IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001764

First-tier Tribunal No: PA/00285/2023
(PA/54228/2022)

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 10th of July 2024

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

M H
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr M. Moriarty, instructed by Lisa's Law Solicitors
For the Respondent: Ms S. Nwachuku, Senior Home Office Presenting Officer

Heard at Field House on 04 July 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity because the case involves protection issues. 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 appealed the respondent's decision dated 03 October 2022 to refuse a protection and human rights claim.

2. First-tier Tribunal Judge S.J. Clarke ('the judge') dismissed the appeal in a decision sent on 13 March 2024. The judge found that the appellant had a subjective fear of loan sharks if returned, but that there was no real risk of her

being re-trafficked or otherwise ill-treated as a result of money owed to loan sharks given that there would be sufficiency of protection from non-state agents and/or internal relocation to live with relatives or elsewhere would be reasonable and would not be unduly harsh.

3. The appellant applied for permission to appeal to the Upper Tribunal on the following grounds:

   (i) The First-tier Tribunal failed to treat the appellant as a vulnerable witness in accordance with the relevant Joint Presidential Guidance Note;

   (ii) The First-tier Tribunal failed to give adequate reasons in relation to 'the Refugee Convention and internal relocation'; and

   (iii) The First-tier Tribunal failed to give adequate reasons in relation to Article 8 of the European Convention.

4. First-tier Tribunal Judge Lodato granted permission in relation to the third ground but refused permission in relation to the first and second grounds in an order dated 08 April 2024.

5. The Upper Tribunal has no record of a renewed application for permission to appeal made directly to the Upper Tribunal in relation to the two grounds upon which permission was refused. At the hearing, Mr Moriarty confirmed that none was made. Therefore, the consideration of this case is confined to the third ground of appeal.

6. I have considered the First-tier Tribunal decision, the documentation that was before the First-tier Tribunal, the grounds of appeal, and the submissions made at the hearing, before coming to a decision in this appeal. It is not necessary to summarise the oral submissions because they are a matter of record, but I will refer to any relevant arguments in my findings.

Decision and reasons

Error of law

7. Mr Moriarty was constrained by the limited grant of permission. Permission was refused to challenge the findings of fact made in relation to the Refugee Convention claim. In the circumstances, it was difficult for him to argue that those findings could not stand in so far as they might have related to any assessment with reference to Article 8. Despite this, he submitted that the judge had erred in referring to the appellant as having 'parents' remaining in China when the appellant's father is deceased. She also failed to take into account the fact that the appellant's mother does not live anywhere near her son or her sister. He repeated the assertion made in the second ground that there was evidence to show that the situation for victims of trafficking had deteriorated in China.

8. Mr Moriarty also relied on a decision of a judge sitting in the Outer House of the Court of Session in *Ali v SSHD* [2017] ScotCS CSOH 11. The judge was considering a judicial review of the Secretary of State's decision to refuse to treat further submissions as a fresh humanitarian protection or human rights claim. The judge observed that there could be circumstances that did not amount to serious harm for the purpose of a protection claim but could still amount to 'very significant obstacles' to integration for the purpose of an Article 8 assessment. This is a trite

statement of the obvious. The case of *JA (human rights claim: serious harm) Nigeria* [2021] UKUT 0097 (IAC) was also relied upon to make the same point.

9. It is clear from the appeal forms lodged in the First-tier Tribunal that it was asserted that removal would be unlawful under section 6 of the Human Rights Act 1998. For the purpose of this decision, it is not necessary to explain why there was more than one appeal lodged leading to two First-tier Tribunal reference numbers. The matter was clarified at the hearing in the Upper Tribunal.

10. The skeleton argument filed on behalf of the appellant for the First-tier Tribunal hearing focussed entirely on protection issues. The judge noted at [6] of her decision that there was 'no discrete Article 8 issue for me to determine'. Nevertheless, she went on at [7(d)] to note that one of the issues that was in dispute between the parties was whether the appellant would face very significant obstacles to integration or her removal would be disproportionate with reference to Article 8.' It is correct to say that the judge did not make any formal determination with reference to Article 8.

11. Counsel's contemporaneous note of the First-tier Tribunal hearing has been produced for this hearing. Consistent with what was noted by the judge at [6] of her decision, the note of the discussion at the beginning of the hearing states:

> 'So issues are well founded fear, sufficiency of protection and internal relocation. Also article 8 on same factual basis.'

12. The note goes on to indicate that detailed submissions were recorded in relation to the protection claim. No detailed submissions were made in relation to Article 8 with reference to any of the immigration rules. It was only under the heading 'Conclusion' that the following is noted in relation to Article 8.

> '34. It is submitted for the reasons outlined above that the Appellant's removal would breach the UK's obligations under the Refugee Convention and as a person eligible for humanitarian protection. It is also submitted that the Respondent's decision is unlawful under section 6 of the Human Rights Act 1998. The Tribunal is therefore invited to allow the appeal.
>
> MM – article 8 –
>
> For the same reasons, we submit that the A would face very significant obstacles to her integration in China and it would be unduly harsh to force her to return to China as a vulnerable VoT in circumstances in which her immigration problems are a direct result of her trafficking experiences.'

13. It is of course possible for the issues in a protection claim to diverge in some ways from the assessment of human rights issues under Article 8. An obvious example would be if a person had established a family life with partner or children in the UK. In that example, the assessment of the protection claim would focus on risk on return to the home country, but the assessment of the human rights claim would focus on the family ties that the person has in the UK.

14. That is not the situation in this case. It is clear from the way in which the case was put to the First-tier Tribunal judge that there was no discrete issue relating to Article 8 beyond the arguments already put in relation to the appellant's vulnerability on return in relation to the protection claim. When asked to distinguish what might have been different about the Article 8 claim, Mr Moriarty said that it had only been agreed that the Article 8 claim would be determined on

the same facts as the protection claim. However, he was unable to articulate any clear distinction as to why it would not follow that the judge's findings on risk on return and internal relocation would not be equally applicable to the assessment of the 'very significant obstacles' test under paragraph 276ADE(1)(vi) of the immigration rules (as applicable to this case) or with reference to an overall balancing exercise under Article 8 more generally.

15. The judge considered the evidence relating to any potential risk to former victims of trafficking and/or those who still owed money to loan sharks. She concluded that, although the appellant had a subjective fear, the evidence did not show a real risk of serious harm. There was in general a system of protection. The appellant could return to her home area. Even if there was difficulty with corruption in the local police force, she would be able to relocate to another area of China [20]. In considering this issue the judge considered the appellant's concerns about relocation to a large city that might have a high cost of living [21]. The judge also considered the risk of re-trafficking, noting some of the evidence [18][23]-[24]. However, she concluded that the evidence of some decreased efforts on the part of the authorities in tackling the issues of trafficking was insufficiently strong to depart from the relevant country guidance cases: see *ZC & Others (Risk - illegal exit – loan sharks) China* CG [2009] UKAIT 00028 and *TT (Risk-Return- Snakeheads) China* CG [2002] UKIAT 04937 [17][25].

16. The judge went on to consider issues that were both relevant to the assessment of whether internal relocation would be unduly harsh for the purpose of the Refugee Convention and/or whether there would be 'very significant obstacles' to integration for the purpose of Article 8. She took into account the fact that the appellant continues to be in contact with relatives in China including a young adult son, her sister, and her mother [26]. I accept that there is a minor error in the judge referring to the appellant's 'parents' [26]-[27]. However, it is not material when the point the judge was making was that the appellant had family members who were likely to be able to provide some support if she returned to China and would therefore not be returning as a lone woman.

17. In any event, the judge considered that the appellant would be able to re-establish herself in China with or without the support of family members. She took into account the fact that the appellant had work experience and the skills to find employment. The appellant was only in her forties and spoke Mandarin. She was born and brought up in China, had worked there, and had the ability to relocate. She considered whether the appellant's ethnicity, religion, or health might act as 'obstacles' to relocation, but concluded that they were not. [29].

18. Even as originally drafted, the grounds did not particularise any clear challenge to these findings beyond the second ground making a general assertion that the judge failed to consider the appellant's psychiatric issues and the most up to date US State Department TiP report relating to trafficking in assessing risk and the availability of internal relocation. Judge Lodato refuse permission in relation to that ground.

19. What remained was a general ground asserting that the judge failed to make any specific findings in relation to Article 8. I accept that human rights issues were raised and were not formally determined by the First-tier Tribunal judge. Had I been considering the issue at permission stage, I would have concluded that any error in relation to the third ground was not material. Permission was not granted to challenge any of the judge's factual findings relating to risk on return and internal relocation and no arguments were particularised in the third ground

as to why the outcome under Article 8 would have been any different given judge's note at [6]. However, having heard submissions at a hearing, I consider that it is appropriate to find that the decision involved the making of an error of law in this limited respect.

20. When invited to make submissions on remaking, Mr Moriarty said that an opportunity should be given to make further submissions on the law. However, I considered that an opportunity had already been given during the course of the error of law hearing to particularise how and why a different outcome might be achieved with reference to the 'very significant obstacles' test. Given the fact that there was no challenge to the factual findings, and submissions had already been made in relation to the relevant legal issue, I considered that it was appropriate to go on to remake the decision based on the existing findings of fact made by the First-tier Tribunal.

Remaking

21. It becomes clear from my summary of the way in which the Article 8 case was put to the First-tier Tribunal that the human rights claim relied on the same facts as the protection claim (see [9]-[14] above). No case was argued with reference to long residence in the UK. On her own evidence the appellant has only been in the UK since 2017 and falls far short of the relevant immigration rules on long residence. The case relied on the circumstances that the appellant might face on return to China. Beyond making general assertions with reference to the cases of *Ali* and *JA (Nigeria)* Mr Moriarty was unable to particularise any material distinction between the two tests on the facts of this case.

22. As a matter of fact, in assessing whether relocation would be unreasonable or unduly harsh the judge considered all of the factors that were relevant to the assessment of whether the appellant might face 'very significant obstacles' to integration as considered in *Kamara v SSHD* [2016] EWCA Civ 813. No error has been identified in the judge's findings relating to the protection claim. The judge found that the appellant would be able to return to China, could find work to support herself, if necessary away from her home area, and could expect to receive some support from family members.

23. General assertions were made during the course of the hearing about the appellant's vulnerability. The Home Office bundle before the First-tier Tribunal contained various pieces of correspondence relating to the appellant's health dated from 2018-2019. The correspondence showed that, understandably, the appellant was deeply affected by her experience of being trafficked for sexual exploitation. Her experience included the need for a medical abortion. She was investigated for abdominal pains and was referred for psychological support.

24. A letter dated 25 June 2019 indicated that the appellant was having suicidal thoughts following her father's death in March 2019. Her son seemed to act as a protective factor and she was able to manage the thoughts by distracting herself with other activities. She was receiving regular reviews with her GP who was monitoring her moods and anti-depressant medication.

25. A letter from an assistant psychologist at the Traumatic Stress Service in Bristol dated 11 November 2019 stated that she presented with symptoms that were consistent with PTSD and severe depression and anxiety. She was offered psychological support from the service, which was usually around 16-20 sessions long. The psychologist said that the appellant had completed the 1:1 stabilisation

work and started trauma therapy in July 2019. Various other documents relating to the appellant's medical history do not appear to disclose any serious medical conditions.

26. The appellant's bundle before the First-tier Tribunal contained a chronology, a witness statement, the NRM Conclusive Grounds decision dated 3 August 2022, and background evidence relating to China. It did not appear to include any up to date medical evidence nor any evidence relating to the appellant's psychological condition. In so far as the second ground asserted that the judge failed to consider psychological evidence, it appears that there was no up to date evidence. The appellant's statement said that she was diagnosed with depression and was suicidal from time to time. She was given medication. This is broadly consistent with the historic evidence of treatment during 2018-2019. Nothing in the statement appeared to outline what treatment, if any, the appellant was receiving at the date of the hearing.

27. It appears that there was no documentary evidence to show what effect removal might have on the appellant's health at the date of the First-tier Tribunal hearing. The limited evidence that was before the judge was out of date. In the circumstances, it was open to the judge to find that even if the appellant does have some current health conditions, there is a functioning health system in China.

28. For the same reasons given by the judge in relation to risk on return and internal relocation, I find that there would not be 'very significant obstacles' to the appellant's integration in China. She has not been long resident in the UK and continues to have linguistic, cultural, and familial ties there. The appellant suffered a traumatic experience as a result of trafficking six years ago and has received treatment and support during a lengthy recovery and reflection period in the UK. The fact that a person has been recognised as a victim of trafficking does not necessarily lead to a grant of leave to remain. There was no current evidence to show that she is particularly vulnerable or would be unable to work or to support herself if she returned to China. The First-tier Tribunal's findings relating to risk on return and internal relocation have been preserved. Those findings of fact lead to the conclusion that there would not be 'very significant obstacles' to the appellant's integration in China. I conclude that there appellant does not meet the private life requirements of the immigration rules. Nor is there any evidence of any other compelling circumstances that might outweigh the public interest in maintaining an effective system of immigration control for the purpose of any wider assessment of Article 8.

29. I conclude that the respondent's decision to refuse a human rights claim is not unlawful under section 6 of the Human Rights Act 1998.

Notice of Decision

The First-tier Tribunal decision dismissing the appeal in relation to the protection claim shall stand

The decision relating to the human rights claim involved the making of an error of law

The decision in relation to the human rights claim is remade and the appeal is DISMISSED

M.Canavan

Judge of the Upper Tribunal
Immigration and Asylum Chamber

08 July 2024