



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

Appeal Number: PA/03811/2019

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre

**Decision & Reasons
Promulgated**

On 5 March 2020

On 19 March 2020

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

**X C Q
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Dieu, Counsel instructed by Fountain Solicitors
For the Respondent: Mr C Howells, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of Judge Richards-Clarke in which she dismissed the appeal of the Appellant, a citizen of China, against the decision of the Secretary of State to refuse her application for international protection.
2. The Secretary of State's decision was made on 3 April 2019. The Appellant exercised her right of appeal to the First-tier Tribunal. The appeal came before Judge Richards-Clarke on 7 November 2019 and was dismissed. The

Appellant applied for permission to appeal to the Upper Tribunal. Her application was granted by Designated Judge Shaerf on 10 January 2020 in the following terms

The first ground refers to paragraph 21 of the Judge's decision. The Judge did not accept the Appellant's claim that her father in China was still imprisoned for lack of "further evidence". The Respondent did not challenge the Appellants credibility as to past matters and also found her account to be consistent with the background information. It is arguable the Judge erred in law by making an adverse finding for lack of corroborative evidence, particularly in the light of interview reply 44.

The second ground refers to paragraph 23 of the decision, it is argued the Judge's consideration of the risk to the Appellant on return on account of her being in breach of the then National population and family-planning laws is inadequate. No reference is made to the expert evidence identified in paragraph 17 of the skeleton argument and in Yan Zheng v SSHD [2017] CSIH 41 which was before the Judge. Additionally, it is evident that judge arguably failed to take account of the fact that the Appellant has three children.

The third ground asserts the Judge's assessment of the Appellant's claim based on her private and family life was inadequate because it failed to take into account the evidence at paragraphs 6.2.1 – 6.3.4 of the Home Office's CPIN of November 2018 in contravention of National population and family-planning laws.

Background

3. The history of this appeal is detailed above. The Appellant is a citizen of China who has three children. Her two younger children aged 3 and 7 months are with her in the United Kingdom and are dependent upon her claim. Her elder child, aged 8, lives with her partner's parents in China. The children's father lives in the United Kingdom but has no status here. The Appellant came to the United Kingdom in July 2007 and it is accepted that she was a victim of trafficking and forced labour. The Appellant claims that she will be persecuted on return to China on the basis of her political opinion having taken part in protests against the government's compulsory acquisition of her father's land and other land in the village where she lived. Further the Appellant claims that she will face harm at the hands of the snakehead gang who trafficked her to the United Kingdom and forced her to work. The Appellant also claims to fear serious harm as, having had three children, she is in breach of the national population and family planning laws.
4. In refusing the application the Respondent accepted the credibility of the Appellant's account both in respect of the land issue and trafficking. The refusal letter does not deal with the breach of family planning laws. The Respondent considered that so far as the land issue was concerned that the Appellant was no longer at risk because the background evidence suggests that persons arrested in connection with this issue were released after demolition had taken place and do not in general face further adverse attention. The Respondent considered that even though the

Appellant had been trafficked the debt to the snakehead had been repaid so she would not face adverse attention in this respect. The breach of family planning law was not considered.

5. In dismissing her appeal the Judge found (at paragraph 21) that there was no evidence of her father's ongoing imprisonment and that this was a dispute that ended in 2007 and that therefore the Appellant had not shown that she was at real risk. So far as the family planning laws are concerned the Judge found that financial penalties and disadvantaged access to social services did not cross the Article 3 threshold and that there was no evidence to suggest that she would be a victim of forced sterilisation.

Submissions

6. For the Appellant Mr Dieu said that the grounds of appeal and the skeleton argument submitted for the First-tier appeal are the pertinent documents. There are three areas where the Judge erred. First in finding that the Appellant would not face the adverse attention of the authorities it was the Appellant's claim that her father had been arrested and had not returned. The Judge says (at paragraph 21) that there is no evidence of his ongoing imprisonment. This is factually incorrect. The Appellant gave evidence to this effect. The asylum interview record (AIR) shows at question 44 that the Appellant said that her father is still in prison. Paragraph 8 of her witness statement says her father is still detained. Her oral evidence confirmed this. If the Judge meant no corroborative evidence then that is an error of law because corroborative evidence is not required. The Appellant was found to be credible about everything else and there is little reason for Judge not to accept her evidence in this respect. The Judge gives no reason apart from the lack of corroboration and fails to engage with the Appellant's evidence in this respect. There is no reference to objective evidence and the Judge's finding seems not to take account of her father's position and that if the Appellant makes a noise she may put herself at risk.
7. Dealing with the Appellant's contravention of family planning laws the decision shows inadequate reasoning. The Judge refers to Yan Zheng v SSHD [2017] CSIH 41 but there is no analysis. Zheng was expanded upon in the skeleton argument at paragraphs 5 to 18. AX (Family Planning Scheme) China CG [2012] UKUT 00097 (IAC) refers to forced sterilisation but does not deal with sterilisation through duress. The crippling social and financial impact of breaching family planning law gives persons in the Appellant's situation no choice but to undergo sterilisation.
8. Turning to Article 8 the Judge just gives a standard analysis. Nothing is factored in about family planning laws and denial of access to medical educational and public services. The last sentence of paragraph 23 of the decision fails to take on board that it is the two children in United Kingdom who are unauthorised.

9. For the Respondent Mr Howells confirmed that there was no rule 24 response. He said the Judge gave adequate reasons at paragraph 21 for finding that the Appellant was not at risk in 2006/7 concluding that her mother had not faced difficulties from the authorities. It is clear that the Judge meant no supporting evidence of her father's imprisonment. Supporting evidence from a lawyer representing the family could be expected. The Presenting Officer did challenge the credibility of the Appellant's claim that her father continued to be detained and also challenged her claim that she would fight her father's cause.
10. AX is the reported country guidance case and the Tribunal was required to follow it. At paragraph 23 the Judge explicitly applied the risk factors from headnote 12 of AX. The Scottish court decision in Zheng was not binding. In any event the Appellant's case could be distinguished from Zheng. The Appellant could be returned with the father of her children. In Zheng the Appellant would have been returned without the father. The Appellant would not be a lone mother. The family unit can turn to her partner's parents who pay for the eldest child to attend school. There was no evidence of a crackdown in her area. She is from Chengdu in Szechuan province. Mr Howells said that paragraphs 26-9 are an adequate assessment of s.55 and Article 8.
11. In response Mr Dieu said that it was never the Appellant's case that lawyers had been engaged by the family in China. Referring to Zheng the Respondent submits it can be distinguished because the Appellant's partner could return to China with them. This is a difference without substance. It does not affect the financial penalties and denial of access to social services. It is accepted that AX is Country Guidance but the position in Zhen distinguishes AX in finding a gap. AX considered physical force whereas Zhen looks at duress.
12. I reserved my decision.

Decision

13. As the Appellant did not proceed with her appeal on the basis of problems with the snakehead there were just two aspects of her appeal to be considered. I will deal with them separately.
14. The Appellant claims that she faced danger on return to China in consequence of a dispute between the people of her village in general, her father in particular and the Chinese government. It was the Appellant's claim that in 2006 the government notified the Appellant's family that they wanted the land where the family business, a restaurant, was located so that a new road could be built. Other land was also marked to be taken. The Appellant's father, with the Appellants support and with other people from the village took the matter to Beijing. The government delayed talks

and when the group, including the Appellant and her father, arranged to go to Beijing they were arrested. Although they were released after about a month it was a condition of their release that they did not take part in anymore petitions. When diggers came to the village to demolish the properties on the land acquired by the government the villagers, ignoring the condition placed on their release, formed a line to prevent the bulldozers doing their work, the police became involved and several villagers, including the Appellants father, were arrested. The Appellant ran away.

15. It is important to note that the Respondent having analysed the Appellant's account against the objective evidence found her account in all the respects above to be credible (see paragraph 32 off the refusal letter). The refusal letter goes on just say that whilst it is accepted that the Appellant was involved in a situation where the government demolished her father's business it is not accepted that she would face any adverse attention if she would turn to China. This is because the Appellant was not arrested, those that are arrested are generally released and do not face any further attention and the Appellant has not openly criticised the government. The Respondent does not in the refusal letter deal with the Appellants claim, clearly shown in the interview record, that her father has never been released from detention.
16. The Judge deals with her analysis of the Appellants account at paragraph 21 of the refusal letter. Firstly the Judge notes the Appellant's claim that her father has not returned home and is still in prison and that if she returned she will attempt to find out what has happened to him but says that she does not bring forth any further evidence regarding this aspect of her claim. The Judge adds that there is no evidence about the Appellant's father's ongoing imprisonment. There is no further analysis.
17. In my judgment the reasons given for doubting the Appellant's account, bearing in mind the lower standard of proof, are not adequate. The Appellant has been generally accepted as a credible witness and the Respondent noted in the refusal letter that the Appellant's account of events occurring in her village accorded with the objective evidence. To single out one aspect of the Appellants account, her fathers continued detention, and dismiss it through lack of corroboration and for no other reason is in my judgment a fundamental error of law. The Judge simply has not engaged with the Appellant's written witness statement or her oral evidence. The error is material to the Judge's decision to dismiss her appeal because the continued detention of her father and her avowed intention to take up his cause is a core aspect of her account.
18. In dealing with the family planning issue the Judge again confines analysis to a single paragraph. The last two sentences of this paragraph make no real sense in the context of the appeal. The Judge finds there is no credible evidence that members of the Appellant's family in China have suffered adversely because of her breach of the family planning scheme. This


ignores the fact that it is only the eldest child that lives in China in respect of whom there has been no breach of the family planning scheme and there is nothing to suggest that the birth of her two younger children in the United Kingdom is known to the Chinese authorities.

19. I have dealt with the end of the paragraph first because of the obvious error of judgment, if not error of law, demonstrated. The rest of this paragraph refers to the country guidance case of AX and the Court of Session case on Zheng both of which were referred to in the skeleton argument but there is no analysis of these cases. Given the detailed skeleton argument submitted to the First-tier Tribunal included very significant submissions on the distinction between AX and Zheng the only conclusion that can be drawn is that the Judge in her analysis overlooked the arguments put forward on the Appellant's behalf. This, in my judgment was a material error of law in that the reasoning is wholly inadequate.
20. My conclusion from all of the above is that the decision of the First-tier Tribunal demonstrates errors of law that were material to the decision to dismiss this appeal. On that basis this appeal must be allowed, and the decision of the First-tier Tribunal set aside.
21. The nature of the error of law related to the credibility findings of the First-tier Tribunal and also to the analysis of the effect of the Appellant's breach of the family planning law upon her treatment on her return. On this basis and in accordance with the President's direction this matter should be remitted to the First-tier Tribunal for hearing de novo.

Summary of decision

22. Appeal allowed. I set aside the decision of the First-tier Tribunal.
23. The matter is remitted to the First-tier Tribunal for hearing de novo.

Signed



Date: 12 March 2020

J F W Phillips
Deputy Judge of the Upper Tribunal