



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: AA/11257/2012
AA/11242/2012

THE IMMIGRATION ACTS

Heard at George House, Edinburgh
On 13 June 2013

Determination Sent

Before

THE PRESIDENT, THE HON MR JUSTICE BLAKE
UPPER TRIBUNAL JUDGE GLEESON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

YANG GUO
QIAO NA LIN

Respondents

Representation:

For the Appellant: Yumann Chung, instructed by the Treasury Solicitor
For the Respondent: Stephen F Winter, instructed by Neil Barnes, solicitor

DETERMINATION AND REASONS

1. The Secretary of State, the respondent below, appeals with permission against the decision of the First-tier Tribunal allowing the claimants' appeals against her refusal to

grant them refugee status, humanitarian protection or other human rights leave to remain in the United Kingdom.

2. The claimants are citizens of the People's Republic of China whose account was found credible, and who came to the United Kingdom together in July 2011, with the help of 'snakehead' people traffickers. They are both from Jin Hua City in Zhe Jiang Province. They are partners, although unmarried, and have had twin girl children since coming to the United Kingdom.
3. At the First-tier Tribunal they did not rely on their family situation as a risk factor because, as set out in paragraph 33 of the determination, they recognised that they would be unlikely to succeed on that basis in the light of the Upper Tribunal's country guidance in *AX (family planning scheme) China CG* [2012] UKUT 97 (IAC), which remains the most recent guidance on the Chinese family planning scheme.

The factual matrix

4. First-tier Tribunal Judge Scobbie accepted the claimants' accounts of their history in China, where they lived together. The first claimant worked away from home in an electronics factory, and the second claimed worked in an internet café. Their parents and other relatives had helped them buy their house in Jin Hua, which was in the first claimant's name. The Chinese government proposed to demolish a number of local houses and pay what the residents regarded as inadequate compensation; complaints through official channels failed and when the authorities came to demolish the houses, there was a demonstration which became a fight, in the course of which these claimants were arrested and taken to the police station, where they were questioned to determine the identity of the ringleader. They were badly treated during repeated questioning.
5. They were then sentenced to time at a labour education camp (*lao gai*), the first claimant for 18 months and the second claimant, because of her computer assistance to the protests, for two years. The labour camp separated men and women, though they were in the same camp. They worked for 12 hours a day in poor conditions. Both the claimants became ill, at exactly the same time, and paid money to the camp authorities for medical leave to receive treatment. Bribery may have been involved or the payments may have been official. That remains unclear. The second claimant was really ill and went to hospital for a week of her allocated month for medical treatment. She felt so ill that, with their parents' help, the couple decided that she could not return to the camp and that both of them would run away. At the end of June 2011, having made a down payment to snakehead people traffickers, the claimants left their village and travelled to Shanghai, then Moscow, and finally to the United Kingdom where they arrived a week later.
6. The snakehead traffickers detained the claimants in the United Kingdom, forcing them to sell DVDs, probably in Glasgow. Eventually, the balance of the trafficking fee was paid and in March 2012 they were released, claiming asylum promptly thereafter. The second claimant was heavily pregnant then, and the twins were born in May 2012. The basis of the asylum claim was that they feared being punished for failing to complete their sentences at the labour camp. The birth of their daughters is not relied

upon: the First-tier Tribunal Judge found, obiter, that the most likely outcome was that an SUC would be imposed, which could be paid over a period of time, and that the claimants had a supportive family who would assist them. They and the children would suffer no long-term disadvantage.

The grounds of appeal

7. The Secretary of State challenged that decision, on two grounds, first that at paragraph 40 the First-tier Tribunal failed adequately to engage with the background information available to him when considering the sentences passed on the claimants, failing to give adequate reasons for 'deviating from this factual evidence by basing his findings on mere assumptions'. Secondly, she argued that in expressing his reservations at paragraph 42, the First-tier Tribunal Judge had misdirected himself and that it was not open to him to find them credible for the reasons given.

Grant of permission to appeal

8. Designated Judge Woodcraft granted permission on the basis that it was arguable that the judge had not assessed the claimants' case against the background evidence; his reference to the material, at paragraph 32 of the determination, was somewhat brief; he had arguably failed to explain how an acceptance of credibility alone resolved the issues in their favour, or adequately to consider the material.

Rule 24 Reply

9. On 27 February 2013, Neil Barnes solicitor, acting for the claimants, filed a Rule 24 Reply combined with a skeleton argument. He noted that the Secretary of State's grounds of appeal did not actually challenge the decision in the First-tier Tribunal determination and argued that no error of law had been identified. He argued that the background information relied upon post-dated the claimants' detention in China and that at paragraphs 7 and 32, the judge had made it clear that he had taken into account the country evidence before him. He relied on the Secretary of State's OGN (paragraphs 3.12.1 - 3.12.4) and her Country of Origin Report at paragraphs 14.10-14.18 which supported the observations at paragraph 40 of the determination.
10. In addition, he argued that the Secretary of State had quoted selectively from the determination and that the effect was to misrepresent the First-tier Tribunal Judge's reasoning, which was adequate to support the conclusions reached.
11. If the decision were to be set aside, with the positive credibility findings preserved, he set out the relevant authorities which would have to be taken into account. In the light of the country information, they would be perceived to have an oppositionist political opinion and would be at risk on return.
12. That was the basis on which these appeals came before us.

The hearing

13. At the beginning of the hearing, we indicated that we considered that the grounds of appeal misstated the conclusions reached by the First-tier Tribunal Judge. The material paragraph of the Secretary of State's grounds of appeal reads thus:

"In addition, it is respectfully submitted that despite his reservations, highlighted at paragraph 42 regarding the appellants contact prior to claiming asylum as well as the wanted notice, he finds the appellants to be credible because they are able to corroborate each other's account. It is respectfully submitted that he has failed to give reasons from deviating from background information in spite of stating 'I am not satisfied that the appellants are telling the truth' (para 42) and 'Of course, the fact that they have exactly similar accounts does not mean that the accounts are true. They could have worked very hard to make up a story and have managed to get it right when it is appropriate to do so' (para 38)."

14. What the First-tier Tribunal Judge said, in context, was as follows:

"38. ...The fact that the appellants have accounts which stand up to cross-examination as being exactly the same is something which I have not met very often. Of course, the fact that they have exactly similar accounts, does not mean that the accounts are true. They could have worked very hard to make up a story and managed to get it right when it is appropriate to do so. However, the major problem I have with any contrary argument is that they both managed to say things when asked questions by the respondent's representative which they may well not have had an opportunity to get their stories correct if they were preparing a lie. I believe that some of the questions asked by the respondent's representative were questions which would not be easily anticipated. ..."

42. ...With regard to the other matters in this case I had a few concerns. It seemed to me that the appellants coming to the United Kingdom and claiming to be under the control of snakeheads for some considerable time and not knowing where they were before claiming asylum was a little difficult. I make this point especially as the appellants claimed asylum when the second appellant had discovered she was pregnant. Further, I was not at all impressed by the copy wanted notice sent. The fact that it contained a phrase concerning his accent seems to me to be a response to the suggestion that he does not come from the Province he claims. I cannot see any reason why this would be put on the wanted notice. I am not absolutely satisfied that the appellants are telling the truth but I am aware that there is a low standard of proof in these cases. I was impressed by the fact that their accounts were almost exactly similar even under questioning which could not have been anticipated. I also accepted that their responses to the various credibility issues were perfectly plausible."

[Emphasis added]

15. We observed to the respondent's Counsel that in both those paragraphs, the full context of the phrases criticised in the grounds of appeal seemed to us to be adequate to support his conclusions. Further, the assertion that the First-tier Tribunal Judge said at paragraph 42 that he was 'not satisfied that the appellants are telling the truth' was not an accurate quotation: he said he was 'not *absolutely* satisfied' and then referred to the lower standard of proof, which is correct. We find that the First-tier Tribunal Judge was entitled to reach the conclusions on credibility which he did, for the reasons given,

which were clear, cogent, and adequate. There was no material error of law in the determination.

16. Ms Chung for the appellant indicated that the Secretary of State would grant asylum to these appellants.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision is upheld.

Consequential Directions

Forthwith on receipt of this decision the respondent shall grant the appellants leave to remain for such period as is necessary to give effect to this determination.

Anonymity

The First-tier Tribunal did not make an anonymity order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Date:

Signed:

Judith Gleeson
Judge of the Upper Tribunal