



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**

Case No: UI-2023-002844

First-tier Tribunal Nos:  
PA/51421/2022  
IA/03817/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 8<sup>th</sup> of February 2024

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN**

**Between**

**BYW**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr E. Waheed, counsel instructed by Lisa's Law Ltd  
For the Respondent: Mr Basra, Home Office Presenting Officer

**Heard at Field House on 12 January 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) 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 (*and/or other person*). Failure to comply with this order could amount to a contempt of court.**

## **DECISION AND REASONS**

1. The Appellant is a national of China, born in 1975. She was trafficked into the United Kingdom in December 2013, arranged by a people trafficker to discharge a loan incurred by her husband and she was thereafter trafficked into prostitution. Following a raid on the brothel where she was held the Appellant was liberated. She subsequently claimed asylum on the basis that she continued to fear the loan sharks she believed were responsible for trafficking her to the United Kingdom. It was accepted that she is a victim of modern slavery, following a referral to the Competent Authority on 27 January 2022, however, her application for asylum was refused. She appealed and her appeal was dismissed but following an application for permission to appeal to the Upper Tribunal, I found an error of law in the decision of the First tier Tribunal and issued a decision and reasons to this effect on 10 October 2023 (appended).
2. The appeal came before the Upper Tribunal for re-making as a hearing *de novo* other than an argument relating to the Appellant's membership of a political party which had not been challenged.

### *Hearing*

3. The Appellant gave evidence, with the assistance of a Mandarin interpreter and adopted her statements of 1 June 2020, 9 June 2022, corrections to her asylum interview record of 10 March 2022 and an updating statement of 20 May 2023.
4. In cross-examination, the Appellant confirmed that she had an urban *hukou* registration card, relating to Shenyang city in Liaoning province, but she had left it in China when she came to the UK in December 2013. She confirmed that she had had no contact with her husband since that time. It is recorded in her asylum interview record at RB 57, Q75 that she provided her husband with money until 2017, however, the Appellant responded that this was a mistranslation as she had had no contact with him since she left the country and had not given him any money since then. She confirmed that China has a different, lunar, calendar alongside the Gregorian calendar and this may have given rise to the mistake.
5. The Appellant confirmed that she was now divorced from her husband and that this had taken place after she left China and that he had divorced her via her older sister, who had organised the divorce. The Appellant said her second eldest sister still sees her son sometimes and that he remains living with his father, in Shenyang city.

6. In re-examination the Appellant said that she had last seen her *hukou* at home in Shenyang city. She said that she used the lunar calendar. In response to questions from the Upper Tribunal, the Appellant said she had received two sessions of psychological therapy and that she was taking medication to help her sleep and reduce depression, since she was unable to return to China and has nowhere to secure to live in the United Kingdom. She said that she was worried that the loan sharks from whom she had previously borrowed money to pay her husband's debts would persecute and threaten her if she returned to China and that her ex-husband would look for her and that they would hurt her if she went back.
7. In submissions, Mr Basra stated that he was not seeking to rely upon the unreported decision regarding a different expert report of Dr Tran. He relied upon the refusal decision and submitted that there was a question mark over the dates provided by the Appellant in interview given that her previous solicitors had gone over the interview record with her but the date of 2017 she now says is wrong was not picked up at that time. Mr Basra queried how the Appellant and her husband were able to get divorced without being in contact, even with the assistance of her second eldest sister.
8. Mr Basra submitted that the inconsistencies in the evidence lead directly into the assessment of the risk on return to the Appellant. He sought to rely on the country information, including the CPIN 2021 regarding trafficked women and the CG case of HC & RC (trafficked women - China) CG [2009] UKAIT 00027, particularly headnotes 2, 3 and 4.
9. Mr Basra submitted that the CPIN March 2018 in respect of relocation at 16.1.3 refers to reform of the *hukou* system and the distinction between urban and rural registration. He further sought to rely upon the decision in ZC and others (loan sharks) [2009] UKAIT 00028 and submitted that this evidence should be weighed against Dr Tran's report, which was poorly sourced and does not provide powerful reasons to depart from the country guidance cases.
10. With regard to article 8, Mr Basra stated that this had been addressed in the refusal decision at [101]-[121]. He noted that DC (trafficking protection HRs appeal) Albania [2019] UKUT 00351 provides at headnote c that the fact trafficking may have caused harm is part of the evidence to be assessed by the Tribunal.
11. In his submissions, Mr Waheed continued to rely upon the documentary evidence and skeleton argument before the First tier Tribunal, which set out four bases of claim:
  1. The Appellant faces a real risk of persecution and/or serious harm at the hands of loan sharks to whom her husband owed money.

She is unable to avail herself of the protection of the Chinese authorities, and it would not be reasonable for her to relocate.

2. Further/alternatively, there would be very significant obstacles to the Appellant's integration into China.
  3. Further/alternatively, the removal of the Appellant to China would result in unjustifiably harsh consequences such as to justify the grant of leave under Article 8 ECHR outside the Immigration Rules.
  4. She also faces a real risk as a victim of trafficking.
12. He drew attention to paragraph 339K of the Immigration Rules and submitted that the Appellant has already been subjected to serious harm and there is no indication that serious harm or persecution would not be repeated. As to the inconsistency between the Appellant's evidence that she stopped providing her husband with money at the point she left China and her answers in interview that she continued until 2017, Mr Waheed pointed out that whilst her previous representatives had not picked up the point the Respondent had also failed to do so.
13. As to the Appellant's divorce, she was not questioned about this by the Presenting Officer and Mr Waheed submitted that this is not material to any assessment of her fear on return to China. Mr Waheed reminded me that the Appellant is a vulnerable witness and submitted that she presented a true and credible history. He sought to rely upon the CPIN dated January 2021 in respect of China at 2.4.3 and footnote 3 to [36]. Mr Waheed submitted that the background evidence shows that loan sharks pursue their debts and the Appellant's account of her treatment by them in both China and the UK suggests that they are very serious.
14. Mr Waheed further submitted that the decision maker had made a mistake in that the debts are not in the Appellant's ex-husband's name as it is her who is being pursued for his debts, notwithstanding the fact he created them. He further reminded me that her *hukou* is in her former matrimonial home.
15. With regard to the expert report of Dr Tran, Mr Waheed pointed out that the expert had read *HC & RC*: see page 4 of her report and that she concentrated on the specific situation of the Appellant and relies upon and cites evidence that postdates the country guidance case, for which he provided references. He submitted that she would have to apply to change her *hukou* registration and this means she would come to the attention of the loan sharks: page 34.

16. Mr Waheed submitted that the Appellant did not have the support of her family because they fear attracting the attention of loan sharks as they had previously threatened her family with a knife and she continued to fear that her ex-husband would disclose her whereabouts if he knew where she was and the loan sharks would be able to find her if she attempted to relocate. He submitted that with her mental health conditions the Appellant was in a very vulnerable category and would be subject to abuse and further exploitation if returned to China.
17. I reserved my decision, which I now give with my reasons.

*Decision and reasons*

18. The accepted factual matrix is that the Appellant is a victim of modern slavery and it has been accepted as reasonably likely that her husband took out a loan with loan sharks.
19. However, the following issues are in dispute: it was not accepted that the Appellant has a well-founded fear of persecution or would be at real risk of serious harm if returned to China because she now lives within 7 miles of the location where she was trafficked but has had no subsequent contact with her traffickers and so it was not reasonably likely that she would be at risk from them or the loan shark(s); the laws in China have changed since the Appellant left in 2013 and unlicensed money lending is now illegal; there would be sufficiency of protection available or the Appellant could internally relocate. Further, section 8(6) has been applied due to a 6 year delay by the Appellant in claiming asylum.
20. I do not place any weight on the fact that the Appellant has continued to live within 7 miles of where she was held as a victim of modern slavery but has had no further contact with her traffickers, given that this was in the London area which is heavily populated. In addition, the Appellant said that she took steps to avoid Chinese people and not to go out more than was necessary in the intervening years.
21. A further issue that arose was whether it was her husband or the Appellant that was in debt to the loan sharks. Her evidence as set out in her asylum interview is recorded at RB F10, Q&A 25:

*'Why are you claiming asylum ?*

*'The reason that I (sic) am claiming asylum is because when I come to this country, the whole thing was organised by an agent or a middle man, they paid a cost for me. Before I left home I borrowed some money.'*

*'Can you tell me any date that they (the loan sharks) went to your home ?'*

*'Normally, they visited at the beginning of the month and asked for money, if I couldn't pay them, they would revisit and come back the following day.'*

RB 18, F21 provides at Q&A 92:

*'When you were in the flat, did the man and woman say that you (sic) repaying the debt?'*

*'They mentioned it, when they first asked me to do this job, I refused.'*

And at RB F33:

*'Then they said I was doing it because I had to repay the debt.'*

22. I conclude that, even though it is her husband who borrowed money to pay his gambling debts, as his wife the Appellant was held equally liable and was trafficked in order to pay off that debt.
23. As to the delay in claiming asylum, the Appellant has stated that she did not know she could claim asylum at the police station and she was in any event, frightened that she would be locked up. The country expert, Dr Tran, suggests that the delay is due also to the stigma of having been forced to work as a sex worker by the traffickers, because sex workers in China are subjected to discrimination. I also note that she does not speak English, or not to any great degree, given she chose to give evidence through a Mandarin interpreter at the hearing before me. Whilst 6 years is a lengthy period of time, I have concluded that the delay in making a claim was due to the reasons given, primarily the Appellant's subjective fear. I note that she has been, albeit briefly, in receipt of some psychological therapy and continues to take medication for depression and anxiety. Therefore, whilst the delay in making her claim damages the Appellant's credibility, given that the Respondent accepts the basic tenets of her claim, I find that her claim is a credible one.
24. In assessing the risk on return to the Appellant, I have taken account of the refusal decision, the contents of the Appellant's asylum interview record and her statements, the cross-examination and submissions made by the parties today. I have also taken into account the background evidence, including the Home Office CPINs and the expert report of Dr Tran.

25. There are two cases of relevance to my assessment. HC & RC (trafficked women) China CG [2009] UKAIT 00027 has *inter alia* the following headnotes:

*“(1) Although the Chinese authorities are intent upon rescuing and rehabilitating women and girls trafficked for the purposes of prostitution, there are deficiencies in the measures they have taken to combat the problem of trafficking. The principal deficiencies are the lack of a determined effort to deal with the complicity of corrupt law enforcement officers and state officials and the failure to penalise as trafficking acts of forced labour, debt bondage, coercion, involuntary servitude or offences committed against male victims.*

*(2) Women and girls in China do not in general face a real risk of serious harm from traffickers. Where, however, it can be established in a given case that a woman or a girl does face a real risk of being forced or coerced into prostitution by traffickers, the issue of whether she will be able to receive effective protection from the authorities will need careful consideration in the light of background evidence highlighting significant deficiencies in the system of protection for victims of trafficking. But each case, however, must be judged on its own facts. China is a vast country and it may be, for example, that in a particular part of China the efforts to eliminate trafficking are determined and the level of complicity between state officials and traffickers is low. If an appellant comes from such an area, or if she can relocate to such an area, there may be no real risk to her.*

*(3) The Chinese state has an obligation to house the homeless and will not allow their citizens to starve. Therefore a returned trafficked woman without family support will not be allowed by the authorities to fall into a state of destitution.*

*(4) Due to reforms of the Chinese household registration system known as the "hukou" system it is unlikely that a returned trafficked woman would be obliged to return to the place where she is registered. The reforms have made it relatively easy for ordinary migrant workers to get legal, albeit temporary, urban registration and there is no reason why this should not extend to returned trafficked women...”*

26. Whilst HC & RC is a country guidance decision and should be followed, the evidence it is based on is now more than 15 years old, since it was heard on 11 November 2008, which does raise a legitimate concern as to whether it still represents the current situation in China for returnees who have been accepted as victims of modern slavery. Therefore, whilst I accept the country guidance in general terms, as it makes clear, each case must be judged on its own facts.



27. Mr Basra further sought to rely upon the decision in ZC & Others (Risk - illegal exit - loan sharks) China CG [2009] UKAIT 00028 the Upper Tribunal held:

*“(1) Individuals returning to China after having made unsuccessful claims for asylum are not reasonably likely to be imprisoned or subjected to administrative detention for having left China unlawfully; LJ (China - Prison Conditions) China [2005] UKIAT 00099 upheld. Those able to provide the authorities with information on loan sharks or snake heads are even less likely to be at risk of prosecution.*

*(2) The evidence does not establish that failed asylum seekers indebted to loan sharks will come to harm on return to China; the information on loan sharks in HL (Risk - Return - Snakeheads) China CG [2002] UKIAT 03683 is still applicable.”*

28. However, ZC is not a country guidance decision and I find, given that the information relied upon there dated from before 2002 and was still deemed to be relevant in 2009, that I cannot derive any meaningful assistance from it due to the evidence now being out of date.
29. The question of risk to the Appellant from the loan sharks was addressed by Dr Tran at [3.1] to [3.8]. Dr Tran concludes that the Appellant’s claim is highly consistent with the country information as to the methods and tactics utilised by the loan sharks. There is no reason to believe that the loan sharks would have lost interest in the Appellant, particularly given that it is likely that she was enslaved for an insufficient period of time (December 2013 to June 2014) to discharge the debt her husband incurred and she had been tasked with paying off. I find that the fact that money lending may now be illegal is nothing to the point given that the evidence suggests that loan sharks continue to operate and, in any event, this case concerns a historic debt that remains unpaid.
30. Mr Basra submitted that Dr Tran’s report was not well-sourced, but I do not find that to be the case in relation to the material issues that I am required to determine. She relies upon the Home Office’s own CPIN as well as reports from the United States State Department and the Australian government.
31. Therefore, I find, applying the lower standard of proof, that there is a reasonable degree of likelihood that the Appellant would be at risk of persecution from the loan sharks, who I find are affiliated to or indivisible from the trafficking gang who brought her to the United Kingdom and subjected her to modern slavery in the form of forced sex work.



32. As to sufficiency of protection, the expert Dr Tran opined that it was, in her view, unlikely that the Appellant could receive adequate protection from the Chinese authorities, based on the USSD TIP reports from 2020 and 2021, which noted that the government decreased efforts to protect victims. The expert also makes reference at [2.5] to the high level of corruption in China and the fact that the police accept bribes to protect illegal businesses including gambling, brothels and loan sharks and cites from a report of the Australian government in respect of China, dated 11 March 2013 which provides at page 7: *“Business and organised crime engage in corrupt activity with local government officials, the judiciary and the police.”* The expert further notes at [2.8] that: *“the operations of criminal gangs in China have been receiving the “protection” from the corrupted government officials known as “protective umbrellas” who shield criminal gangs from the law.”*

33. In HC & RC the Upper Tribunal found that: *“the issue of whether she will be able to receive effective protection from the authorities will need careful consideration in the light of background evidence highlighting significant deficiencies in the system of protection for victims of trafficking.”* I find in light of the expert evidence that in this particular case there is a reasonable degree of likelihood that the Appellant would not receive sufficient protection from the Chinese authorities, due to the level of corruption.

34. The Respondent submitted that the Appellant could internally relocate, however, her ability to do so is dependent on the *hukou* registration system. I have had regard to the Home Office CPIN *Victims of modern slavery v1*, January 2021 at [8.2.2.] which provides:

*“The USSD TiP report, 2020 stated:*

*‘The government hukou (household registration) system continued to contribute to the vulnerability of internal migrants by limiting employment opportunities and reducing access to social services, particularly for PRC national victims returning from exploitation abroad. The government continued to address some of these vulnerabilities by requiring local governments to provide a mechanism for migrant workers to obtain residency permits. However, these residency permits were disproportionately unavailable to China’s minorities, exacerbating their constrained access to employment and social services.’*

And at section 9, updated on 1.12.20:

*“9. Return of modern slavery victims*

*9.1 Treatment on return*

*9.1.1 The 2019 DFAT report noted that: ‘While victims of trafficking (VoTs) do not generally face state based discrimination on return to*

*China, they often do not wish to return to their city of origin due to perceived or actual risk to physical safety. If the VoT is relocated to an alternate city to mitigate against this risk, they may face issues with hukou and access to social welfare.”*

35. In her expert report, Dr Tran makes clear that life is very difficult for a person in China without a *hukou* or registration booklet [6.5]. Whilst it would be possible for the Appellant to transfer her *hukou* as set out in the CPIN at 8.2.2. above, this is not a straightforward process, particularly given that the Appellant is not and would not be able to obtain a high-skilled job and she is not in possession of a postgraduate degree [6.8]-[6.11]. In order to transfer her urban *hukou* to a rural one, she must own or have long-term accommodation [6.13] which she lacks. If she fails to register she will be unable to access any state-run services eg healthcare and this will also have the concomitant effect that her risk of being re-trafficked increases [6.16].
36. Most importantly, however, the Appellant left before the *hukou* system became digital and her registration booklet was left in the family home. Therefore, she would have to apply for a China ID card or resident identity card, which is mandatory and the Appellant would have to return to her place of origin in order to apply for this and present her *hukou* booklet [6.27]. Dr Tran opines that in this situation it is very likely her return will come to the notice of her husband’s loan shark [6.28].
37. Whilst the Appellant is not claiming to be a member of a minority group, I find that the evidence above, when considered along with the expert report of Dr Tran, means that there is a real risk that the Appellant would be detected by the loan sharks and her ex-husband if she sought to apply for a new identity card, as this would involve a return to her previous place of residence. Alternatively I find if she failed to register this would exacerbate her vulnerability to re-trafficking as she would be unable to access any State support in the form of healthcare, accommodation in a State supported shelter or assistance to avoid destitution, as she would be an unregistered person. I further accept Mr Waheed’s submission that she would be unable to seek support in the form eg of accommodation from her sisters, not least as return to her place of origin would give rise to a risk to her from the loan sharks/traffickers.
38. I have concluded, having accepted the credibility of the Appellant’s account, that she would be at a real risk of harm if returned to China from the loan sharks who were responsible for her being trafficked to the United Kingdom in 2013. I further find, in light of the expert evidence, that there is a reasonable degree of likelihood that in light of the Appellant’s vulnerability, depression

and anxiety which in all likelihood would increase upon her removal, that she would be at a real risk of being re-trafficked, either by her original traffickers or a different group.

39. I allow the appeal on the basis that removal of the Appellant to China would be contrary to article 3 of ECHR and/or a breach of the 1951 Convention on Refugees on the basis of the Appellant's membership of a particular social group ie. trafficked women. It follows that I find that there would be very significant obstacles to the Appellant's integration in China, contrary to Appendix Private Life of the Immigration Rules.

**Notice of Decision**

40. The appeal is allowed on both protection and human rights grounds.

Rebecca Chapman

Deputy Upper Tribunal Judge Chapman

5 February 2024