Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06648/2018

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision & Reasons Promulgated**
on 7th December 2018	**on 15th January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DEANS

Between

Lifang He
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr K Forrest, Advocate, instructed by Chung & Rea, Solicitors
For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This appeal is against a decision by Judge of the First-tier Tribunal Juliet Grant-Hutchison dismissing an appeal on protection and human rights grounds.

2. The appellant is a national of China. She entered the UK in 2009 as a student. She has a partner and child, who are dependants on her

claim. The appellant claims to fear persecution in China because of her support for Tibetan independence. The judge did not find the appellant's evidence about her fear of persecution to be credible.

3. Permission to appeal was granted on two main grounds. The first of these was that the judge had arguably placed too much reliance upon the record of the appellant's screening interview. The second was that the judge arguably did not give proper regard to the country information. Other grounds were considered arguable.

Submissions

4. In his submission at the hearing before me Mr Forrest relied upon the two main grounds and a third, which was that the judge had found a supposed contradiction in the appellant's evidence where there was none.

5. First, the judge found against the appellant for not disclosing all the relevant details of her claim at her screening interview. The judge did not take into account that at the start of this interview the appellant was given advice in standard form to the effect that she would not have to provide details of her asylum claim and would have an opportunity to do this later. The judge was wrong to attach significance to a point which was absent from the screening interview. At paragraph 17 of her decision the judge referred to the absence from the screening interview of any mention of the authorities looking for the appellant because she had designed leaflets for "Free Tibet", or that there was an arrest warrant for her issued in 2009, or that the police had been visiting her family home.

6. The second ground on which Mr Forrest relied was that the judge failed to have regard to all the evidence including, in particular, the country information. Mr Forrest referred to paragraphs 3, 7 and 8 of the grounds in the application for permission to appeal. At paragraph 3 it is contended that the appellant's description of how the police behaved was consistent with the country information on how the police react to persons associated with the Tibet secessionist movement. Not all of those associated with the movement would be persecuted or detained for a lengthy period but this did not mean the authorities would not seek to gather as much information as possible.

7. At paragraph 18 of her decision the judge found it "inconceivable" that the Chinese authorities would have any continuing interest in the appellant nearly nine years after she left China. According to paragraph 7 of the grounds this failed to recognise the extent of repression in China, particularly in relation to secessionist movements.

8. At paragraphs 19 and 20 of her decision the judge considered the appellant's *sur place* activity and found that this would not put the appellant at risk. According to paragraph 8 of the grounds, were the appellant to be questioned on her return to China because of the interest of the authorities in her, the authorities would seek confession evidence and admitting her activity in the UK would put the appellant at risk of detention and maltreatment.

9. The third ground relied upon by Mr Forrest arose from paragraph 1 of the grounds. At paragraph 14 of her decision the judge found it contradictory that the appellant should have phoned a fellow supporter of "Free Tibet" seeking information about arrests fearing that this might get the appellant into trouble when the police had already been to the appellant's home with an arrest warrant. According to the grounds there was no contradiction here.

10. Mr Forrest enlarged on these grounds in his submissions. He pointed out that the appellant's responses at her screening interview had been enlarged upon in a statement sent to the Home Office before the full interview (Annexe G1, Home Office bundle). According to this statement the appellant's mother telephoned her in November 2009 to say the police had been to the house and shown her an arrest warrant. The appellant then phoned her friend, who told her about some of the other supporters having been arrested.

11. Mr Forrest then referred to Qs 73 & 74 from the appellant's full asylum interview. At Q73 the appellant was asked how she knew the police were still looking for her 8 years later. The appellant replied that her mother had phoned her when she first saw the arrest warrant and she telephoned the appellant after every visit to the house by the police. At Q74 the appellant was asked why she did not mention this event and the continued visits in her screening interview and statement. The appellant replied: "When my lawyer asked me the questions, I only answered the questions he asked, so it could be he forgot to ask me." Mr Forrest submitted that at paragraph 17 of the decision the judge referred to the appellant not having mentioned continuing visits by the police in her statement at G1 and of not mentioning the arrest warrant. There was a lack of clarity over what the appellant did not say which she should have said. Reliance was placed upon the decisions in YL (China) [2004] UKIAT 145 and JA (Afghanistan) [2014] 1 WLR 4291. It was wrong for the judge to attach weight to a supposed failure to mention a fact at the screening interview which was stated at the later more detailed stage.

12. Mr Forrest then turned to the country information lodged before the First-tier Tribunal on behalf of the appellant. This contained information on the attitude of the Chinese authorities to

those perceived as attached to the Tibet secessionist movement. If the appellant was a member of "Free Tibet" she would be persecuted on return even after the lapse of time referred to by the judge. Mr Forrest concluded that if there was anything in any of the three grounds to show an error by the judge then the decision was undermined, as the appeal had to be considered in the round. The appeal should be allowed and remitted to the First-tier Tribunal.

13. For the respondent, Mrs O'Brien submitted that the grounds amounted to no more than a disagreement with the findings made by the judge. Paragraph 17 of the decision should not be read in isolation from the preceding paragraphs. A proper credibility assessment was conducted. As far as the screening interview was concerned, it was not a question of a lack of detail. There was a contradiction between a single visit to the family home by the police and continued visits. Nowhere at her screening interview did the appellant say the authorities were looking for her or there was an arrest warrant for her. The judge was entitled to question why evidence was not produced when it might have been produced. No omission was held unfairly against the appellant but any omission was taken into account in the wider context. Contradictions in the evidence meant a positive credibility finding could not be made. The decision should be upheld.

14. In response Mr Forrest stressed the advice given to an interviewee at the start of a screening interview. The purpose of part 5.6 of the screening interview was to ask about offences. When the appellant was asked if she had been accused of an offence the correct answer was "no". It was unreasonable to expect the appellant to refer to anything else.

15. I informed the parties that I would reserve my decision on the question of whether the Judge of the First-tier Tribunal had erred in law.

Discussion

16. I will start my consideration with the second of Mr Forrest's grounds, which was whether the judge had proper regard to all the evidence, particularly the country information. I agree with Mr Forrest to the extent that if the authorities had an interest in the appellant because of her perceived involvement with "Free Tibet" then their interest in her would not necessarily diminish owing to the lapse of time while she was out of the country. As Mrs O'Brien pointed out, however, this supposed that the appellant's involvement was genuine and not fabricated for the purpose of her claim. Furthermore, while the appellant might be interviewed on return about her activities if she was of interest to the authorities, if she is not of interest she would not have to answer any questions revealing her involvement in demonstrations in the UK. As was

acknowledged in the grounds of the application, the judge was entitled to find that, given the appellant's low level of involvement and the large size of the demonstrations she attended, the appellant's activity in the UK would not put her at risk.

17. Turning to the appellant's screening interview on 13th November 2017, according to the record of the interview the appellant would have been advised at the start of this interview that she would be asked for only a brief outline of why she was claiming asylum. She would also have been advised that, if appropriate, she would be able to give a full detail of her experiences and fears at a full asylum interview at a later date. During the interview the appellant mentioned neither the existence of an arrest warrant for her nor that the police had repeatedly visited her family home. At paragraph 17 of the decision the judge referred to these omissions. At part 5.3 of the screening interview the appellant was asked if she had ever been accused of or committed an offence, to which the appellant answered "no", rightly in the view of Mr Forrest. It is worth observing, however, that at part 5.5 the appellant was asked if she had ever been involved in any pro-government groups, political organisations, religious organisations, or armed or violent organisation, group or party, to which she also answered "no".

18. Reference is then made to the undated statement at G1, which Mr Forrest said was submitted to the Home Office after the screening interview but before the full asylum interview. In this statement the appellant referred to the police coming on one occasion to the appellant's family home and showing her mother an arrest warrant. Her mother phoned her in November 2009 to inform her of this. This phone call was therefore said to have taken place several years before the screening interview.

19. At Q73 of her full asylum interview, which took place on 8th February 2018, the appellant was asked how she knew the police were still looking for her 8 years later. The appellant explained that her mother phoned her the first time she saw the arrest warrant and added that her mother phoned her every so often when the local police went to the house asking for the appellant. At Q74 the appellant was then asked: "You didn't mention this in your screening or your statement can you explain why you didn't mention the continued visits". The appellant replied: "When my lawyer asked me the questions, I only answered the questions he asked, so it could be he forgot to ask me".

20. This question contained a number of parts. It was translated into Mandarin. It is not surprising that the appellant answered the question only partially. She appears to have answered by refence only to the statement at G1, in which she referred to the first visit by the police with an arrest warrant, but not about any further visits.

Her explanation for this particular omission was that her lawyer did not ask her about any further visits when the statement was prepared. There is no explanation of why she did not mention the arrest warrant at her screening interview, or the repeated visits by the police to the family home.

21. The issue I am asked to consider is whether the judge was entitled to found upon these omissions in the way that she did at paragraph 17 of the decision. The judge said that she accepted that the screening interview was a short interview but there was no reason why the appellant should not have mentioned these details, which appeared to be the cornerstone of her claim. The judge pointed out that the appellant's representative could not have forgotten about the repeated visits by the police because the representative would not have known about the visits unless the appellant had spoken of them. The judge concluded that the appellant omitted to mention in her statement at G1 that the police continued to visit her home. Thus the judge found not only that the appellant had omitted to mention the arrest warrant and police visits at her screening interview but had also omitted to mention the continuing visits in her subsequent statement. The judge did not accept the appellant's attempt to blame her representative for this omission.

22. It is important to look at the whole of paragraph 17 of the decision. The judge attached weight not only to the omissions from the screening interview but also to the omission of the continued police visits from the subsequent statement at G1. The suggestion at the hearing before me was that the G1 statement was prepared, at least in part, to supplement the account provided by the appellant at the screening interview, yet the judge found the appellant failed to mention in this statement a fact which was late considered important to her claim, namely that the police continued to visit her family home to look for her.

23. If paragraph 17 had referred only to omissions from the screening interview, then there would have been more strength in the appellant's submissions on this point. The judge did not just consider the screening interview in this paragraph, however, but also considered a significant omission from the appellant's statement at G1, and rejected the appellant's proffered explanation at the asylum interview for this omission. In the circumstances these were matters which the judge was entitled to take into account in her assessment of the evidence. In addition, this was not an instance of a screening interview carried out on arrival in the UK with a claimant who was tired, disoriented or even ill. The appellant had been living in the UK for several years and had supposedly known of the arrest warrant since her mother phoned her in November 2009. The circumstances of this screening interview

were very different from those described in JA (Afghanistan). It was for the Judge of the First-tier Tribunal to decide what weight should be given to what was said at, or omitted from, the screening interview and the judge did this in a fair and proper manner.

24. The remaining matter to be addressed is the contradiction in the appellant's account, to which the judge referred at paragraphs 13 and 14 of the decision. This contradiction seems to have arisen from the statement at G1 and from further information provided by the appellant at her asylum interview. In her statement at G1 the appellant said that her mother informed her by phone in November 2009 that the police had visited the family home with an arrest warrant. The appellant then phoned her friend, who told her arrests had been made. At her asylum interview the appellant said she telephoned her friend again but her friend's parents said she was in prison. The appellant telephoned several more times but then stopped because the appellant was worried that if she kept calling her friend the appellant herself could be in trouble. The judge pointed out that the appellant already was in trouble, according to her evidence, because the police had an arrest warrant for her.

25. According to ground 1 of the application it should have been obvious to the judge that by contacting another person in the "Free Tibet" group the appellant could be corroborating her association with the group. It was contended that there was no contradiction in the appellant's evidence on this matter. I disagree. There was indeed an apparent contradiction, as explained by the judge at paragraphs 13 and 14.

26. Certain other matters were raised in the application for permission to appeal. They do not disclose any error of law requiring the decision to be set aside. The position is that the judge was entitled to assess the evidence in the manner in which she did and did not err in law in her findings or in the reasons given for disbelieving the appellant. The decision dismissing the appeal shall stand.

Conclusions

27. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

28. The decision dismissing the appeal shall stand.

Anonymity

The First-tier Tribunal did not make a direction for anonymity. I have not been asked to make such a direction and see no reason of substance for doing so.

M E Deans
4th January 2019
Deputy Upper Tribunal Judge