Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/12981/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 1 October 2019	**On 14 October 2019**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

H Z
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: None (the appellant represented himself as a litigant in person)
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of Judge of the First-tier Tribunal Cohen (the judge) who, in a decision promulgated on 14 May 2019, dismissed the appellant's protection and human rights appeal against the respondent's decision of 30 October 2018 to refuse his protection and human rights claim.

Background

2. The appellant is a national of China, born on 28 December 2000. I summarise his protection claim. He lived with his mother and father in

a village in Anhui Province in Eastern China. The appellant's parents followed a religion called Church of Almighty God (CAG). The appellant had no interest in the religion and preferred to play with his friends. In 2013, when the appellant was 13 years old, the police raided the CAG place of worship. The congregation, including the appellant, tried to escape but he was caught and hit with batons that caused a serious fracture of his leg. He was hospitalised for some months and the fracture treated. A neighbour informed the appellant's parents that a warrant for the family's arrest had been issued. After being discharged from the hospital the appellant and his parents went to Hefi City where they rented several properties over a 3-year period, often moving house so as to avoid the authorities. The appellant's parents obtained money from a Snakehead gang and illegally obtained a passport for the appellant. The appellant left China in January 2017 and travelled for 6 months in the company of an agent until he arrived in the UK in July 2017 and claimed asylum.

3. The respondent was not satisfied that the appellant gave a credible account of his protection claim. The respondent identified several inconsistencies in the appellant's evidence relating to his parents' religion and noted the appellant's lack of basic knowledge of the religion. The respondent additionally identified inconsistencies relating to where the appellant and his parents lived prior to his leaving China and the appellant's age at the time of the raid. The appellant exercised his right of appeal under s.82 of the Nationality, Immigration and Asylum Act 2002 in respect of the respondent's decision.

The decision of the First-tier Tribunal

4. The appellant had the benefit of legal representation at his appeal hearing and his solicitors produced a bundle of documents running to 297 pages including a witness statement dated 1 April 2019 (the appellant had previously produced a statement dated 2 October 2017 prior to his substantive asylum interview), a confidential medico-legal report authored by Dr Amandeep Singh Ranu, an expert country report authored by Professor Mario I. Aguilar, a letter from Krystle [C] (the appellant's Leaving Care Personal Advisor) and several background evidence reports on religious freedom in China. The appellant gave oral evidence through a Mandarin interpreter, adopted his witness statement and answered questions from the representatives and from the judge.

5. In his decision the judge summarised the appellant's protection claim and reasons advanced by the respondent for rejecting that claim. At [16] the judge "… agreed to apply the guidelines for vulnerable witnesses in respect of the appellant." At [17] the judge confirmed that the appellant gave evidence with the assistance of the Tribunal appointed Mandarin interpreter and that they understood each other. The judge summarised the evidence before him and the oral evidence

given by the appellant at the hearing. The judge accurately set out the burden and standard of proof in protection and human rights claims. At [31] the judge stated,

> "The appellant was a minor and was younger when he arrived in the UK and I have made appropriate allowances for this factor and in respect of the evidence that he gave in support of his claim. I note however that he is now 18 years old."

6. The judge considered the Medico-Legal report (the scarring report) at [33] noting the expert's view that the injury was unlikely to have been caused by a baton strike in the case of someone of the appellant's age and that it was more likely to have been caused by a fall. Although the injury was consistent with the appellant's account the expert could not exclude the possibility that the appellant's injury occurred other than in the manner claimed by him. In these circumstances the judge found that the expert report did little to advance the appellant's appeal. At [34] the judge considered Professor Aguilar's report noting that the expert accepted the appellant's account as being credible and that many of the discrepancies in the appellant's account were neither considered nor addressed by the expert. The judge noted the expert's findings and indicated that they would be considered as part of his overall assessment.

7. From [35] to [49] the judge gave detailed reasons for finding the appellant an incredible witness and for rejecting his account of being targeted by the Chinese authorities. These related, amongst others, to inconsistencies in the appellant's evidence in respect of the number of occasions he attended church, inconsistencies relating to the name of the religion, the implausibility of the appellant not attending church from the ages of 6 until 13 and his inability to give any basic details of the church. The judge did not find it credible that the appellant would be abandoned by the police after being assaulted rather than arrested and it was implausible that the police would not come to look for him when he was hospitalised. Nor was it credible that the appellant and his family remained only 30-40 minutes away from their original home if they were wanted by the police. The judge found the absence of any explanation for why the appellant's parents decided to send him out of the country 3 years later rather than as soon as possible after the incident to be incredible. The judge noted inconsistencies in the appellant's evidence relating to his contact with his parents and the implausibility of his account of friends of his parents collecting him from the airport and then effectively abandoning him.

8. At [48] the judge stated,

> "I find the appellant's immigration history to be damaging to his credibility. The appellant came to the UK in a journey taking 6 months. He would have spent significant time in various countries. The appellant however claimed that he did not know

> any of the countries he passed through. The appellant said that he could not remember the last plane that he used to travel to Heathrow and yet had been in contact with his parents who advised him that two friends would be waiting to pick him up from the airport. I find the appellant is an intelligent young man who has been progressing well in his education in the UK and find that he would have been aware of at least some of his travel details to the UK. I find the fact that the appellant has failed to disclose the same in an attempt to frustrate removal. In considering the appellant's immigration history I have regard to Section 8 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004. I find the appellant's immigration history to be further damaging to his credibility."

9. And at [49] the judge stated,

> "There are further discrepancies in the appellant's evidence and evidence which I find to be implausible which I will not set out in further detail herein."

10. At [50] the judge found that the experts' reports accepted the appellant's evidence at face value whereas the judge found significant credibility issues. The judge was not satisfied that the appellant or his parents were members of CAG or that he held a well-founded fear of persecution in China. Nor was the judge satisfied that the appellant left China illegally. At [51] the judge noted that, whilst the appellant was a minor, the Home Office would not seek to return him until he reached majority. The judge found that the appellant was in contact with his parents in China and that he could return to that country and live with his parents. The protection appeal was dismissed, as was the appellant's appeal on humanitarian protection grounds and human rights grounds.

The challenge to the judge's decision

11. The original grounds of appeal were drafted by the appellant himself. He claimed he had experienced distress before the First-tier Tribunal and that, due to the language barrier, his age and the trauma he faced when he arrived in the UK, he had been unable to recall all the information asked of him at that time. The appellant was not satisfied that the evidence relating to his leg injury was satisfactorily investigated. The appellant criticised his former legal representatives because the caseworker was twice changed, because no interpreter was provided by his solicitors at the First-tier Tribunal hearing, and because they failed to explain their advice to him following the First-tier Tribunal's decision. His solicitors had used interpreters over the phone and he found it difficult to understand their dialect. He wanted the chance to clarify important information or discrepancies.

12. In granting permission to appeal Upper Tribunal Judge Stephen Smith stated,

> "The grounds of appeal mainly set out disagreements of fact. In addition, the appellant highlights his age (he arrived as an unaccompanied minor), the language barriers he experienced during the hearing, and his claimed prior trauma. It appears that the ground suggest that those factors meant the appellant's evidence was less coherent, and that the Judge should have made further allowances. It is arguable that he should have done so. The Judge's extensive credibility concerns were based, in part, on the appellant's failure to claim asylum in one of his (unspecified) transit countries prior to arriving here, pursuant to section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. Arguably, the Judge erred at [48] when reaching this finding as he did not know (or if he did know, did not specify) which "safe" countries the appellant had transited through prior to arriving here. Still less did the judge expressly consider the impact of the appellant's youth on his expectation that he should have claimed asylum earlier. As the Court of Appeal recently noted in KA (Afghanistan) v Secretary of State for the Home Department [2019] EWCA Civ 914 at [54], it is important (i) to apply section 8 correctly, and (ii) to make allowances for unaccompanied minors. The Judge arguably failed to take those steps. Although the Judge said at [16] he would treat the appellant as a vulnerable witness, his operative analysis of the appellant's evidence does not feature any adjustments on that account.
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> The judge also arguably erred by noting that there were "further discrepancies… which I will not set out in detail further detail therein" at [49]. Arguably, the Judge failed to give any, let alone sufficient, reasons for these additional, unspecified credibility concerns. It is not clear whether those concerns were infected by the Judge's arguably erroneous approach to assessing the appellant's credibility, or the extent to which they were material in the Judge's overall assessment.
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> By arguably erring in his application of section 8, and by holding credibility concerns against the appellant which - on the Judge's own reasoning - were expressly withheld from the reasons he gave, it is arguable that the overall credibility assessment conducted by the Judge was flawed.
>
> The appellant's complaints concerning his former solicitors and interpretation difficulties have less merit. However, I grant permission or grounds, as it will be difficult to isolate which aspects of the Judge's decision were arguably affected by that arguable error."

The error of law hearing

13. The appellant acted as a litigant in person. He was accompanied by Krystle [C], his Leaving Care Personal Adviser. Ms [C] acted as a McKenzie friend. The appellant made his submissions through the Mandarin interpreter appointed by the Upper Tribunal. I allowed Ms [C] and the appellant a short time to use the Tribunal appointed interpreter to prepare his submissions. The Mandarin interpreter

additionally translated the grant of permission and some paragraphs of the scarring report.

14. The appellant argued that the judge failed to give him sufficient opportunity to explain what was wrong with his leg and that he was disadvantaged from not having his own interpreter at the First-tier Tribunal hearing. The appellant claimed that the judge's questions were not appropriate, but he did not particularise this complaint. The appellant said he could not understand the judge's questions in order to give an appropriate answer. The appellant referred to there being 129 different Chinese dialects and said he didn't understand the interpreter's language.

15. Ms Isherwood submitted that the challenge amounted to a mere disagreement with the judge's findings of fact. The appellant's statement from April 2019 was prepared by his solicitors and signed by him and the medical assessment was undertaken in the presence of a Mandarin interpreter. There had been no complaint in respect of what was contained in both the medical report and the statement. The judge had borne in mind the appellant's age when considering his evidence. The appellant was legally represented at the hearing and no concerns were raised with the interpretation. The judge properly considered the scarring report. Any error in approaching the scarring port was, in any event, immaterial given the weight of the judge's other adverse credibility findings. The judge did not ignore the appellant's age and any error was not material.

16. In response the appellant claimed that he could not be returned to China as he could not find anyone in the country, and he spoke about his age assessment interview in which he gave his mother's phone number to the assessors.

17. I reserved my decision.

Discussion

18. I will first consider the written grounds of appeal and the appellant's submissions at the 'error of law' hearing. The appellant criticises his former legal representatives for changing his caseworker twice, which caused delays, for not providing an interpreter for him at the First-tier Tribunal hearing, and for not explaining their reasons for advising that there were no merits in seeking to appeal the First-tier Tribunal's decision. The appellant did not advance the last point at the 'error of law' hearing and I note that it relates to confidential legal advice. The appellant does not appear to have informed his previous solicitors of his concerns and they have not therefore been given an opportunity to respond to the appellant's criticisms.

19. Whilst it is unfortunate that there were changes of caseworkers there is insufficient evidence to suggest that this materially undermined the appellant's ability to present his case, or that his former solicitors

acted in a negligent or improper manner. The former solicitors prepared a substantial bundle of documents including a detailed witness statement from him and two expert reports. There is nothing on the face of the papers to suggest that the appellant's case was not professionally prepared.

20. The appellant maintained that his former solicitors failed to provide an interpreter for him at the First-tier Tribunal hearing and this left him feeling unsure and lacking confidence about the Tribunal appointed interpreter which, he claimed, had a negative impact on the way he answered questions. He also claimed at the 'error of law' hearing that he had been unable to understand the Tribunal appointed interpreter at the First-tier Tribunal hearing. Information provided by Ms [C] at the 'error of law' hearing suggested that an interpreter may have been book either by the former solicitors or by the social services but failed to attend. Even if the solicitors failed to book an interpreter themselves the appellant was able to give his evidence through the First-tier Tribunal appointed interpreter. There was no indication in the judge's decision, or indeed in the judge's notes, that the appellant had any difficulty with the Tribunal interpreter. As noted at [17] of the decision the appellant and the official Mandarin interpreter confirmed that they understood each other. The appellant was, moreover, legally represented. There is no indication in the documents before me that the appellant's counsel ever needed to raise concerns relating to the quality of interpretation, or that counsel was unable to follow his client's instructions. Nor does the judge's decision suggest that any questions he asked of the appellant were inappropriate. Although the appellant stated in both his written grounds and in his oral submissions at the 'error of law' hearing that there are 129 Chinese dialects he was able to provide detailed answers to all the questions asked of him during the First-tier Tribunal hearing. I additionally note that the appellant had a Mandarin interpreter during his substantive asylum interview and he indicated that he understood the questions asked of him and that he felt fit and well during the interview. I am not persuaded that there were any language difficulties either during the appellant's substantive asylum interview or during his First-tier Tribunal appeal that prevented him from understanding the questions asked and giving his answers.

21. There is some merit in the criticisms identified in the grant of permission to appeal. The judge drew an adverse inference under section 8 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 on the basis that the appellant failed to claim asylum while travelling through safe third countries, but the judge does not identify what countries the appellant travelled through. Without knowing which countries the appellant travelled through it is not possible to draw an adverse inference under this provision.

22. The grant of permission additionally notes that the judge appears to have had other, unspecified, credibility concerns [49], but he failed to

identify these concerns or give any reasons in support of his concerns. It is not appropriate for judges to make vague or general references to the existence of other credibility concerns without then specifically engaging with those concerns. A judge must provide clear reasons if he or she does not believe the material elements of an appellant's account. On reading [49] one is left with the impression that the judge may have held matters against the appellant that are unreasoned and unidentified. The lack of transparency in this aspect of the decision is concerning.

23. I am not however persuaded that this error of law, taken on its own or in conjunction with the error relating to s.8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 and the other points raised in the grant of permission to appeal, materially undermine the sustainability of the judge's decision.

24. The grant of permission noted that, although the judge indicated he would treat the appellant as a vulnerable witness [16], the operative analysis of the appellant's evidence did not feature any adjustments on that account. The reference to the vulnerability guidelines however indicates that the judge was aware of the appellant's age and the impact his age could have on his evidence. at [31] the judge again made specific reference to the appellant's age and indicated that he made appropriate allowance for this factor in respect of the evidence given by the appellant in support of his claim. Having made these two general comments, it was not necessary for the judge to then again refer to the allowance based on the appellant's age or vulnerability when making specific adverse credibility findings. The decision, read as a whole, suggests the judge did take into account the appellant's age and vulnerability at the time of the incident in 2013 and in respect of the appellant's evidence in his asylum interview.

25. From [35] to [47] the judge gave substantial reasons for disbelieving the appellant's account of his and his parents' involvement with the CAG and of being targeted by the Chinese authorities. At [36] the judge did not consider it credible that the appellant's parents, who were regular churchgoers, did not insist that he accompanied them to their place of worship from the ages of 6 until 13. The judge identified inconsistencies in the appellant's explanation for his non-attendance at church and found the appellant's account to be implausible, especially given the appellant's age at the time and his claim in his age assessment interview that his parents were strict [37]. These were adverse findings rationally open to the judge and which were not significantly affected by the appellant's age.

26. At [38], [39] and [40] the judge noted that, despite his claim to not be interested in his parent's religion and to know little of the religion, the appellant had been born into the religion, that he claimed in interview to belong to the religion, and that he had attended the place of worship when he was 4-5 years old and again when he was 13 years

old. Yet his interview the appellant referred to his religion as "Almighty God and Catholic" and "is the Almighty God in Catholic I believe" and was unable to provide even basic information about the religion and church. The judge did not find it credible that the appellant would not know the name of the church his parents attended on numerous occasions throughout his life or the basics of the religion. This was the conclusion rationally open to the judge on the evidence before him.

27. At [41] the judge found implausible the appellant's claim that the police simply left him after assaulting him with batons and that they did not seek to arrest him while he convalesced in hospital for several months despite the issuance of an arrest warrant for the whole family. The judge was rationally entitled to find this aspect of the appellant's claim implausible for the reasons given. At [42] the judge did not find it plausible that the appellant's family would relocate to an area only 30 to 40 minutes away if they were wanted by the police and arrest warrants had been issued. The judge was entitled to find that those feature the state authorities would not live in such close proximity for a period of 3 years given the dangers of detection. None of these adverse findings could be reasonably affected by the appellant's age.

28. At [43] the judge was entitled to hold against the appellant the absence of any explanation from him as to why the appellant's parents only decided to send him out of China some 3 years after the incident that gave rise to his asylum claim and to find that this indicated that the appellant was not sought by the authorities. At [45] the judge identified clear inconsistencies in the appellant's evidence relating to ownership of a mobile phone in his possession and his knowledge of either his mother's mobile phone number or his father's mobile phone number. The judge was unarguably entitled to hold these discrepancies against the appellant.

29. At [46] and [47] the judge drew an adverse inference from a discrepancy in the appellant's evidence relating to how long he remained with friends of his parents when he first entered the UK, and the judge found it implausible that the family friends would effectively abandon the appellant without giving him any contact number or contact details given that they had been willing to pick him up from the airport and allowed him to live with them for several days, and especially given that they would have been in contact with his parents. The judge gave cogent and legally sustainable reasons for his findings.

30. Whilst criticism can properly be made of some elements of the judge's decision, he ultimately provided overwhelming reasons for finding the appellant an incredible witness and rejecting the appellant's account of fearing the Chinese authorities. In so doing the judge referred on two occasions to the appellant's age and vulnerability. I am not persuaded that the errors of law identified in

this decision are capable of undermining the overwhelming majority of adverse credibility findings made by the judge. I consequently find there is no error on a point of law requiring the decision to be set aside.

Notice of Decision

The appeal is dismissed

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.

D.Blum

Signed Date 8 October 2019

Upper Tribunal Judge Blum