



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

Appeal Number: PA/10334/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 16 October 2020**

**Decision & Reasons Promulgated
On 1 December 2020**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

**Y H R
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Childs of Counsel, instructed by Duncan Lewis & Co Solicitors

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the Appellant. Breach of this order can be punished as a contempt of court. I make this order because the Appellant is an asylum seeker and so entitled to anonymity. I am also concerned because she is vulnerable.
2. The Appellant is a citizen of China. She appeals against a decision of the First-tier Tribunal dismissing her appeal against a decision of the Secretary of State that she is not a refugee or otherwise in need of international protection.

3. It is an important feature of the case that the Appellant is a victim of trafficking. This has been established to the satisfaction of Competent Authority. She is a victim of sex trafficking. She was persuaded to think that she was obtaining a job as a hairdresser and found out that services of a very different kind were required. The matter came to light during a police raid in the United Kingdom when she had the confidence to tell the police what had been happening. Unsurprisingly, on this occasion the police authorities behaved as they ought to do and immediately provided the Appellant with protection which got her away from the place where she was harmed and opened up the possibility of her being recognised as a victim and indeed claiming asylum.
4. The decision of the First-tier Tribunal is careful and in many ways thorough. Permission to appeal was given by Upper Tribunal Judge Gill, who made two points. The first is that the Appellant arguably was not treated as a vulnerable witness and secondly the judge had misapprehended or overlooked certain evidence. The vulnerability point is made out clearly. The Appellant almost certainly is a vulnerable witness; there is psychiatric evidence about many of her difficulties.
5. Ms Childs, who prepared the grounds of appeal, made it absolutely plain that it is not suggested that the judge misconducted the hearing in a way that was bullying or oppressive, this is not the complaint. The problem is that the judge did not show conspicuously in her reasoning that any of the inconsistencies or adverse credibility findings or difficulties in the case at least might have been attributable to the difficulties experienced by somebody who is vulnerable and did not indicate how that possibility affected her findings of fact. I am persuaded that this is important. The Court of Appeal has made plain the respect that should be given to vulnerable witnesses. Tribunal has produced Joint Presidential Guidance and whilst it may have been in the judge's mind, it is not in the judge's Decision and Reasons and that omission is always risky.
6. It is not going to be plain sailing for the Appellant. Her case is that she cannot return anywhere in China, which is a vast country. This is a point properly picked up by Mr Tufan in his submissions and indeed by Mr Avery, who produced the Rule 24 notice that I have read.
7. There are two difficulties with this from the Secretary of State's point of view.
8. First, it is the Appellant's case that she will not be able to settle into China easily because of her mental health problems. These must not be exaggerated. She is a person who is getting some treatment from which she is benefiting. She is not a person with suicidal ideation but the judge has not explained clearly how she could establish herself in China. There is reference in the grounds to new procedures about people moving within China. It is not suggested it cannot be done but it takes time, it brings with it at least an interruption in medical treatment and the consequences have just not been considered in the way that the case required.
9. Second, there is the alleged power of the oppressor. I think it is right that the person directly involved in sex traffic in the United Kingdom is not known to have obvious links with China but I accept Ms Childs' submission that it might all be linked. The prostitution was taking place in Chinatown, it is a Chinese

case. There is evidence in the background material of widespread corruption in China. Particularly important is evidence in the U.S. State Department Report on trafficking that China is in the lowest category of countries providing effective protection to traffickers. The contention that she could not go to her home area because of the risk of being traced there is one which I find has not been investigated properly by the First-tier Tribunal Judge.

10. The problem in part is that the Appellant did state at early stages and throughout her case that she feared a person who was powerful but was not always consistent in the way she described that person. Certainly, the word "Triad" is used at some point but, as Ms Childs has accepted, properly, that is itself an imprecise term. This is not a case where there is clear reference to corrupt officials. However, I am satisfied there is sufficient evidence of general corruption in China and of poor protection for victims of trafficking, to find that the judge has not investigated or made proper findings on the risk of return, especially as the judge has not conspicuously factored-in the Appellant's vulnerability when she has made her findings.
11. The consequence of all this is that although the Decision and Reasons has obviously been done carefully it is wrong and I have to set it aside. In doing this I have thought carefully about Mr Tufan's submissions about whether the points are material. I am persuaded that they are. The case has to be heard again. The Appellant has not had a proper hearing because the things that matter to her have not been investigated. It is not a case of a "repair job". The appeal needs to be reheard and I find that the proper place to do it is in the First-tier Tribunal, so I set aside the decision and I direct the case be heard again in the First-tier Tribunal.
12. Ms Childs has asked me to make plain that no findings are preserved. They are not. The case has to be reheard on all matters.

Notice of Decision

The appeal is allowed. The First-tier Tribunal erred in law. I set aside its decisions and direct that the case be heard again in the First-tier Tribunal.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 20 November 2020