family members if he had not returned. This was a case where both the mother and the father were now objecting to the Appellant's mistreatment. Accordingly, the judge was entitled to conclude that there would now be "sufficiency of protection" in that a complaint could be made to the police and the Appellant could be provided with the adequate protection that he needed.

Error of Law

13. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.
14. First, this is a case where it is accepted that the Appellant has been the victim of domestic violence.
15. Second, it is significant that the Appellant even at this stage remains a minor.
16. Third, it is significant that the mother tolerated the violence meted to the Appellant by his uncle because she did not think this was a problem "regarding it as ordinary discipline" (paragraph 16). It is not, however, the mother who has objected to the Appellant's mistreatment in the UK. It is the father who has done so. The question still remains as to what the mother's role would be if the Appellant were to be returned back to the same household where the uncle would be present, and where the grandparents (with whom the mother lived) would also be around. This is a question which, even if there had been discussions between the two sides of the family in the UK and in China, actually requires clear evidence on. It is not enough to assume. It may well be that the mother is not strong enough or willing enough to have the matter reported to the police there. The Appellant is a minor. He himself may not be able to do so if he is returned back to the same household environment. The situation needed a proper probing and evidential enquiry. The fact that the Appellant is a child affects his ability to relocate away from the danger posed by the uncle. The objective evidence was clear that the police protection is limited (see pages 46 to 48) and complaints to the police can result in arrest of the complaint. In short, it is simply not clear whether the mother has treated this abuse of the Appellant with sufficient

seriousness that she would support the Appellant in having the uncle reported to the police.

17. Fourth, there is the question of the reception arrangements being provided. It is true that Save the Children operates in China, but it is not clear how the organisation will help the Appellant in being reunited with his family, and whether this would be facilitated, and what the role of the mother would be in this regard. The fact that the Appellant had not previously complained to the police is a relevant factor in deciding whether a complaint to the police would now be made. The fact that such a complaint has been made in the UK does not necessarily mean that it would be made in China as well. The two scenarios are entirely different. Quite simply, there has to be evidence on these matters. Without such evidence, a finding made risks being made on an erroneous basis with potentially disastrous consequences for this Appellant child. That being so, I make a finding of an error of law and remit this matter back to the First-tier Tribunal to be heard by a judge other than the judge below.

Notice of Decision

18. The decision of the First-tier Tribunal amounts to an error of law. The decision is set aside. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal to be heard by a judge other than Judge R D Taylor pursuant to Practice Statement 7.2(b).
19. An anonymity direction is made.
20. This appeal is allowed.

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 their 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

Deputy Upper Tribunal Judge Juss

15th August 2019