



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

Appeal Number: PA/10887/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 4 August 2020**

**Decision & Reasons Promulgated  
On 11 August 2020**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**GP (CHINA)  
[ANONYMITY ORDER MADE]**

Respondent

**DECISION AND DIRECTIONS**

**Anonymity order**

*Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) The Tribunal has ORDERED that no one shall publish or reveal the name or address of [initials] who is the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of him or of any member of his family in connection with these proceedings.*

***Any failure to comply with this direction could give rise to contempt of court proceedings.***

## **Decision and directions**

1. The Secretary of State appeals with permission against the decision of the First-tier Tribunal allowing the claimant's appeal against her decision to refuse him international protection or leave to remain in the United Kingdom on human rights grounds.
2. The claimant is a citizen of the People's Republic of China and his appeal was allowed under the Refugee Convention, Articles 2, 3 and 8 ECHR, and also under the Immigration Rules HC 395 (as amended).

### **Background**

3. The claimant entered the United Kingdom clandestinely in 2007, aged 29. His account was that when in China, his family owned a small farm and in 2003/2004, borrowed RMB 400,000 and acquired additional land to make two fish ponds, which the Chinese government sought to buy for road building. When the claimant's parents refused to sell, he says that in October 2004, the Chinese authorities poisoned the fish. The claimant, with the help of a friend, approached a loan shark to repay the money borrowed to buy the land.
4. When the local mayor and head man came to the house to try to force his parents to sign a contract to sell their land, his parents refused. Security staff slapped the claimant's father, and in anger, the claimant stabbed the mayor in the thigh. He then fled to Guangzhou, where he worked in a factory until he was abducted in a car and trafficked to the United Kingdom. The claimant feared harm from the government or from the loan shark, should he be returned to China.

### **Refusal letter**

5. The claimant benefits from a Conclusive Grounds decision by the respondent on 1 November 2018, which accepted that he is a victim of modern slavery, having been trafficked from China to the United Kingdom. I can find no copy of the Reasonable Grounds decision dated 7 April 2017 in the documents which were before the First-tier Judge and the Secretary of State's GCID, which would have the reasoning behind the Conclusive Grounds decision, was not disclosed.
6. In her refusal letter of 28 October 2019, the Secretary of State accepted at [53] that the claimant had provided a consistent and coherent account of his trafficking experience, which as Competent Authority she had accepted, and therefore accepted that the claimant was indeed a victim of trafficking. She also accepted that the claimant was a citizen of the People's Republic of China.
7. The Secretary of State rejected the claimant's account of his family problems, and his own problems, in China in 2004 and thereafter. She did so by reason of a number of disagreements with the claimant's account which are set out at [36]-[51] of the refusal letter. There are no findings

as to the claimant's credibility, but a number of internal inconsistencies were relied upon.

8. The Secretary of State accepted that the claimant had demonstrated a genuine subjective fear of the authorities and the loan shark if he were returned to China, but considered it not to be objectively well founded by reason of sufficiency of protection, and also because his account of problems with the authorities and the loan shark in China had been rejected. The Secretary of State considered that the claimant would have an internal relocation option in Beijing, away from any risk in Fujian.
9. In relation to Article 8 ECHR, the Secretary of State noted that the claimant had not resided in the United Kingdom and had not shown very significant obstacles to reintegration to bring himself within paragraph 276ADE(1)(iii) of the Immigration Rules HC 395 (as amended). Nor were there any exceptional circumstances for which leave to remain on human rights grounds or discretionary leave to remain should be granted. There was no mention in this part of the decision of the claimant's mental health issues or his having been a trafficked person.
10. The Secretary of State refused leave to remain and the claimant appealed to the First-tier Tribunal.

### **First-tier Tribunal decision**

11. The claimant was unfit to give oral evidence and the First-tier Judge decided the appeal on the basis of the written evidence before him. He found that the central core of the claimant's account was credible: he was a trafficked person who had been brought from China through Russia to the United Kingdom and was a victim of modern slavery. The judge found it likely that the background circumstances were as asserted by the claimant: that he had been trafficked in connection with the family's unpaid debt. The judge accepted the claimant's account of having attacked the village head with a knife when his father was slapped.
12. The First-tier Judge went on to make a brief but robust reference to the expert evidence of Dr Anthony Ahwe, Consultant Psychiatrist MBBS MRCPsych DPM and to the fragility of the claimant's mental health, as therein set out. Dr Ahwe found the claimant to be suffering from Major Depressive Disorder: his report does not reference the Istanbul Protocol, but the judge was entitled to give it weight. He also had regard to the Secretary of State's CPIN on China, in particular section on corruption and local politics, which was supportive of the claimant's account.
13. The First-tier Tribunal allowed the claimant's appeal and the Secretary of State appealed to the Upper Tribunal.

### **Secretary of State's appeal**

14. The Secretary of State challenged the First-tier Judge's failure to apply the 2009 country guidance in *ZC and others* and the adequacy of the First-

tier Tribunal's findings of credibility and fact, with particular reference to those made under Article 8 ECHR. The Secretary of State relied on the decision of the Upper Tribunal in *Budhathoki (reasons for decisions)* [2014] UKUT 000341 (IAC), arguing that the First-tier Judge failed to explain in clear and brief terms why the claimant's case was preferred to that of the Secretary of State.

15. Permission to appeal was granted to the Secretary of State on the basis that the First-tier Judge's reasoning was arguably inadequate; that he had arguably failed properly to apply the relevant country guidance or to provide a clear explanation of why he had departed therefrom; and that his assessment of the Article 8 ECHR claim was insufficiently reasoned.

### **Upper Tribunal proceedings**

16. Following triage directions during the COVID-19 pandemic period, the parties were invited to provide further written submissions. The Secretary of State chose not to do so, relying exclusively on her grounds of appeal, but reserving (which the directions did not) the right to make further submissions if the claimant responded.
17. The claimant's submissions assert that at [39]-[42] of the decision the First-tier Judge did provide an adequate explanation of the reason why he disapplied the country guidance in *ZC (Risk - illegal exit - loan sharks) China CG* [2009] UKAIT 28 and in *HL (Risk - return - snakeheads) China CG* [2002] UKAIT 03683. The claimant relies on *Terzaghi v Secretary of State for the Home Department* [2019] EWCA Civ 2017 as to the extent to which the Upper Tribunal should interfere with the reasoning of a First-tier Judge, and on *UT (sl) v Secretary of State for the Home Department* [2019] EWCA Civ 1095 and *AH (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49 to show that the Upper Tribunal should not interfere merely because it might have reached a different conclusion on the evidence before the First-tier Judge.
18. In relation to Article 8 ECHR, the appellant relied on *TZ (Pakistan) and PG (India) v Secretary of State for the Home Department* [2018] EWCA Civ 1109 at [34] in the judgment of the Senior President of Tribunals (Lord Justice Ryder, with whom Lord Justices Longmore and Moylan agreed) and contended that if the requirements of the Rules were met, the statutory presumptions in Part VA of the Nationality, Immigration and Asylum Act 2002 (as amended) did not apply. Having regard to the observations of the Senior President at [27], that is arguably a misreading of the ratio decidendi in *TZ and PG*.
19. Even if the statutory presumptions were applicable, the claimant argued that the First-tier Tribunal conducted the necessary broad evaluative judgment and that its decision should be upheld.
20. The Secretary of State did not take the opportunity to reply to the claimant's submission.

21. Neither the claimant nor the Secretary of State has submitted that a further oral hearing is required. I therefore proceed to determine this appeal on the documents before me, in accordance with the directions of Upper Tribunal Judge Mandalia.

## Analysis

22. The Secretary of State 's challenge is to the adequacy of the First-tier Tribunal's reasoning, failure to apply 2002 and 2009 country guidance, and to the adequacy of the First-tier Tribunal's credibility findings and approach to Article 8.
23. The claimant was referred into the NRM by the Salvation Army. The Secretary of State disclosed her positive Conclusive Grounds decision to the First-tier Tribunal, but that is of little assistance since the decision says no more than that 'there are conclusive grounds to accept your client is a victim of modern slavery'. The Reasonable Grounds decision is not disclosed, nor the GCID which would indicate what parts of the claimant's account was treated as reliable in reaching the positive Conclusive Grounds decision.
24. I remind myself that the appellant was present and gave evidence and that the First-tier Judge is the fact-finding judge. I may not go behind the First-tier Judge's findings of fact and credibility, save in the limited circumstances set out by Lord Justice Brooke in *R (Iran) v Secretary of State for the Home Department* [2005] EWCA Civ 982 at [90]. The First-tier Tribunal's reasoning must be *Wednesbury* unreasonable, perverse, or incomprehensible to the reviewing judge.
25. Neither the First-tier Judge nor the Secretary of State when arguing this appeal before the First-tier Tribunal had the benefit of the Supreme Court's decision in *MS (Pakistan) v Secretary of State for the Home Department* [2020] UKSC 9, as to the treatment of a Conclusive Grounds or Reasonable Grounds decision in international protection appeals. Giving the judgment of the court, Lady Hale JSC (with whom Lord Kerr JSC, Lady Black JSC, Lord Lloyd-Jones JSC and Lord Briggs JSC agreed) said that in the case of a negative NRM decision, it was for the fact-finding Tribunal to determine for itself whether a claimant was a victim of trafficking, and that the fact-finding Tribunal was in a better position to do so than the Secretary of State as Competent Authority.
26. In this case, however, the Secretary of State, in her role as Single Competent Authority, has made positive Reasonable Grounds and Conclusive Grounds decisions, applying the higher civil standard of balance of probabilities. She has accepted that this claimant is indeed a victim of trafficking. The Secretary of State's grounds of appeal did not deal with, or disclose, the Reasonable Grounds decision or the GCID record underlying the Conclusive Grounds decision.

27. Applying the lower standard in international protection claims, that of real risk or reasonable degree of likelihood, those findings must therefore be preserved. Absent the Secretary of State's reasoning in her Conclusive Grounds decision, it is very difficult to understand how she rejected the account of the claimant's troubles in China and how she considered that he had fallen into the hands of traffickers, if not because of the family debts and his attack on a local dignitary. It was unarguably open to the First-tier Judge to find that part of the account credible and to reach the conclusions he did as to credibility and fact.
28. I am not satisfied, on the limited evidence and argument which the Secretary of State has chosen to put before the Upper Tribunal, that the First-tier Judge erred in his findings of fact and credibility at an *R (Iran)* level or that I am entitled to interfere with those findings. If the First-tier Judge's findings of fact and credibility are accepted, the claimant's appeal was bound to succeed before the First-tier Tribunal.
29. I therefore uphold the decision of the First-tier Judge and dismiss the Secretary of State's appeal.

## **DECISION**

30. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of no error on a point of law

I do not set aside the decision but order that it shall stand.

Signed [Judith AJC Gleeson](#)  
Upper Tribunal Judge Gleeson

Date: 4 August 2020