



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Appeal No: PA/02927/2019

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 21 December 2023

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

Mr P T
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Gilbert, instructed by Milestone Solicitors

For the Respondent: Ms Isherwood, Senior Home Office Presenting Officer
(03/05/2023)

Mr E Tufan, Senior Home Office Presenting Officer
(14/12/2023)

Heard at Field House on 3 May 2023 and 14 December 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Keane, promulgated on 20 November 2019, dismissing his appeal against the decision of the respondent to dismiss his asylum protection appeal.
2. For the reasons set out in my decision of 5 October 2020, that decision was set aside to be remade in the Upper Tribunal. For a number of reasons, the hearing did not finally take place until 3 May 2023. Subsequent to that, further difficulties arose after I had dictated my decision on 21 May 2023, which resulted it being necessary to reconvene the hearing. The reasons for that are set out in some detail below.

The Appellant's Case

3. The appellant's case is that he is a Tibetan, raised in the Shigatse region of Tibet. He became committed to the cause of Tibetan independence, attending on 10 March 2006 a demonstration with his brother and others. His brother was arrested, and the appellant went into hiding, then travelled overland to India. While there, with the assistance of an agent, he obtained an Indian passport, and then applied for entry clearance to the United Kingdom as a student. That was eventually granted, and he travelled to the United Kingdom in February 2011. His leave was curtailed in 2013, but he was later granted leave to remain which was later curtailed in 2015. He claimed asylum on 24 October 2016.

The Respondent's Case

4. The respondent's case is set out in the refusal letter dated 4 March 2019. In summary, the respondent did not accept that the appellant is a citizen of China and concluded that the appellant's Indian passport was genuinely issued; that he is a citizen of India; and, is not a citizen of Tibet. He noted in particular inconsistencies in the appellant's account of where he and his parents were born, observing also that his Indian passport had passed checks in order that he be issued with a visa to the United Kingdom.

Procedural History

5. Owing to the prevailing situation in 2020, the determination of whether the First-tier Tribunal decision involved the making of an error of law was decided without a hearing. It was not possible to list the appeal to be remade until 10th November 2021 when it became necessary to adjourn it owing to the service of a witness statement only the day before the hearing which, it was accepted, was a fault on the part of the appellant's then solicitor. In consequence, the appellant's solicitors were served with a "show cause" notice requiring them to explain their failure to comply with directions.

6. A further hearing on 24 May 2022 had to be adjourned when, yet again, the appellant's solicitors (not the solicitors who had been acting on the previous occasion) served an additional bundle and an expert report a day before the hearing. Again, this was blamed on the appellant's solicitors and a further "show cause" order was issued.
7. On 21 July 2022 Upper Tribunal Judge Plimmer gave directions in this case for a consolidated bundle which had been prepared alongside a skeleton argument and a direction that the respondent produce a position statement in response to the bundle and skeleton argument from the appellant.
8. There was a further case management hearing on 27 October 2022 and further directions were given.
9. The matter was then listed for a case management review on 25 November 2022 at which it was agreed that the hearing would be "hybrid" in order to allow the attendance of five witnesses to be called in addition to the appellant. Directions were given for the appellant's solicitors to provide contact details for any witness for whom it is intended to call to give evidence via video link.
10. Although the appeal was set down for hearing on 21 February 2023, this was adjourned owing to delays in obtaining legal aid for and the commissioning an expert witness to prepare a report. In the event, the expert report from an expert in Indian nationality law was not served within the required time limit.
11. On 2 May 2023 the respondent contacted the Tribunal stating that they were unsure if the matter had been listed substantively or as a further case management hearing. They took note of the fact that the expert report had been served late and requested that the matter be pushed back until 12 noon.
12. Given the history of this case, the fact that the hearing notice was clearly marked for a hearing and the directions clearly expressed on several occasions that the time estimate of the hearing was one day, I do not understand how the Secretary of State could have thought that this was a case management hearing.
13. In the event, Ms Isherwood did not seek an adjournment save to another day but requested additional time to read the relevant papers, which was granted.
14. Subsequent to the hearing, and when considering my draft decision, I concluded that it would be necessary to obtain a translation of the appellant's "Green Book", a document issued by the Tibetan Government in exile which appeared to confirm the appellant's place of birth (see below). Directions to that effect were issued on 6 June 2023. Although there was compliance with those directions, the translation was difficult to understand, and I issued further directions seeking clarification on 24 July

2023. These were not, however, served until 6 September 2023, owing to an administrative error. Having then received a clarification as to the spelling of the appellant's date of birth, I concluded that it would be necessary to reconvene the hearing, directing that:

- (a) The appeal will be listed for further submissions, solely on the reliability of the Green Book (and the associated correspondence from the Tibetan Government Office in London, as evidence of the appellant's place of birth.
- (b) The time estimate is 1 hour.
- (c) No interpreter will be booked as there is no need for further evidence.

15. It was on that basis that the hearing was reconvened on 14 December 2023

The Hearing on 3 May 2023

16. I heard evidence from the appellant and two witnesses called on his behalf. In addition, I had the following before me:

- (1) Appellant's bundle.
- (2) Appellant's consolidated bundle.
- (3) Expert report from S M Puri.
- (4) Respondent's bundle.

17. The appellant gave evidence in Tibetan, adopting his three witness statements as examination-in-chief. He explained the three of the witnesses whose statements appear in the bundle Dhondup Tsultrim, Tenzin Dasang and Lobsang Thinlay were not present as they were at work and he could not get them here today. They explained that they had attended before to give evidence.

18. Asked about the Indian passport application he had signed, he said that the information in the form had been provided by the Home Office. He said he had provided the names of his parents as he was under pressure and just gave those names but did not recall giving addresses in India. He said he was just told to put his name and signature. He said that he had learned some English in India and had attended education in the United Kingdom but his English was not quite poor and so he could not complete the form.

19. Asked about the document which appears in the green book (an identity document issued by the Tibetan Government in Exile "TGIE")) he did not know why it had not been translated but said that it is issued by the government in exile and proves that he is Tibetan.

20. After some equivocation he explained that he was given the document after he had had a conversation with the representative of the government

in exile and had had to fill in forms. There had been a delay of some six to seven months between the interview and getting the book.

21. The appellant said that he obtained the letter from the Office of Tibet in London dated 13 December 2021 after telephoning them. He had shown his green book and was able to pick it up and they were satisfied that he was Tibetan having been shown the green book and having a conversation.
22. The appellant confirmed that when he had been questioned by Dr Tsering he had been asked lots of questions about Tibet but did not know if the answers were things that could be looked up. He said that he had been taught Tibetan by his parents.
23. The appellant said he had only claimed asylum when he did as, when he got here, he did not know the process and had been giving conflicting information. He had been told he would not be allowed to seek asylum here as he was carrying a valid Indian document.
24. The appellant said he had made contact with his aunt in Tibet. He had tried but not recently but that had been a long time ago. He had tried but could not get through. He said he tried to contact her by telephone and tried to contact her through the Tibetan Reception Centre in India but that it was extremely difficult to maintain contact with people in Tibet given the risk to those he contacted from the Chinese authorities. He accepted he had no evidence of his attempt to contact.
25. The appellant confirmed he had only attended one demonstration in Tibet and that he had made enquiries about his brother through the Tibetan reception centre but without success. He had last tried to make contact with his brother from India in 2011 but could not contact his mother, outside contact being very dangerous from families.
26. The appellant said he had been living in India for about five years saying it was not a conscious decision to come to the United Kingdom but it was an agency. It was up to them and so he was sent here. He said he had not worked in India but had studied a little English, living in rented accommodation paying the rent through selling some antique jewellery he had been given which he had sold. He said that it was his agent who sent him to the United Kingdom and that it was not his choice to come here. He denied being in fact an Indian citizen.
27. He denied that his account of events in Tibet were vague and lacking in detail.
28. The appellant said that he had no documents to show that he was Tibetan as he had left with is just clothes and barely with his life. He said that the Indian passport was obtained through bribery, first instalment made when the documents were prepared and second was just before his flight to the United Kingdom. He did not recall when the first attempt to make a visa was.

29. The appellant said that he had two items of Tibetan jewellery known as gzhi. He sold one and kept the second round his neck and then sold that later. The first had been used to pay for the first sum and the second to pay for the second instalment and that all his expenses in India came from the sale of his jewellery. He confirmed that the balance from the sale of the first stone was enough to live on for four years and that he could live very cheaply in India confirming that he kept the money in cash.
30. In re-examination the appellant said that the Tibetan reception centre had been set up by the government in exile to inspect those who arrive in India. In response to my questions the appellant said that he decided to live in India but within less of her year of arrival but he said there was not any pull to stay. He has been persuaded that his future would be most stable if he left, which is why he chose to do so. He said he was too scared to claim asylum.
31. The appellant said that his decision to attend the demonstration was in Shigatse was spontaneous and he had been in that town, visiting. His aunt's house was about 40 minutes away by walk and he had stayed there until late at night.
32. The appellant confirmed he had not had any identity document on him when he went to the demonstration. He said usually did not travel around without documentation and not having so was risky but it was also risky if you did have a document as they could trace the family straight away if arrested.
33. The appellant, when asked about leaving the United Kingdom, said that he had thought of claiming asylum but thought he was not eligible to do so as their eyes he had an Indian passport. He said he had been home schooled in Tibet and had learned to read and write in that language and had never studied Chinese.
34. I heard evidence from Tensing Bhattachan who adopted her witness statement confirming that she was now a British citizen having previously had refugee status. She said the appellant had lived with her since 2011. She was aware of his situation and had advised him to claim asylum but he was afraid as he has a student visa. She said she had advised him to go elsewhere and seek asylum and he had decided to leave in 2016.
35. Cross-examined Ms Bhattachan said that she had claimed asylum on the basis she had fled Tibet. She had travelled first to Nepal and from there to the United Kingdom and had never returned since leaving . She did not contact anyone there and her parents were dead. It was put to her that apart from being Tibetan herself she had no experience to confirm that the appellant is Tibetan. She said that his language, his knowledge of Tibet, whereinafter to satisfy her. She had not told him, she had assisted him to leave the country to claim in Europe and she had not told him about the asylum system in the United Kingdom. She denied knowing that he was in fact actually Indian. She was, however, unable to explain why it was she

thought that he could not claim asylum having coming here with a student visa.

36. In response to my questions she said that she did not at any time think that he was not brought up in Tibet.
37. I then heard evidence from Mr Dorjee who adopted his witness statement confirming he had obtained British citizenship having previously been a refugee. He said he had only learnt about the appellant's status in the United Kingdom about 2020. They had met about five years previously. Mr Dorjee had been living in Salisbury at the time and didn't ask too many questions but did recall if he knew about his asylum and immigration status after he had claimed asylum. He said he accepted that the appellant is Tibetan based on language, shared culture and things that they share but that he had no qualifications other than being Tibetan. So it was possible to tell whether someone is Tibetan or not even though they came from different parts of that territory.
38. Ms Isherwood submitted that neither the appellant nor the witnesses were credible. She drew attention to the fact that the green book had never been translated and that the office in London had failed to explain how he had been properly identified, his being Tibetan. There is simply no evidence as to what. She submitted further the letter from Dr Tsering did not comply with any of the necessary requirements that, for example, a report from **Sprakab** would need and lacked detail. She accepted that the appellant spoke Tibetan but that his whole account of what had happened there was lacking in any detail. The appellant had also been evasive about his circumstances in India and could not give clear evidence of what he was doing there.
39. She submitted that there was nothing to show that the appellant's name, as indicated on the passport and passport form and the details given for his parents were incorrect.
40. Ms Isherwood submitted that it was simply incredible that the appellant could not have known how to go about claiming asylum.
41. Turning to the expert report, she submitted that it was defective in that it fails to comment on whether what the situation would be if the appellant's parents had been Indian and that there is therefore no analysis of the possibility that the appellant had acquired citizenship by descent. Mr Gilbert submitted that the expert evidence showed clearly that it was possible to obtain an Indian passport fraudulently.
42. Mr Gilbert submitted that the attacks on the appellant's credibility, as set out in the refusal letter, should carry little weight. He submitted that the application for the passport made to the Indian authorities is undated but that it appears that this was an internal document and that the appellant had been assisted by the respondent to complete the application form. This was consistent with the Immigration Officers and notebook which set out what had happened to the appellant when he was arrested.

43. Mr Gilbert submitted that the appellant had not in fact given an inaccurate or inconsistent account of how he had travelled from Tibet to Nepal nor was he inconsistent on the selling of the dzhi.
44. Mr Gilbert submitted that the witnesses were truthful and that there was no reason to doubt their ability to know, as Tibetans, that the appellant was also Tibetan. Although he accepted that there were difficulties with the latter from Dr Tsering, all the evidence points in one direction, that is that he is a native speaker.
45. Mr Gilbert submitted that it was unlikely that the appellant had acquired citizenship by birth given the difficulties that existed for Tibetans in that position, and it was unlikely that his parents would have acquired Indian nationality, there being no indication as to how they would have been able to do so. Further, the first Tibetan to be given an Indian passport had been an exceptional and motivated person, succeeding only after protracted litigation after the appellant had left India.

The hearing on 14 December 2023

46. I heard submissions from Mr Gilbert and Mr Tufan. Mr Gilbert submitted that, on the evidence of the Green Book, the appellant was born in Tibet, not India. The Green Book, and the accompanying letter, taken together, were reliable evidence that the appellant was born in Tibet. In the light of the expert evidence, there was no legitimate basis on which the appellant could have acquired Indian nationality and is a citizen of China. On that basis, and in the light of the CPIN China: Opposition to the State at 2.4.28 and SP and Others (Tibetan - Nepalese departure - illegal - risk) People's Republic of China CG [2007] UKAIT 0002, the appellant had a well-founded fear of persecution.
47. Mr Tufan submitted that the evidence of the Green Book was not reliable, applying the principles set out in Tanveer Ahmed. He drew attention to the date of issue of the Green Book, and that it was unclear how the information was verified. He submitted also that adverse inferences could be drawn from the Office of Tibet's statement that they would not attend court hearings to give evidence.

The Law

48. It is for the appellant to show, on the lower standard, that he has a well-founded fear of persecution in the country or countries of which he is a national; or, that to return him there would be in breach of the United Kingdom's obligations pursuant to article 3 of the Human Rights Convention; or, that to do so would be in breach of his other rights under that convention, in particular Article 8 thereof.
49. The core issue in this case is whether the appellant is in fact an Indian citizen. If he is, then it is for him to show why he cannot safely return to India. If he is not, and was in fact born in Tibet, it follows that he would be

a citizen of China. The issue would then be whether he would be at risk if returned there.

50. It is not in dispute that the appellant has in the past held an Indian passport which he says was obtained by fraud. The respondent's case is that the appellant is a citizen of India and that the passport was properly issued. It is, in this case, for the appellant to demonstrate that he is not a citizen of India.
51. In Hussein and Another (Status of passports: foreign law) [2020] UKUT 250 (IAC), the Upper Tribunal stated:
- 1. A person who holds a genuine passport, apparently issued to him, and not falsified or altered, has to be regarded as a national of the State that issued the passport.*
 - 2. The burden of proving the contrary lies on the claimant in an asylum case.*
 - 3. Foreign law (including nationality law) is a matter of evidence, to be proved by expert evidence directed specifically to the point in issue.*
52. Unlike in that appeal, however, I have been provided with expert evidence on the law of India.

Assessment of the evidence - Credibility

53. In assessing the appellant's credibility, I bear in mind that the events that occurred in Tibet were, on his account, events which occurred some seventeen years ago. It is not in dispute that he has been living in the United Kingdom for twelve years. I bear in mind also that his testimony must be seen in the light of the psychiatric report from Dr Dhumad albeit that that report is now three and a half years old. I note that the appellant is recorded as feeling low and anxious [9.7] and had been in August 2019 prescribed Sertraline for depression. Dr Dhumad opined [13.1] that the appellant's presentation is consistent with a diagnosis of a moderate depressive episode. What he does not do is set out how this may affect the appellant's ability to recall or to be consistent in his evidence. The nearest he comes to it is "his concentration is poor, due to anxiety and distress. He is also worried that he would be killed if he returned." [12.3]. There is no more recent medical evidence nor anything from the GP more recent than this.
54. Further, this medical report does not appear to record the appellant's evidence in his witness statement of 25 September 2019 or that he had become paranoid [10] or that he has become more paranoid and depressed. Again, there is no evidence more recent on the appellant's medical evidence regarding the appellant's mental state beyond this.
55. The respondent challenges the appellant's credibility for a number of reasons set out in the refusal letter. The first [29] is the appellant was unable to give the name, having said that he was born on the seventeenth

day of the fifth Tibetan month, to give the name of that month, it being observed also the Tibetan calendar does not have a seventeenth day in the fifth month. This is not explained by the appellant.

56. Much of the remainder of the challenge to the appellant's credibility relates to the Indian passport application which appears in the respondent's bundle. There is an application for an Indian passport and also a document entitled "information required for online nationality verification module". The latter appears to be an internal Home Office document. This is not, however, signed by the appellant but the personal details correspond to those given on the application for an Indian passport and, importantly, the details set out in the Indian passport issued to the appellant, a copy of which appears in the respondent's bundle. It would appear that a copy was retained by the respondent as the appellant had made three visa applications, one of which was successful and two applications for further leave to remain in the United Kingdom as a student. The details of the parents' names appear also in the application forms, The address given, is that given for the appellant in the Visa Application Form. The same is the case with the telephone number.
57. The provenance of the Indian passport application form is unclear. It is plausible that a blank form was obtained by the Secretary of State in order to document the appellant and remove him to India, the details being completed from existing records. It is unlikely that the appellant would have recalled his passport number which is given on the form or would have recalled the date of issue and expiry, and I consider it more likely that these details were obtained by the respondent from her own records.
58. The appellant's case is that he did not write the information on the relevant pages, and that it was done by the respondent's officials, taking the details from their records, and that on that basis, weight cannot properly be attached to inconsistencies between what the document records and what he now says is the true position of his parents.
59. I am satisfied that what happened is that the appellant went along with the documentation process. That is consistent with what he is recorded as saying when apprehended.
60. I do, however, draw inferences adverse to the appellant from the fact that he did sign the document as being truthful and at the very least he clearly went along with the documentation process, persisting in something which he now says is untrue.
61. I attach little weight to the document entitled "information required for online nationality verification module", given that it records the languages being spoken as only Punjabi and English, given that he does not recall that the appellant speaks Tibetan, which is not something in doubt. That in turn causes me to conclude that this document was prepared not by the appellant. In any event, it was not signed by him.

62. Turning next to the challenges around the attendance at the demonstration in Tibet, I considered that the appellant's account of this demonstration is vague. Even accounting for the fact that it took place seventeen years ago. That there is no record of a protest taking place other than in Lhasa on that day, is not evidence that it did not take place. But the lack of detail and the spontaneous nature of the demonstrations appears unusual, as does the appellant's sudden decision to attend the demonstration. I do however draw no inferences adverse to the appellant from his evidence that if arrested at the demonstration he would face serious consequences as that is consistent with the background information. Equally, it is surprising the appellant could not recall any detail about the uniform that the men were wearing, whether they carried weapons or whether they used vehicles.
63. I note that there is an inconsistency between the appellant's letter written and signed on 20 October 2016, the initiation office claim for asylum, with his statement he did not know what had happened. This is not explained adequately.
64. I do, however, draw no inferences adverse to the appellant from his account of his journey from Potang to Kathmandu on foot, given that that is not what he said. He said he went part of the way in a lorry covered by a tarpaulin and thus there is no inconsistency. Similarly, there is no inconsistency with the appellant being able to cross a border without guards as these clearly were referring to the border between Nepal and India at that point.
65. That said, the evidence of how he was able to survive in India by selling jewellery to pay firstly for his passport and then to be smuggled to the United Kingdom makes little or no sense. The appellant's account of how he was able to live in India for some four to five years between 2006 and 2011 lacks credibility; he was unable to explain how much was left after he had sold the first piece of jewellery and paid for the passport and how he was able to rely on the balance for some four years before selling another piece of jewellery to pay eventually for his flight from India.
66. I find further the appellant's evidence that he did not know where he was going on leaving India, implying that he had no choice about where he was going is implausible given that he was paying an agent a substantial sum of money in a process which took years to achieve. While an agent might have that degree of control over someone who is being held and smuggled, or who is in fear of imminent danger, that was clearly not the case here. The appellant was living in India, in contact with the TGIE who were assisting him. The background evidence demonstrates that many thousands of Tibetans live in India and have done for many years and the appellant was unable properly to explain why he decided to leave that sort of environment to travel, using false documents, to study in the United Kingdom in what could only be a precarious situation. I find that the appellant has not told the truth about this in an attempt to cover up the

true circumstances of his decision to leave India and travel to the United Kingdom.

67. Whilst I note that the Immigration Officer's book, copies of which appear in the respondent's bundle are not signed, there is no reason to doubt that what is recorded there is inaccurate. The appellant accepts that he was trying to leave the United Kingdom and he accepts in one of his statements that he did not tell the truth, out of fear, stating that he was going to Portugal to visit friends and then return to India. Again, that makes little sense if the appellant is in fact Tibetan, but it is consistent with the appellant not telling the truth about what why he is now is seeking to cover up the truth.
68. If what the appellant says is true, then he had since he left Tibet, in 2006, a well-founded fear of persecution if returned there. What he has not done is explain why, despite that fear, he chose to leave India where he was relatively safe (albeit that he would not have been recognised as a refugee) and travelled to live in the United Kingdom where he had a precarious existence as a student, twice having his leave curtailed. I do not accept the explanation that he thought that it would be a better base for him and that again is inconsistent with his statement that he did not know where he was going and he was effectively in the hands of an agent.
69. Despite Ms Isherwood's submissions, I did not find either of the witnesses to be lacking in credibility. Whether, and to what extent, their evidence is reliable is another matter. It is not in dispute that either of the witnesses are native born Tibetans who obtained refugee status and subsequently were naturalised as British citizens. They thus speak Tibetan and I have no reason to doubt that they are fully conversant with their culture, no doubt that they were, having been brought up there, used to Tibetan culture. Neither had any doubt that the appellant was a native Tibetan speaker, and knew of their culture and common customs and the things that they shared.
70. Whilst this is not expert evidence, per se, it is a factor which can be given weight. It is, to say the least, improbable that somebody who was not Tibetan or brought up in a Tibetan community would have acquired the language to a native level of fluency such as would persuade a native Tibetan that he also was a native Tibetan. Their evidence is also consistent with that of Dr Tsering although I find that little weight beyond stating that he is a native Tibetan speaker can be attached to his letter given the lack of detail one would expect and from such a report. There is no reference to the morphology, syntax, phonology or vocabulary of the appellant's speech which indicate that he or she is of a specific origin within Tibet. (see ASA (Bajuni: correct approach; Sprakab reports) Somalia CG [2022] UKUT 222 at headnote para 2).

Green Book

71. The appellant produced in support of his application a document known as a "Green Book". For some reason, as noted above, neither party saw fit to have this document translated even though it bears a photograph and what appears to be identity details, until I gave directions to that effect.
72. It appears from the translation that the appellant was born in "Gyantse" which is an alternative spelling for "Gyaltse", a town in Shigatse province in Tibet. That is consistent with the appellant's account of where he was born. The date of birth given is 17 February 1986.
73. The email from the Office of Tibet, 20 May 2022, states that the appellant was identified as a bona fide Tibetan by the Office of Tibet based on the presentation of a Tibetan Green Book in his name "which was then verified against the database maintained by the central Tibetan administration (CTA), Dharamsala, India". An earlier letter dated 13 December 2021 simply states that he is a bona fide Tibetan living in London. The letter of 27 October 2016 adds little or nothing to that.
74. In assessing this document, I have applied the principles set out in *Tanveer Ahmed*, but bearing in mind that the authenticity of the document has been confirmed in a letter to the appellant's solicitors.
75. I have no reason to doubt the authenticity of the letter and email from the Office of Tibet. The request was made from the appellant's solicitors direct to them and there would appear to be no reason why the Tibetan office would not tell the truth or not properly have verified the appellant's Tibetan Green book. Importantly, there is reference to checks made with the office in India, where the Tibetan government in exile is based. I draw no adverse inferences, as a result, from the date of issue of the document. Nor from the fact that it expires and is also a record of donations made by the holder.
76. I note that the Office of Tibet has said that they do not attend court hearings to give evidence. That is a matter I consider to be neutral; there may well be policy reasons why they do not do so, rather than because they doubt what they have said.
77. Taking these considerations into account, I consider that the Green Book is reliable evidence, given the checks undertaken, and that weight can be attached to it as evidence that the appellant was, as he says, born in Tibet.

Expert Report on Nationality

78. I have considered carefully the report of Mr Puri who I find is entitled to be treated as an expert on Indian nationality. The report set out in detail the possible way by which an individual may acquire Indian citizenship either by birth, descent, registration, naturalisation or incorporation of territory.

79. Much of the report is based on the assumption, entirely understandably, that the appellant has told the truth. I accept that, on the basis of Mr Puri's report, that it is entirely possible for an individual, given money, to obtain an Indian passport by fraud, frequently by bribing officials to produce the relevant documents necessary in order to make an application for a passport which may then be issued and indeed speedily and with its issue expedited or facilitated again by bribery such that an individual acquires what appears to all intents and purposes to be a validly issued Indian passport. There are a significant number examples of this occurring. Mr Puri says [52] "obtaining birth certificates which were a primary document for establishing identity, place and date of birth is not at all difficult. As part of the verification work done by me in my office, we have seen forged and falsely obtained birth certificates, school certificates, photo cards, ration cards etc from all parts of India."

80. Mr Puri sets out in some detail the issues faced by Tibetans in obtaining Indian citizenship although, in theory, if born in India prior to 1986, he states:

"90. Until very recently, the policy of the Indian government was not to recognise citizenship for Tibetans, even those who qualified under the (Indian) Citizenship Act. The provisions of Section 3 of the Citizenship Act of 1955 appear to offer at least a proportion of Tibetans in India access to citizenship. However, it has been extremely difficult for Tibetans in India to acquire passports and prove their citizenship statuses. This inability of Tibetans even those born in India between 1950 and 1987 to receive citizenship has continued despite various High Court rulings entitling them to citizenship."

He continues to state that the government of India has refused to apply the case law to anyone other than the named plaintiffs in the case and that about only 300 or so Tibetans have received Indian passports, the first being Namgyal Dolkar, an ethnic Tibetan born in India in April 1986, succeeding only in 2011. It is not in doubt that the appellant's passport was issued in 2007. I have no reason to doubt Mr Puri's evidence on this point.

81. What Mr Puri's report does show is that those Tibetans born in India between 26 January 1950 and 1st July 1987 are citizens by birth and they have a consequent right to Indian citizenship. "However, Tibetans born in this timeframe do not have the full ability to exercise the de jure rights to which all Indian citizens are entitled including securing a passport for travel."

82. If, however, the appellant was not born in India, then on the basis of Mr Puri's expert evidence the appellant could not have acquired Indian nationality by birth, absent the somewhat fanciful possibility that his parents had Indian nationality prior to his birth, and having travelled to Tibet where the appellant was born. Ultimately, the question of whether the appellant is an Indian national depends on it being shown that he was not born in India or was born in India prior to 1987.

Conclusion on nationality

83. The appellant is not, for the reasons given above, a credible witness. It is thus difficult to attach weight to his evidence unless it is confirmed by other sources.
84. The evidence that the appellant is of Tibetan ethnicity is substantial. He speaks Tibetan fluently, has conducted all his Home Office interviews, and was cross-examined twice in that language. He is believed to be Tibetan by Tibetan friends, and his ethnicity (and position as a Tibetan) has been confirmed by the Tibetan Government in exile. For the reasons given above, I am satisfied that these are reliable sources, and given how the documents have been obtained and verified, having had regard to Tanver Ahmed, I am satisfied that weight can be placed on them, the appellant's credibility notwithstanding.
85. In opposition to that, there is the appellant's India passport which, he submits, was obtained by fraud. I accept that is possible, given Mr Puri's evidence, and also that, if born in India, the appellant may be entitled de jure to Indian nationality. That could have occurred if he was born there to Tibetan exiles, and thus grew up in that culture and speaking Tibetan in the dialect of his parents.
86. I bear in mind also that, if not born in India, then, on the basis of Mr Puri's evidence, it is very unlikely indeed that the appellant had lawfully acquired Indian nationality on any basis.
87. Taking these factors into account, I am persuaded on the balance of probabilities that the Indian passport was obtained by fraud, given it was issued in 2007, 4 years before, on the evidence the first Indian of Tibetan origin was granted one officially. That, in my view, indicates also that the evidence of the appellant's place of birth, and that of his parents, and so on, is unreliable.
88. I am persuaded also, on the balance of probabilities, that the appellant was born in Gyantse, Tibet, as confirmed by the Green Book, and that he is not an Indian citizen as the evidence indicates no mechanism by which he could have achieved that. I am satisfied that the appellant is a citizen of China, and it is on that basis that his claim for asylum must be considered.

Risk of persecution

89. The question then arises whether the appellant has a well-founded fear of persecution in China. In the light of what is said in the CPIN referred to at [46] above, and the evidence of the appellant's pro-Tibetan activities over an extensive period including outside the Chinese Embassy, which I accept and was not disputed by Mr Tufan, I find that there is a real risk that he would be at risk of persecution on account of his political opinion if returned to China. That was, in effect, accepted by Mr Tufan.
90. **Conclusion**

91. For the reasons set out above, the appellant has demonstrated that he is not a citizen of India but is a citizen of China. He has also demonstrated that he has a well-founded fear of persecution on return there, and that his removal would be in breach of the United Kingdom's obligations pursuant to article 3 of the Human Rights Convention. As the appellant has shown that he is a refugee, he is not entitled to Humanitarian Protection and I therefore formally dismiss his appeal on that basis.

Notice of Decision

- (1) The decision of the First-tier Tribunal involved the making of an error of law, and I set it aside.
- (2) I remake the appeal by allowing it on asylum and human rights grounds.
- (3) I dismiss the appeal on humanitarian protection grounds.

Signed

Date: 15 December 2023

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul

ANNEX – ERROR OF LAW DECISION

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

Appeal Number: PA/02927/2019

THE IMMIGRATION ACTS

**Decided under Rule 34 Without a Hearing
At Field House
On 5 October 2020**

**Decision & Reasons
Promulgated**

.....

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**P T
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Keane promulgated on 20 November 2019, dismissing his appeal against a decision of the respondent to dismiss his asylum and protection appeal.
2. The appellant's case is that he is a Tibetan, raised in the Shigatse region of Tibet. He became committed to the cause of Tibetan independence, attending on 10 March 2006 a demonstration with his brother and others. His brother was arrested, and the appellant went into hiding, then travelled overland to India. While there, with the assistance of an agent, he obtained an Indian passport, and then applied for entry clearance to the United Kingdom as a student. That was eventually granted, and he travelled to the United Kingdom in February 2011. His leave was curtailed in 2013, but he was later granted leave to remain which was later curtailed in 2015. He claimed asylum on 24 October 2016.

3. The respondent did not accept that the appellant is Tibetan, noting inconsistencies between his account of where he and his parents were born and what is recorded in his Indian passport. She also noted that he had applied for visas on 29 February 2008 and 7 January 2009, both of which had been withdrawn, and then again on 11 February 2011, an application which was successful.
4. The respondent did not accept his account of having attended a demonstration in Tibet, nor that his attendance at demonstrations in the United Kingdom would have brought him to the adverse attention of the Chinese authorities.
5. At the hearing before the First-tier Tribunal, the appellant gave evidence in Tibetan. The judge also had before him, a bundle of evidence prepared by the appellant's representatives, including a report from Dr Dhumad who diagnosed the appellant as suffering from unusable mental health, moderate depression and a moderate risk of suicide.
6. The judge considered that the identity of who made the first visa application and whether the appellant had a bank account in India were important issues. He concluded [8+] that the appellant had not been consistent about who had made the first visa application, giving accounts that could not be reconciled and then under re-examination resiling from earlier evidence. The judge also found [9] that the appellant had been inconsistent in his oral evidence with the records made by an Entry Clearance Officer in 2011.
7. The judge drew further inferences adverse to the appellant's credibility from the circumstances of his arrest while trying to leave the United Kingdom [10] and for the delay in making a claim for asylum [11].
8. The judge did not attach weight to the report from Dr Dhumad as they were predicated on the appellant's account of events in Tibet being credible [12].
9. The judge found [13] that the respondent had shown on the balance of probabilities that the appellant is an Indian national and entered the United Kingdom using a validly issued Indian passport and that the Indian authorities would have no interest in him on return.
10. The appellant sought permission to appeal on the grounds that the judge had erred:
 - (i) In his assessment of Dr Dhumad's evidence, appearing to have reached conclusions as to the appellant's credibility before going on to reject it, contrary to Mibanga v SSHD [2005] EWCA Civ 367;
 - (ii) In failing to raise in the hearing apparent inconsistencies which were, in any event, not inconsistencies with regard to who completed the visa application and whether or not he had a bank account;

- (iii) In drawing inferences adverse to the appellant pursuant to section 8 of the Asylum (Treatment of claimants, etc) Act 2004 without considering the evidence in the round
 - (iv) In applying the wrong standard of proof to the issue of the appellant's nationality, the correct test being for the appellant to establish to the lower standard his nationality; and,
 - (v) in assessing that, had wrongly attached weight to the respondent's evidence and had not taken into account the appellant's evidence that the passport had been obtained by an agent through bribery; and, in failing to take into account the appellant's proficiency in Tibetan
11. On 15 May 2020 Upper Tribunal Judge Coker granted permission to appeal, stating that it was arguable that the judge had failed to consider all the evidence including the account the appellant had given to Dr Dhumad, but noting that the judge had applied to correct standard and burden of proof.
12. Subsequent to the grant of permission, the Upper Tribunal made directions in this case on 4 May 2020 which provided:
- 1. I have reviewed the file in this case. In the light of the present need to take precautions against the spread of Covid-19, and the overriding objective expressed in the Procedure Rules¹, I have reached the provisional view, that it would in this case be appropriate to determine the following questions without a hearing:
 - (a) whether the making of the First-tier Tribunal's decision involved the making of an error of law, and, if so
 - (b) whether that decision should be set aside.
 - 2. I therefore make the following DIRECTIONS:
 - (i) The appellant may submit further submissions in support of the assertion of an error of law, and on the question whether the First-tier Tribunal's decision should be set aside if error of law is found, to be filed and served on all other parties no later than **14 days after this notice is sent out** (the date of sending is on the covering letter or covering email);
 - (ii) Any other party may file and serve submissions in response, no later than **21 days after this notice is sent out**;
 - (iii) If submissions are made in accordance with paragraph (ii) above the party who sought permission to appeal may file and serve a reply no later than **28 days after this notice is sent out**.
 - (iv) All submissions that rely on any document not previously provided to all other parties in electronic form must be accompanied by electronic copies of any such document.

¹ The overriding objective is to enable the Upper Tribunal to deal with cases fairly and justly: rule 2(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008; see also rule 2(2) to (4).

3. Any party **who considers that despite the foregoing directions a hearing is necessary** to consider the questions set out in paragraph 1 (or either of them) above must submit reasons for that view no later than **21 days after this notice is sent out** and they will be taken into account by the Tribunal. The directions in paragraph 2 above must be complied with in every case.
4. If this Tribunal decides to set aside the decision of the First-tier Tribunal for error of law, further directions will accompany the notice of that decision.
5. Documents and submissions filed in response to these directions may be sent by, or attached to, an email to [email] using the Tribunal's reference number (found at the top of these directions) as the subject line. Attachments must not exceed 15 MB. This address is not generally available for the filing of documents. Service on the Secretary of State may be to [email] and to the original appellant, in the absence of any contrary instruction, by use of any address apparent from the service of these directions.
13. There was no response and further directions were issued on 13 July 2020 restating the directions given on 4 May. Neither party has responded to either set of directions.
14. The Tribunal has the power to make the decision without a hearing under Rule 34 of the Procedure Rules. Rule 34(2) requires me to have regard to the views of the parties. Given that no objection to this course of action has been raised, and bearing in mind the overriding objective in Rule 2 to enable the Tribunal to deal with cases fairly and justly, I am satisfied that in the particular circumstances of this case where no objection to a decision being made in the absence of a hearing that it would be right to do so.
15. The core issue in the appeal was the appellant's nationality. It must be borne in mind that the appellant said that he owns an Indian passport (witness statement, [3]) which was utilised to enter the United Kingdom. It would appear that this passport was used not only to obtain a visa in 2011, but also to obtain an extension of leave in the United Kingdom. The appellant's case is, therefore, that the passport was fraudulently obtained and that he has no right to Indian nationality, despite the existence of that passport in his name.
16. Contrary to what is averred, it was for the respondent to show that the appellant was Indian on the balance of probabilities. Further, even had the appellant shown he is Tibetan (and thus a Chinese citizen), that does not mean he is not a national of both states.
17. In addition, in Hussein and Another (Status of passports: foreign law) [2020] UKUT 250 (IAC), the Upper Tribunal held this:
 1. *A person who holds a genuine passport, apparently issued to him, and not falsified or altered, has to be regarded as a national of the State that issued the passport.*

2. *The burden of proving the contrary lies on the claimant in an asylum case.*
3. *Foreign law (including nationality law) is a matter of evidence, to be proved by expert evidence directed specifically to the point in issue.*
18. It follows from this that the credibility of an appellant who asserts he is not a national of a state that issued a passport to him is of central importance.
19. With regard to ground (1), the judge does appear to have fallen into the error of reaching conclusions as to credibility without taking into account Dr Dhumad's report. The issue then is whether that was material.
20. The judge rejected the conclusion that the appellant has depression and moderate suicidal tendencies but that is not necessarily material.
21. It is argued that it should have been taken into account in assessing whether the appellant's account was correct; Dr Dhumad does not, however, opine as to the appellant's ability to recall events. He does, however at [13.6] state that the appellant is a vulnerable adult with depression and thus adjustments be made to help him participate in the hearing. There is no proper indication that this was not done or that the appellant was disadvantaged at his hearing owing to his health.
22. Whilst I accept that a doctor may, following the Istanbul Protocol, make weighty observations on the wider context of an injury that is not what is argued here. In this case the challenge is not that the judge did not take into account the observation at [13.4] that the appellant's clinical presentation is compatible with the experience of intense fear of expected threat to life.
23. Turning next to ground (ii), as regards the accounts said to be irreconcilable at [8], the inconsistency is predicated on whether the interview "Interview Date scheduled for 29.02.08" took place. It is odd that his appears in a field relating to 5 March 2008 which sets out, in brief, the points that needed to be checked. It does not follow that an interview took place. It is also of note that very shortly thereafter the application was deferred. There is no indication of what information was obtained at the interview, if it was held.
24. Further, what are said to be different accounts of whether he had a bank account in India or not, are not borne out by the evidence as recorded by the judge. Paying for a visa, and having money in a bank account are not the same thing. Had the appellant been directly asked "Do you have a bank account?" and he had said "No" then there would be a clear inconsistency. But that is not what was asked, and it does not appear to be recorded if he could account for the £10,000 in the account submitted to the Entry Clearance Officer; and, it appears his evidence was that the account was not his.
25. As to ground (iii), it appears that in his assessment at [11] of the reasons the appellant attempted to leave the United Kingdom, the judge did not

take proper account of the appellant's statement that he was afraid that the Indian authorities would remove him to Tibet.

26. As to ground (iv), while I am not satisfied that the judge applied an incorrect standard and burden of proof, he did not take into account that the appellant speaks Tibetan. That is not determinative but it is material.
27. Taking these factors into account, cumulatively, I am satisfied that the credibility findings were flawed to such an extent that the findings are undermined materially. The decision involved the making of an error of law as claimed. None of the findings of the First-tier are preserved.
28. I have considered whether to remit this appeal, but I am not satisfied that it is in the interests of justice to do so.

Notice of Decision

- 1 The decision of the First-tier Tribunal did involve the making of an error of law and I set it aside.
- 2 I direct that the decision be remade in the Upper Tribunal on a date to be fixed. As an interpreter will be needed, I consider that a face to face hearing is required.
- 3 Any party wishing to adduce further evidence must make an application pursuant to rule 15 (2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 at least 10 working days before the hearing.

Signed

Date 5 October 2020

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul