IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003573

First-tier Tribunal No: HU/51811/2023
LH/01263/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 15 August 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

SHOUXIONG XUE
(no anonymity order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Read of Counsel
For the Respondent: Miss Isherwood a Senior Home Office Presenting Officer by CVP

Heard at Phoenix House (Bradford) on 31 July 2024

DECISION AND REASONS

1. The Appellant was born on 14 March 1974. He is a citizen of China. He appealed against the decision of the Respondent dated 31 January 2023, refusing his application for leave to remain, that having been made on the basis of a claim to have lived here in excess of 20 years.

2. He appeals against the decision of First-tier Tribunal Judge Hatton, promulgated on 27 June 2023, dismissing the appeal.

3. The reasons the Respondent had refused the application for leave to remain were summarised by Judge Hatton as follows:

> 24. The Respondent's impugned decision of 31 January 2023 [see above] does not accept the Appellant has lived continuously in the UK since November 2001,

> primarily for want of sufficient evidence in support thereof. Although the Respondent accepts sufficient documentation has been provided to evidence the Appellant's presence in the UK for the years 2001-2002 inclusive, 2010-2017 inclusive and 2020-2022 inclusive, they do not accept the Appellant lived in this country from 2003-2009 inclusive and/or from 2018-2019 inclusive. Accordingly, the Respondent's position on the evidence provided is that the Appellant has only resided continuously in the UK since 12 June 2020 [HB, p.292].
> 25. Correspondingly, the Respondent's subsequent Review dated 4 March 2023 [see above] reiterates at [10]: "As noted in the RFRL, there is no reliable evidence of residence in the UK in the years 2003-2009 & 2018-2019"."

The Appellant's grounds seeking permission to appeal

4. The First-tier Tribunal refused to grant permission to appeal. The grounds submitted to the Upper Tribunal asserted that an application to adjourn the hearing had been made. This ground was subsequently withdrawn by Mr Read before me and in his skeleton argument of 24 July 2024 as the recording revealed no such application had been made. In doing so Mr Read also abandoned the application to amend the grounds seeking permission to appeal dated 15 July 2024. I will not refer to it again. Accordingly I will only refer to Ground 2 of the application to the Upper Tribunal:

> "[15] … is there any evidence the Appellant was outside the UK at any time during the period in contention? A lack of a travel document might conceivably be relevant to the question if it was sought to challenge other evidence that placed the Appellant outside of the UK, but no such evidence exists…
> [16] … there is no reliable evidence that placed the Appellant in the UK is simply not evidence that he was outside of the UK. It is submitted that no fairly reasoned argument can lead from the fact, only that it can not be said where the Appellant was during the period in contention, to the conclusion that the Appellant was in fact outside of the United Kingdom. It is wrong to say otherwise."

Permission to appeal

5. Permission was granted by Upper Tribunal Judge Blundell on 23 April 2024 who granted permission to appeal on the adjournment issue but did not deal with the issue raised in Ground 2. Accordingly I apply EH (PTA: limited grounds; Cart JR) Bangladesh [2021] UKUT 117 (IAC) headnote (2) that*:*

> "… in the absence of any direction limiting the grounds which may be argued before the Upper Tribunal, the grounds contained in the application for permission are the grounds of appeal to the Upper Tribunal, even if permission is stated to have been granted on limited grounds."

Skeleton argument filed by Mr Reads on 24 July 2024

6. The relevant parts of the skeleton argument are that:

> "[9] The issues arising on Second Ground of appeal are:
> 1. Whether or not there was any evidence before the FtT that the Appellant was out of the UK during the period in question;
> 2. If not, whether or not it is possible to say that a person is (or was) out of the UK where there is no evidence that that person was out of the UK;

3. Or, put another way, does a lacuna of evidence in support of a proposition prove the opposite;
4. If not, whether or not it is material that the FtT found the Appellant to be out of the UK…

[11] In the context of a discussion concerning whether or not negative findings *obiter* to a judgment could be challenged on appeal, Waller LJ said in *Cie Noga* at [28] that if:

> … findings of fact might be relevant to some other proceedings … it might be appropriate to … enable a party to challenge those findings and not find him or herself prejudiced by them. The findings would still [need to] be pregnant with legal consequences. …

[15] Relevant extracts from the Appellant's application form include…

At p RB13:

> Q: Time lived in the UK
> A: 21 years …
> Q: When did you last travel to the country where you were born and/or any other country whose nationality you hold?
> A: I entered UK on 07 November 2001 and never left since

At p RB16:

> Q: Provide details
> A: I entered UK in November 2001 and never left since…

[16] The relevant words from the reasons for refusal are at p AB7:

> It is to be noted that for a Private life application the onus is on you to evidence that you have been continuously resident within the UK for the time period claimed. A lack of evidence that you have left the UK does not equate to the same as evidence that you were in the UK.
>
> With that in mind, with the evidence that you have submitted, there are gaps in your claimed residence within the UK. It is not disputed that you were in the UK in 2001 to claim Asylum but the information from then until this application is sparse and is heavily reliant on personal statements that cannot be corroborated.
>
> Evidence has been accepted for the following years
> 2001 - 2002, 2010 — 2017, 2020 - 2022
>
> As such your residential evidence is taken from the period with no break up until this application was submitted , which is your Medical record evidence from 12 June 2020.
>
> You have therefore evidenced you have continuously lived in the UK for 2 years 6 months and it is not accepted you have lived continuously in the UK for at least 20 years…

[20] At [37] the learned judge again held the test to be applied by the FtT was:

> … whether there is sufficient evidential basis for being satisfied, on the applicable balance of probabilities, that he lived in the UK during the years in dispute …

[21] At [103] the learned judge concludes his consideration of the private life question under PL 5.1.(a).: '… I find he fails to satisfy paragraph PL 5.1.(a) of Appendix Private Life of the Immigration Rules.'

[22] At [93] however, the learned judge goes beyond that and finds:

> … there is no … documentary evidence of his presence in the UK during these periods, which in my view, renders it more likely than not that he was outside of the UK for protracted periods of time, …

And again, at [102] he continues: '… I find the Appellant has left the UK since his initial entry on 7 November 2001, …'

[23] Having interrogated the record of hearing together with the writer on 07.06.2024, the Respondent concedes there was no evidence before the learned judge at first instance that the Appellant was outside the UK, see attached correspondence at [TAB A]…

[24] It is submitted that it is trite law that the burden of proof in the Appellant's application lies with him – he who claims must prove. It is submitted common ground that the test to be applied in assessing the claim he makes in support

of his application is that he must satisfy a decision maker of the truth of his claim. If he fails to do so then, within reason, his claim must fail.

[25] The above is taken as the test in the impugned judgment: '… I am required to determine whether there is sufficient evidential basis for being satisfied the Appellant lived continuously in the UK …' for 20 years.

[26] The learned judge also finds, however, that the Appellant left the UK during the period in question and it is conceded there is no evidence to support that finding. So, the learned judge at first instance was wrong to find that the Appellant left the UK.

[27] The most that can be said on an insufficiency of evidence as to the location of a person, is that it is not known where he or she is or was.

[28] The erroneous finding of fact that the Appellant was outside the UK was made on account of an absence of evidence that he was in the UK. However, the absence of evidence is not evidence of absence.

[29] It is submitted the learned judge, in erroneously finding the Appellant to have been outside the UK, has fallen to making an 'argument from ignorance' – that is, he reasons the Appellant's case to be false because the Appellant has not yet proven it to be true. That, however, is not a conclusion that can be drawn from a lacuna in the Appellant's evidence. More important however, than a nice argument on the irrationality of the learned judge's decision to make an erroneous finding, is the prejudice the finding does to the right the Appellant to make another similar application to the Respondent. That the Appellant would seek to exercise that right is predictable.

[30] It might be argued that the finding that the Appellant was outside the UK goes beyond that which was necessary for the impugned judgment, which rests merely on a lacuna evidence that the Appellant was in the UK, and so obiter the judgment and so does not fall to be questioned on an appeal against that judgment. However, following the discussion of Waller LJ on that issue in Cie Noga, it is submitted that this is just such a finding of fact 'pregnant with legal consequences' which the Court of Appeal considered should be open to challenge on appeal.

[31] As it stands, the erroneous finding prejudices the Appellant in any similar application he may wish to make to the Respondent. That is why, it is submitted, the finding that the Appellant was outside the UK is a material error of law."

Rule 24 notice of 29 July 2024

7. The relevant parts of the Rule 24 notice stated:

6. …The burden of proof is on the appellant, and it is for him to establish that he was, on a balance of probabilities, in the UK for the 20-year period. It is not for the SSHD or the Judge to consider that if he was not in the UK, where was the appellant. Neither is the burden of proof reserved for the SSHD to establish where the appellant has been.
7. As stated at paragraph 34
   Correspondingly, simply because the Respondent has not sought to assert the Appellant has relied upon false information, representations, or documents, does not mean the Respondent is automatically obligated to accept, at face value, all the Appellant's supporting evidence, and nor was any case law or authority brought to my attention capable of supporting Mr Reed's contention in this regard.
8. It is clear that the Judge approached this appeal correctly looking at the SSHD position and all the appellant evidence to consider whether the appellant has been continuously in the UK. It remains the position that no authority has been put forward to assert that the Judge is required to consider where the appellant was if he did not satisfy the requirements of the rules or for the SSHD to put an alternative position forward.

9. The Judge reminds themselves of the correct approach in considering this appeal at paragraph 37.
10. It is noted that the grounds do not challenge the adverse findings that are throughout this determination. The Judge clearly considered the oral and documentary evidence and reached findings open to be made.
11. For example (not an exhaustive list) it is noted that the grounds do not challenge the following:
    - The concession that "*some of the evidence is of questionable reliability"* (Paragraph 35)
    - The use of different names and dates of birth (paragraph 35)
    - The contractions in evidence (Paragraph 42, for example)
    - The inconsistences in the documentary evidence (Paragraphs 49, 50, 52, 53 and 75)
    - The appellant used a card to purchase goods but said he has never had a bank card (paragraph 87)
12. It is due to this evidence that the Judge is entitled to find that the appellant does not have continuing residency in the UK. In addition, given the evidence provided and the unchallenged findings the Judge correctly approached this appeal in considering the gaps in the evidence.

Consideration of the concession at paragraph 26 of the grounds

13. In the instance, I would ask the Tribunal to consider my full answer to the appellant's questions, annex 4.

    • *Whether or not there is any evidence that Mr Xue was outside of the UK?*

    ..., but as I said to you, I would be looking at the questions and answers and the gaps. It is clear from the recording the appellant was asked about his period in the UK, recording 3 at 52.04, the appellant was clearly asked that it could be indicated that he was not in the UK.

    Applying the precise wording of the question – no evidence was provided to say the appellant was actually outside the UK. As you are aware the burden of proof is on the appellant, and it does not mean that the appellant remained in the UK and the credibility of the appellant. It is not for the SSHD to put an alternative position or for the Tribunal to simply accept the evidence. As the Judge highlighted this was a matter of continuing residency. It is a matter for the Judge whether he accepts the evidence or not.

    It is submitted that this is not the concession has claimed by the appellant. This extract clearly notes that the appellant was asked about him not being in the UK. In addition, it can be seen that I qualify my answer to the question…

Hearing note filed by Mr Read of 30 July 2024

8. The hearing note states that:

> "CASES WHICH MAY BE REFERRED TO IN ARGUMENT…
> [1] Compagnie Noga D'importation Et D'exportation SA v Australia & New Zealand Banking Group Ltd. & Ors [2002] EWCA Civ 1142; [2003] 1 WLR 307 (31 July 2002) (Cie Noga)
> [2] M (Children) [2013] EWCA Civ 1170 (04 October 2013)
> [3] Re W (A Child) (Care Proceedings: Non Party Appeal) [2016]
> EWCA Civ 1140; [2017] 1 WLR 2415 (17 November 2016). In particular, per McFarlane LJ at [118]:
> … the judge's findings themselves are a 'judicial act' which, on the facts of this case, is capable of being held to be 'unlawful' under HRA 1998, s 7(1) and therefore the proper subject of an appeal, without having to consider whether or not it is a 'decision', 'determination', 'order' or 'judgment'…
> [5] Under the heading 'Consideration of the concession at paragraph 26 of the grounds' (sic) at [20] the Respondent quotes from her correspondence with counsel for the Appellant:

… It is clear from the recording the appellant was asked about his period in the UK, recording 3 at 52.04, the appellant was clearly asked that it could be indicated that he was not in the UK.

[6] What the Respondent has failed to provide is the evidence the Appellant provided in reply to that question. Counsel's report to the Appellant of the interrogation 07.06.2024 of the record of proceedings notes the Appellant's response to that question:

Recording 3… [52:04]

- Q: Or, it could be that you're not here
- A: I was here definitely, I am always here, it is impossible for me to return, I don't have any relative back home; I treat United Kingdom as my family

[7] That note accords with counsel's report and contemporaneous record of evidence to solicitors reproduced at p CB/278. Particular reference is made to the last sentence of the second row of column one…

> [Q] – it could be because you were not here-
>
> [A] I was here, I was always here, it is impossible for me to return, I don't have any relatives back home, I treat the UK as my family …

[8] It is submitted that it is absolutely clear that the Appellant was adamant under cross-examination that he has never left the United Kingdom (UK) since his arrival in 2001.

[9] Further to the above, there is no finding in the impugned judgment against the Appellant's character. There is no finding against his reliability – as opposed to the reliability of some other evidence – and there is no finding against his credibility. In that context, it is submitted unreasonable that the Appellant's evidence was not accepted…

[13] In conclusion to this note, following Re W (A Child) it is submitted clear that it is open to the Appellant to challenge the erroneous findings of fact made in the impugned judgment on appeal.

[14] Further, it is submitted that it is the evidence of the Appellant that he was not outside the UK during the period in question, that there are no findings against his character and so it is unreasonable of the learned judge at first-instance to have found him to be outside the UK."

Oral submissions

9. Mr Read submitted that the Judge made a finding not open to him to make namely that the Appellant was outside the United Kingdom during the 20 year period in [93] and [102]. There was no evidence to support that finding. The Respondent had refused the application that there was insufficient evidence of a period of 20 years continuous residence. That finding related especially to the period from 2007 to 2010 and also later. That finding may have been open to the Judge. Issue is taken with the positive finding that he was outside the United Kingdom as that makes it impossible he was inside the United Kingdom. That is a finding that may be prejudicial to future applications he may wish to make to the Respondent. It is predictable there will be one. The finding that he had been outside the United Kingdom has legal consequences and will be highly prejudicial in future. At the hearing he said he had definitely been here throughout. There is no challenge to his credibility or personal reliability. Therefore the finding the Judge made that he had been outside the United Kingdom was not open to him.

10. Miss Isherwood submitted that there was no material error of law. There is no challenge to the adverse findings the Judge made, or regarding there being no very significant obstacles to his re-integration in

China, or regarding Article 8, or on s117B of the Nationality Immigration and Asylum Act 2002. It is a very narrow challenge. The Appellant is not entitled to be here. He has no legitimate expectation he will be able to stay. The Judge dealt with the evidence in a lengthy decision. He considered the submissions and dealt with them. The same submissions are being made now. The burden of proof does not shift to the Respondent. Mr Read had accepted that "some of the evidence is of questionable reliability". The Judge had reminded himself what he had to consider. The findings were open to the Judge for the reasons he gave.

11. Mr Read submitted in response that the Judge did not reject the evidence on account of credibility. There was no adverse finding on his oral evidence. The Judge failed to balance the Appellant's oral evidence with the evidence he found lacking. He failed to give sufficient reasons. Questions of fact can be challenged at an appeal hearing.

The First-tier Tribunal decision

12. Judge Hatton made the following findings:

> "39. It is striking that the Appellant's claimed residence in the UK from the years 2003- 2009 relies almost exclusively upon the written and oral evidence of Mr Hui Xue [see above].
> 40. Correspondingly, the Appellant's written submissions of 23 January 2023 [HB, pp.306-311] make explicit that his claimed residence in the UK from 2003-2008 inclusive is predicated solely upon a "*Tenancy Agreement*" [HB, p.307].
> 41. I note the document in question was submitted to the Respondent in support of the Appellant's private life application, and confirms that Mr Hui Xue is the "*Owner*" of the rental property i.e. 9A The Parade, Cottingley, Bingley, BD16 1RP [HB, p.330].
> 42. By stark contrast, during cross-examination, Mr Hui Xue alternatively asserted that he rented the above property, and is therefore not the owner.
> 43. Thereafter, when I sought to clarify why the above document expressly characterises him as the property's owner, he replied: "*Er, my English is limited, maybe I did not understand well, maybe I made a mistake*."
> 44. I do not accept this. Although a Mandarin interpreter was present throughout Mr Hui Xue's live evidence, he made explicit his ability to speak and understand English at the hearing's outset, and repeatedly gave his answers in fluent English, without waiting for the question to be translated into Mandarin.
> 45. Correspondingly, I am mindful Mr Hui Xue is a British Citizen, as evinced by his UK passport, and I am therefore satisfied, on the applicable balance of probabilities, that he has been fluent in English for some time.
> 46. My finding thereon is bolstered by the fact that, in response to one of my clarifying questions, Mr Hui Xue confirmed he is the author of the above document, and that he was the one who prepared it.
> 47. On his own testimony, as the document's self-confessed author, I am therefore satisfied that he must have been aware of and fully conversant with its contents.
> 48. I am also mindful that during cross-examination, Mr Hui Xue asserted that "*I did not regard myself as the landlord, I just rented out a spare room to him*" [i.e. the Appellant].
> 49. By stark contrast, the rental agreement, as expressly created by Mr Hui Xue [see above], makes explicit that "*It is intended to promote household harmony by clarifying the expectations and responsibilities of the homeowner (Landlord) and tenant when they share the same home*."
> 50. Given that Mr Hui Xue expressly confirmed during his oral evidence, not only that he did not regard himself as the landlord, but also that he was not the

homeowner [see above] I have no option but to find there is a profound disconnect between his oral and written evidence.
51. My observation is bolstered by the fact this in his first undated statement [HB, p.331], which he adopted in full and without amendment during his examination-in-chief, Mr Hui Xue asserted the Appellant was a tenant in the property from 2003 to 2008 and "*During the tenancy, Mr Shou Xiang Xue always has paid the rent on time*".
52. By stark contrast, during cross-examination, when asked (by Mr Bhurton) to clarify whether the Appellant always paid the £150.00 monthly rent specified in the agreement, Mr Hui Xue replied: "*Yes, at the very beginning of the few months he did pay but later he did not pay and I did not pursue the rent from him*."
53. Thereafter, when I asked Mr Hui Xue to clarify his above answer, he asserted that the Appellant only paid the full amount of £150.00 for the first 5-6 months of the tenancy, and after that, "*sometimes he paid fifty pounds, sometimes a hundred pounds, whenever he had some money*". Further, Mr Hui Xue asserted that in the years 2007 and 2008, "*he did not pay me a penny*."
54. On the evidence before me, I therefore have no option but to consider that Mr Hui Xue's oral and written testimony in this regard is incapable of being reconciled and is wildly discrepant.
55. Having regard to the above circumstances, I find that Mr Hui Xue is an unreliable witness, and correspondingly, that the content of his supporting statement is also unreliable.
56. Accordingly, I consider the above evidence is incapable, on the applicable balance of probabilities, of evidencing the Appellant's residence in the UK from 2003-2008 inclusive.
57. My finding thereon is bolstered by the fact that neither the Appellant nor Mr Hui Xue have provided any other supporting documentation capable of corroborating their conjoined claims to have cohabited at the above address from 2003 to 2008 inclusive. This is a striking omission, given that if they were genuinely living together throughout the period in question then I would have reasonably expected them to have provided some form of documentation addressed to either/both of them during this period. Plainly, they have not done so, without valid justification, notwithstanding that both the Respondent's impugned decision and subsequent Review expressly took issue with the Appellant's claim to have lived in the UK during this period. Correspondingly, I consider the Appellant and Mr Hui Xue have had ample opportunity to adduce further supporting evidence in this regard, if indeed it existed.
58. Further, as made explicit at [11] of the Respondent's Review, Mr Hui Xue's supporting statement [see above] expressly characterises his relationship with the Appellant as one of landlord/tenant.
59. By stark contrast, in his subsequent statement dated 20 March 2023 [HB, pp.239- 240], which he also adopted in full and without amendment during examination-in-chief, Mr Hui Xue alternatively characterises his relationship with the Appellant as "*just like brothers*" [6] and "*a family member to me*" [4].
60. Plainly and obviously, there is a profound disconnect between the positions adopted by Mr Hui Xue in his two supporting statements. Although Mr Hui Xue originally claimed the first undated statement was written in 2003, after I pointed out this could not be possible, because the statement asserts the Appellant was a tenant in his property from 2003 until 2008, Mr Hui Xue alternatively claimed he wrote the first statement "*Last year*". This is another instance of Mr Hui Xue providing wildly divergent testimony [see above].
61. I accept Mr Hui Xue's alternative suggestion that his first supporting statement was written last year, given that it could not possibly have been written in 2003 as he originally asserted, for the above reason.
62. Accordingly, it is jarring that in 2022, Mr Hui Xue's statement referred solely to the Appellant as a tenant, whereas in the following year, the claimed dynamic of his relationship with the Appellant has shifted to one of brother/family member [see above].
63. Correspondingly, I am mindful that when I asked Mr Hui Xue to clarify why he failed to mention anything about the Appellant being like a member of his own

family in the first supporting statement he wrote last year, he replied: "*To be honest with you, I am very nervous to come to the court today, I have never experienced this kind of situation, apart from that, I don't know about the view of the application, how to do it*."

64. I consider Mr Hui Xue's explanation in this regard to be unsatisfactory. If he genuinely regarded the Appellant as being like a member of his own family, then he would have seen fit to mention this in his first supporting statement, especially because this statement was submitted in support of the Appellant's initial application of 9 January 2023 [see above]. Conversely, given the statement was expressly provided to support an application for leave to remain based upon purported residence in the United Kingdom for a continuous period of more than 20 years, it makes very little, if any, sense for Mr Hui Xue to have confined his supporting statement exclusively to the years 2003-2008 inclusive.

65. I am additionally mindful that during his oral evidence, when I asked the Appellant to clarify when he first developed a close relationship with Mr Hui Xue, he replied: "*Since we moved to BD10*". I am mindful that on the evidence before me, this refers to the Appellant's current home address i.e. 10 Harvest Mount, Bradford, BD10 8WU. Correspondingly, I am mindful that during his oral evidence, the Appellant claimed he has lived at this address since 2017. Accordingly, it appears the Appellant is claiming his relationship with Mr Hui Xue first became close in the year 2017. In turn, this accords with his assertion during oral evidence that Mr Hui Xue first stopped charging him rent in the year 2017. Again, this assertion conflicts with Mr Hui Xue's assertion during his oral evidence that in the years 2007 and 2008, the Appellant paid him no rent whatsoever [see above].

66. By the same token, I am mindful that during Mr Hui Xue's oral evidence, when I asked him to clarify when his relationship with the Appellant first became close, he alternatively asserted it was in 2010, following the birth of Mr Hui Xue's daughter: "*Since my daughter was born, she needs attention from my wife, and the Appellant spent a lot of time with my daughter, my daughter likes him, he looks after her very well*."

67. Conspicuously, Mr Hui Xue made no mention of the Appellant having any kind of caring responsibilities/and or relationship with Mr Hui Xue's daughter in either of his two supporting statements, and neither did the Appellant make any such mention in his own statement of 22 March 2023 [HB, pp.235-238].

68. Correspondingly, I am mindful the Appellant and Mr Hui Xue's belated assertions in their oral evidence to have lived together at 10 Harvest Mount since 2017 is similarly discrepant, given that in his online application of 9 January 2023 [see above], the Appellant alternatively asserted he started living at 10 Harvest Mount in June 2021 [HB, p.298].

69. Yet again, the conjoined oral and written testimonies of the Appellant and Mr Hui Xue are wildly discrepant, a discrepancy which is compounded by the suggestion made by Mr Hui Xue, as highlighted by Mr Reed during closing submissions, that Mr Hui Xue's wife i.e. Mrs Ling Chen, assisted the Appellant in completing his application form.

70. If the Appellant has genuinely been like a member of Mrs Ling Chen's own family since 2010, as claimed by her husband during his oral evidence [see above], then one would reasonably expect her to have provided consistent information about the length of time the Appellant has purportedly lived with her as part of her family unit in this country.

71. I additionally note that in his application form, the Appellant further asserted that 10 Harvest Mount has just two bedrooms and no other rooms (not including kitchens, bathrooms, and toilets) [HB, p.302].

72. By stark contrast, during his oral evidence, the Appellant alternatively asserted that the property contains four bedrooms, and that he has his own bedroom downstairs, and that Mr Hui Xue and his wife have their own bedroom and each of their two children have their own bedrooms. Correspondingly, the Appellant was unable to explain why he claimed in his application form that the property only has two bedrooms, simply asserting that, "*I made a mistake*". Given the Appellant purportedly had assistance from Mrs Ling Chen in completing the form [see above],

it makes even less sense for the information contained therein to be inconsistent with the oral evidence provided during the hearing.

73. Accordingly, I am far from convinced the Appellant has lived at 10 Harvest Mount since 2017 as he alternatively claimed for the first time during the hearing. In my view, this is little nothing more than an ill-conceived and belated attempt to retrospectively fill the glaring evidential gap in the years 2018-2019 inclusive.

74. My observation is bolstered by the fact there is no other supporting documentary evidence capable of placing the Appellant as living at the above address before the start date stipulated in his online application form i.e. pre-June 2021.

75. Correspondingly, there is no reliable evidence capable of placing the Appellant as even having lived in the UK from 2018-2019. In particular, I am mindful that although he appears to have registered with a GP practice using his correct particulars on 10 June 2011 [HB, pp.339] and his corresponding patient records show periodic and regular appointments thereafter from 13 June 2011 until 14 November 2022 [HB, pp.345-350], there is a very significant length of time, during which the Appellant had no recorded appointments/check-ups at all, of *some three years and three months* i.e. between 3 March 2017 and 12 June 2020 [HB, p.348].

76. Although the Appellant claimed during cross-examination that he provided documentary evidence about seeing a dentist in the year 2019 to his legal representative, I am mindful that no such evidence is before this Tribunal. Indeed, the proof of dental treatment in the papers relates to an appointment on 12 May 2022 [HB, p.325].

77. By the same token, as confirmed in the Appellant's submissions of 23 January 2023 [see above], the only supporting documents pertaining to his purported presence in the UK in the years 2018-2019 are "*Photos*" [HB, p.307].

78. Whilst I note there are several photographs which purport to have been taken during the period from 2011 to 2022, including some which were purportedly taken in the years 2018-2019 [HB, pp.87-125], I consider these photographs, in the conspicuous absence of other supporting documentation, to be of very limited probative value.

79. In so finding, I am mindful that, as highlighted at [12] of the Respondent's Review, no evidence has been provided by the Appellant about the phone App used to identify the location and time of the photograph and its reliability, including the possibility of editing. I further consider the Appellant has had ample opportunity to adduce such evidence since the Respondent's Review was uploaded.

80. I am additionally mindful that the Appellant's own patient summary [HB, pp.351-352] expressly confirms he was not registered as living at the 10 Harvest Mount address in Bradford [see above] until 25 January 2022, and that immediately prior to this, he was registered as living at 3-7 Saltaire Road, Shipley i.e. from 12 April 2021 to 25 January 2022 inclusive [HB, p.351].

81. I further note that during Mr Hui Xue's oral evidence, he claimed, for the first time, that the Appellant has lived with him at the Saltaire Road address from 2013 to 2017 inclusive. Conspicuously, this was not mentioned in any of the supporting statements before this Tribunal.

82. Accordingly, for the above cumulative reasons, on the applicable balance of probabilities I find that the Appellant did not reside at 10 Harvest Mount before June 2021.

83. Whilst I note the Appellant has belatedly sought to fill some of the years in which he has no reliable documentary evidence of the time he has purportedly spent in the UK with receipts [HB, pp.245-284] as with the photographs, these documents are of exceedingly limited probative value.

84. First and foremost, although most of the receipts adduced contain legible dates, none of them contain any particulars which relate to the Appellant. On the contrary, several of them expressly refer to a person called "*Andy*" e.g. [HB, pp.274, 276 & 278].

85. During his oral evidence, Mr Hui Xue confirmed that "*Andy*" is his English nickname. I accept this. In so finding, I am mindful his first supporting statement [see above] gives his contact email address as andyxue888@hotmail.com.

86. Accordingly, I find that a significant proportion of the receipts adduced by the Appellant in fact relate to transactions conducted by Mr Hui Xue.
87. My finding thereon is bolstered by the fact that, during cross-examination, the Appellant further conceded that the receipts which show purchases made by card rather than cash were not made by him e.g. [HB, pp.247, 248, 252 & 255], because he maintains that he has never had a bank account in this country, as originally asserted at [12] of his witness statement.
88. I am therefore satisfied, on the applicable balance of probabilities, that the receipts adduced by the Appellant in support of his application have been provided by individuals other than the Appellant to bolster his claim and I therefore attach negligible weight to them.
89. Neither is the additional oral and written evidence of Mr Longhui Wu [see above] capable of materially advancing the substance of the Appellant's long residence claim. By Mr Wu's own admission during cross-examination, he has never lived with the Appellant and throughout the period of their claimed acquaintance in the UK, Mr Wu does not know whether the Appellant has been living.
90. Although Mr Wu subsequently claimed during his oral evidence that he first met the Appellant in 2002 at a Christian Church in the centre of Bradford called Bai Fu, where they usually meet every Sunday, I note there is no mention of this in either Mr Wu's supporting statement of 20 March 2023 [HB, pp.242-243] or indeed in the Appellant's own statement [see above].
91. Conspicuously, there is no supporting documentation from the Church in question either, which is a significant omission if the Appellant has genuinely been a regular attendee there for over two decades.
92. Further, as stated by Mr Bhurton during the hearing, Home Office records confirm the Appellant's asylum claim of 7 November 2001 was based upon his assertion that he was a practitioner of Falun Gong. Accordingly, there is a profound disconnect between the Appellant's claim to be a follower of Falun Gong and his professed adherence to the Christian faith during a similar time frame.
93. Having regard to the totality of the evidence before me, in conjunction with its perceived shortcomings and inconsistencies, in my view, this strongly indicates the Appellant has travelled in and out of this country clandestinely during the periods from 2003-2009 and 2018-2019 inclusive, especially because there is no reliable documentary evidence of his presence in the UK during these periods, which in my view, renders it more likely than not that he was outside of the UK for protracted periods of time, especially given the Appellant's protracted period of absconding as chronicled in the Home Office's records from 2003 onwards [see above].
94. My finding thereon is also bolstered by the fact that, although Mr Bhurton confirmed during the hearing that the Home Office's records reveal the Appellant's further submissions of 13 December 2010 were predicated upon his purported inability to return to China for want of documentation, I am mindful that on the evidence before me, he obtained a Chinese passport whilst in the UK, which was issued to him in Edinburgh, on 27 October 2021 [HB, p.40].
95. Correspondingly, I am mindful that during cross-examination, the Appellant confirmed he was able to obtain the above passport by using his original Chinese identity document which has remained in his possession since he first entered the UK in 2001.
96. It thereby follows that, on the Appellant's own testimony, he has always had the ability to obtain documentation enabling him to return to his country of origin.
97. By the same token, I do not accept that he was precluded from returning to his country of origin for want of documentation. Although he subsequently claimed during cross-examination that he was unable to obtain a Chinese passport until 2021 because "*I did not know how to do it then*", I am far from persuaded it would have taken him twenty years since his initial entry to the UK in 2001 to establish how to apply for a passport.
98. Further, although he claimed during cross-examination that he was only able to find this out in 2021 because "*My friend taught me so*", if he has established friendships in this country since 2001, then he has had abundant opportunity to establish the relevant procedure for applying for and/or obtaining a Chinese passport in the intervening period.

> 99. I am additionally mindful that although the Appellant's initial asylum claim was based upon his claim to be a follower of Falun Gong [see above], there is no discernible indication in the papers before me that he sought to rearticulate this claim after his initial appeal was dismissed in 2002 [see above].
> 100. Although he indicated during his oral evidence, for the first time, that he would be ill-treated by the Chinese authorities on return to China on account of a land dispute which took place before he entered the UK, by his own admission, he has never previously mentioned this to the Respondent.
> 101. Correspondingly, I am mindful that in applying for a Chinese passport in 2021, he expressly contacted the Consulate General of the People's Republic of China [see above]. I am far from convinced that he would have done so, if he genuinely feared any adverse consequences from the Chinese authorities, especially given the discernible absence of any renewed protection claim since the refusal of his initial asylum claim in 2002.
> 102. Accordingly, on the applicable balance of probabilities, I find the Appellant has left the UK since his initial entry on 7 November 2001, and given the conspicuous evidential gaps and inconsistencies I have already highlighted and identified, I can only be satisfied that he has lived continuously in this country since the year 2020."

Discussion

13. In assessing the grounds, I acknowledge the need for appropriate restraint by interfering with the decision of the First-tier Tribunal Judge bearing in mind its task as a primary fact finder on the evidence before it and the allocation of weight to relevant factors and the overall evaluation of the appeal. Decisions are to be read sensibly and holistically; perfection might be an aspiration but not a necessity and there is no requirement of reasons for reasons. I am concerned with whether the Appellant can identify errors of law which could have had a material effect on the outcome and have been properly raised in these proceedings.

14. The appeal turns on a very discreet point. Namely was the Judge entitled to find at [93] that the Appellant had left the United Kingdom in the periods 2003-2009 and 2018-2019. I am satisfied that he was for these reasons.

15. It is not for the Respondent to prove anything. Mr Read had accepted that "some of the evidence is of questionable reliability". The Judge had noted at [39] the source of the evidence for the Appellant's claimed residence from 2003-2009. The Judge had dealt with the "Tenancy agreement" from [41] to [64] which are set out above. He gave numerous cogent unchallenged reasons for finding that reliance could not be placed on that document or the evidence of the Appellant or Mr Hui Xue. The Judge similarly gave numerous cogent unchallenged reasons from [65] to [88] regarding the subsequent period which included 2018-2019. The Judge similarly gave numerous cogent unchallenged reasons regarding the Appellant's general credibility findings at [89-92] and [99-100]. The Judge similarly gave numerous cogent unchallenged reasons for finding that the Appellant had access to documentation to enable him to leave the United Kingdom at [94-98] and [101].

16. Just because the Appellant was adamant he had not left the United Kingdom, did not mean that the Judge had to accept that especially where he had given numerous cogent unchallenged reasons for rejecting his evidence, and the evidence from his witness, and for placing little weight on the documentary evidence produced. Given the numerous findings the Judge had made where he rejected the evidence the Appellant had given, Mr Read was wrong to assert that there was no challenge to his credibility or personal reliability. There plainly was, and the Judge had given numerous cogent unchallenged reasons for finding that he was neither credible nor reliable.

17. The ground that remains is no more than a disagreement with a finding the Judge was entitled to make regarding the Appellant's failure to establish his lack of continuous residence, which the finding he had been outside the United Kingdom is part of, and the finding that he had only been continuously resident here since 2020. The fact that such a finding may be prejudicial to future potential applications is the natural consequence of the Judge's findings as correctly noted in the post hearings submissions by Mr Read.

Notice of Decision

18. The Judge did not make a material error of law.

Laurence Saffer

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
5 August 2024