Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/01110/2017**

THE IMMIGRATION ACTS

Heard at: Manchester Civil Justice Centre	**Decision and Reasons Promulgated**
On: 21st June 2019	**On: 16th July 2019**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

S H C
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Patel, Howe and Co Solicitors
For the Respondent: Ms Groves, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of China born on the 18th September 1985. He appeals against the decision of the First-tier Tribunal (Judge Pickup) to dismiss his appeal against a decision to refuse him leave on protection grounds.

2. In considering whether to grant permission to the Upper Tribunal, First-tier Tribunal Judge Keane said this: "the grounds amounted to no more than a disagreement with the findings of the judge, an attempt to re-argue the appeal and they did not disclose an arguable error of law". He did however find that the determination gave rise to what he regarded as a *Robinson* obvious[1] point:

[1] R v Secretary of State for the Home Department (ex parte Robinson) [1997] 3 WLR 1162

> 'did any procedural irregularity or unfairness arise from the fact that Judge Pickup had already had some involvement in this case, in his capacity as a Deputy Judge of the Upper Tribunal?'

3. The salient facts are these.

4. The Applicant's appeal was originally heard by First-tier Tribunal Judge Smith on the 6th March 2017. His claim was that he faced a well-founded fear of persecution in China for reasons of his religious belief, said to arise from his membership of the 'Church of Almighty God' (CAG or COG). It had been accepted that adherents of this faith do face persecution in China so the only issue before Judge Smith was whether the Appellant was a practising adherent as claimed. Judge Smith found that he wasn't and dismissed the appeal.

5. The matter came before Judge Pickup, sitting in the Upper Tribunal. The appeal was settled by consent, with the Respondent accepting that Judge Smith had erred in two respects. Judge Smith had found that the Appellant had been unable to give an exposition of two particular aspects of CAG theology when asked; this was an error of fact because the asylum interview record showed that in fact an accurate explanation had been given. Second, it was agreed that the Tribunal had overlooked two articles published online that had been "written by the Appellant for his church" (I take this quote from Counsel's grounds of appeal dated the 14th May 2017). Judge Pickup decided that these errors went to the heart of the credibility findings made by Judge Smith, which in turn had gone to the heart of the appeal. He therefore decided to remit the matter for hearing *de novo* in the First-tier Tribunal.

6. When the matter came back before the First-tier Tribunal it came, by what I believe was coincidence, before Judge Pickup, this time sitting as a Judge of the First-tier Tribunal. Counsel who appeared for the Appellant was Ms G. Patel, who had appeared before Judge Smith, had drafted the grounds to the Upper Tribunal, and who had appeared before Judge Pickup in the Upper Tribunal hearing. Given that history Ms Patel obviously knew that Judge Pickup had dealt with the case in the Upper Tribunal. She made no objection to his now dealing with the case in the First-tier Tribunal. She was perfectly correct not to have done so. There is in principle no reason why he should not have heard the case. Afterall, it would have been open to him to remake the decision in the appeal sitting as a Deputy of the Upper Tribunal. I am satisfied that there was no arguable procedural impropriety in the matter proceeding before Judge Pickup.

7. Judge Pickup heard the appeal, but by his written decision dated the 16th March 2019 decided to dismiss it. He made various adverse findings against the Appellant, but his findings can broadly be summarised as follows: the Appellant had given inconsistent evidence about his claimed history of persecution, he was unable to give a detailed explanation as to why he had

joined this church, his current attendance at a protestant church in the United Kingdom was inconsistent with his claimed adherence to CAG which has markedly different - and exclusive - theology, and he had demonstrated a general lack of awareness of the CAG faith. As to documents produced by the Appellant Judge Pickup found, upon *Tanveer Ahmed* assessment, that these were unreliable or added little to the claim.

8. There were two passages in the determination which concerned Judge Keane. The first is at §29:

> "One of the grounds of appeal to the Upper Tribunal was that Judge Smith failed to take account of the two articles said in the grounds to have been written by the appellant and demonstrating his knowledge of and reasoned adherence to the COG"

9. Having made that observation Judge Pickup goes on to record the Appellant's denial before him that he was in fact the author of those articles, and to draw adverse inference from the inconsistency on the point. Judge Keane's concern, I assume, was that in identifying that discrepancy Judge Pickup had drawn upon his earlier involvement in the case, in particular his knowledge of Ms Patel's grounds.

10. If that was his concern, I am satisfied that it is misplaced. Even if the determining Judge had had no prior involvement in the appeal it would have been plain that there was an inconsistency in the evidence. The index to the Appellant's bundle described the articles as "articles written by the Appellant and its English translations". The articles themselves bore the Appellant's name, and in one case, his photograph. It was therefore plainly open to Judge Pickup -or any other Judge - to draw adverse inference from the fact that the Appellant was now denying involvement in authorship.

11. The second paragraph in issue is paragraph 39:

> "The appellant was refused an adjournment in the previous appeal in order to get the original of the document at A42, translation at A41. Apart from the fact I am not satisfied that the translation has been by a certified translator, I find I can place little reliance on this document even though the so-called original was produced with an envelope showing something sent from China to the appellant's home address in Bolton. The document is something that could have been produced on a computer by almost anyone and bear a clearly scanned image, even if it is of the appellant. There is a red ink stamp on it but nothing else to authenticate it. There is no expert evidence to confirm its conformity with official wanted posters. The appellant claimed his father got this from a post stand or noticeboard in his village. However the document is pristine and clearly has not been stapled or pinned to any noticeboard. It is dated 16.11.13 and given

> that he remains in contact with his father in China I fail to see why it was not available to the appellant before the previous appeal hearing. He claimed he received it about a week after the hearing, which took place on the 6.3.17. However, that is not consistent with the date stamps on the document. Neither is it clear why it was issued on 16.11.13. It makes no mention of the appellant having escaped from the labour re-education camp or having failed to return on bail. In all the circumstances, whilst I take it into account in the context of the evidence as a whole, I find I can place little reliance on this document in support of the appellant's claim to be wanted by the Chinese authorities"

12. Here the issue for Judge Keane arose in the first sentence. A judge determining this matter afresh with no prior knowledge of the appeal would not have been aware that the Appellant had previously applied for the hearing to be adjourned so that he could obtain the original of this poster. That is true. I struggle to see, however, what unfairness thereby arises. The opening sentence of this paragraph is, read in context, nothing more than preamble. I have set the passage out in its entirety because it illustrates that Judge Pickup gave several good reasons why he was not minded to place any weight on this document. None of these turned on his knowledge of the earlier adjournment request, apart from the final point made about why it had not been available sooner. Even this would have been a finding open to any judge determining the appeal, given that the envelope was produced and part of the evidence in this appeal was about how and when the document arrived in the United Kingdom.

13. Accordingly I am satisfied that no error of law arose in Judge Pickup determining this matter in his capacity as a Judge of the First-tier Tribunal.

14. Given the terms in which Judge Keane granted permission, one might think that that was the end of that: see my §2 above[2]. Not so, says Ms Patel, who points out that Judge Keane concluded his decision with this: "the application for permission is granted". Ms Patel relied on Safi and others (permission to appeal decisions) [2018] UKUT 00388 (IAC) to submit that she had permission on all grounds, notwithstanding Judge Keane's remarks that these grounds were without any arguable merit.

15. The guidance in Safi, given by Mr Justice Lane, is as follows:

> *(1) It is essential for a judge who is granting permission to appeal only on limited grounds to say so, in terms, in the section of the standard form document that contains the decision, as opposed to the reasons for the decision.*
>
> *(2) It is likely to be only in very exceptional circumstances that the Upper Tribunal will be persuaded to entertain a submission that a decision which, on its face, grants permission to*

[2] I note for the sake of completeness that the decision of the Upper Tribunal in Durueke (PTA: AZ applied, proper approach) [2019] UKUT 00197 (IAC) was not available to the parties at the date of the hearing and so no submissions were heard on it.

> *appeal without express limitation is to be construed as anything other than a grant of permission on all of the grounds accompanying the application for permission, regardless of what might be said in the reasons for decision section of the document.*

16. I did not hear argument on whether the terms of this grant disclosed 'exceptional circumstances', since I thought it would be more straightforward to simply to hear Ms Patel's submissions.

17. The first was that there was an error of law in Judge Pickup placing reliance on discrepancies arising from the SEF interview, as in YL (rely on SEF) China [2004] UKIAT 00145 (IAC). I am not satisfied that any such error here arises.

18. At paragraph 41 of the determination the Tribunal weighs against the Appellant, as it was bound to do by s8 of the Asylum, Immigration (Treatment of Claimants etc) Act 2004, the fact that the Appellant delayed for some 18 months before he sought international protection. Judge Pickup considered whether a reasonable explanation had been offered for the delay and found that it hadn't, *inter alia* noting that there was a discrepancy between the evidence given at screening interview and the evidence that was given later about a claimed Snakehead debt. In identifying that discrepancy Judge Pickup squarely acknowledges the ratio of YL: "even though the screening interview is not intended to be a comprehensive account he can be expected to be truthful and consistent in his claims". I am satisfied that this was an approach open to the Judge. The point in YL is that screening interviews are brief, and so matters there omitted, but later relied upon, should not be fatal to the claim's credibility. That was not what happened here. Rather evidence about the debt was given at both interviews, but in markedly different terms.

19. Similarly the discrepancy identified at paragraph 22 of the determination is one that turns of substance, rather than an omission, or the Appellant having been brief in his answers at the screening interview.

20. Ms Patel's second point was that the Tribunal erred in law in taking against the Appellant matters that were not put to him, contrary to basic principles of fairness. It is submitted that the Tribunal acted unfairly in rejecting the Appellant's account of how his father assisted him with being released from detention.

21. It is a basic tenet of a fair trial that appellants are given an opportunity to meet a forensic challenge. See for instance HA & Anr v Secretary of State for the Home Department [2010] ScotCS CSIH 28:

> "the Tribunal may identify an issue which has not been raised by the parties to the proceedings, but it will be unfair, ordinarily at least, for it to base its decision upon its view of that issue without giving the parties an opportunity to address it upon the matter"

I am however quite satisfied that no such error or unfairness has arisen here. That is because the claim that the Appellant was detained, and subsequently released from detention, has been challenged since at least the date of the refusal letter, the 20th January 2017. At paragraph 19 of that letter the Respondent rejects it in these terms: "when asked how you can to be released (*sic*) you claimed that your father paid a bribe, that you were released to receive medical treatment and that you were released on bail. You have provided three different accounts of your release from detention and it is therefore not accepted that you were ever arrested and detained". Furthermore it is apparent from the typed record of proceedings that Ms Groves, who also appeared before the First-tier Tribunal, had cross examined the Appellant about the circumstances surrounding his release. It was a matter for Ms Patel whether she wished to clarify any of the answers given on the point in re-examination; this she chose not to do. In those circumstances the Tribunal was perfectly entitled to draw adverse inference from inconsistencies in the evidence.

22. Ground three is that the First-tier Tribunal failed to give reasons when it stated, at paragraph 22, that the Appellant was "vague and inconsistent as to what was wrong with him". The grounds suggest that the Tribunal should have explained in what way the Appellant was vague and inconsistent. I do not believe that the Tribunal need give reasons for reasons, but if the Appellant is unable to understand the reasoning in paragraph 22, I shall explain. When first interviewed the Appellant said that he had been badly beaten in prison and that he became sick. In his substantive interview he said that he had fever, flu and bronchitis. At the hearing he said that he had a high temperature and hepatitis. The Tribunal found these three explanations inconsistent with each other, which apart from the 'temperature/fever', they are. The Tribunal found the evidence to be vague, because it changed on each occasion that the account was given. Those findings amounted to reasons why the account was disbelieved, and they were findings open to the Tribunal on the evidence before it.

23. Ground four is that the First-tier Tribunal failed to have regard to material evidence when it found, at paragraph 24 that the Appellant was only able to demonstrate a "limited degree of knowledge" about CAG. The material evidence is identified as the Appellant's answers in his asylum interview at Q73-76, 81-83 and 91. It is worth setting those answers out.

24. At Q73 the Appellant was asked what it was about the female Christ that he likes. He replied: "she's Chinese but she is the female Christ" before going on to explain that God "somehow gone into her body". He said that she had been sent to judge people who would be sentenced by God. He is later asked what is was about the religion that appealed to him, to which he said "lots of good points. We believed in this female Christ will get forever life".

25. I am satisfied that there was no irrationality in Judge Pickup concluding from those answers that the Appellant had a limited knowledge of CAG. Nor is there any indication that he failed to have regard to that interview record: that it

formed part of the evidence before him is expressly acknowledged at paragraph 15. As to why the Appellant was attracted to CAG in the first place Ms Patel pointed to the Appellant's explanation that he went to a meeting because he liked a girl who went there. I am not persuaded that this evidence could or should have satisfied Judge Pickup that this was a genuinely held faith.

26. Ground five is that the Tribunal failed to conduct a *Tanveer Ahmed* assessment when it stated, at paragraph 34, that the Appellant's CAG membership card was so poorly made that he could not be satisfied that it was even genuine. I have looked at that card. I entirely agree with Judge Pickup's assessment. It's a piece of photocopied black and white paper that has been cut to card size and laminated. I further reject the contention that he compartmentalised his findings. As his conclusion to paragraph 34 makes clear, it added nothing to the claim. At paragraph 20 the Tribunal specifically acknowledges its duty to consider all of the evidence in the round.

27. Ground six concerns the 'wanted poster' submitted in evidence by the Appellant. As I set out above (at my §11, citing Judge Pickup's §39), several reasons are given for rejecting the veracity of that document. Some of these, Ms Patel argued, were based on mistakes of fact. Judge Pickup states that he is "not satisfied that the translation has been by a certified translator", when in fact it was. He said that it makes "no mention of the appellant having escaped from the labour re-education camp or having failed to return on bail" when in fact it does. I accept that the Tribunal does appear to have erred in those two respects. I am however far from satisfied that this makes any difference at all to the overall assessment. Judge Pickup does not have to be a document expert to be able to observe that "the document is something that could have been produced on a computer by almost anyone" or that it bore no marks or pin holes even though it was supposed to have been retrieved by the Appellant's father from the village notice board. The Tribunal was entitled to note that there was no verification report with this item of evidence, and that it fell to be assessed in the round, taking into account the fact that it was not provided to the Appellant until some four years after it was allegedly made and put up by the Chinese authorities.

28. All of these grounds, which took up a considerable amount of court time, were without merit. They amounted, as Judge Keane rightly identified, to an attempt to re-argue the claim.

29. There was one ground, however, which upon anxious scrutiny had more arguable merit. That was this. The Appellant had appeared, in name and photograph, on the CAG United Kingdom website. Photographs of him on CAG protests in London were also featured on this website. Ms Patel submits that the Tribunal failed to assess whether those facts in themselves would place the Appellant at risk. It mattered not, for the purpose of this submission, whether the Appellant believed in this faith, nor indeed whether he was actually the author of the articles attributed to him on the website.

30. I accept that the Tribunal has not dealt with this issue in the determination. I am not satisfied, however, that on the evidence before it, this error was in any way material.

31. Asked to identify country background material that would support her submission that the images and text on the website would place the Appellant at a real risk of harm Ms Patel pointed to the material at pages 52-75 of the Appellant's bundle. I have read that evidence. It demonstrates unequivocally that where the Chinese authorities identify someone in China as being an active adherent of CAG, that individual faces a real risk of serious harm, usually imprisonment for reasons of his religious belief. Those arrested are forced to work in 're-education camps' until they renounce their faith. Torture is used systematically against those who refuse to do so. Since the crackdown started in the 1990s it is estimated that 300,000 people have been detained in China as a result of CAG membership. All of that evidence is accepted by the Respondent. None of it establishes that the Appellant, a non-genuine adherent, is at risk by virtue of having his photograph appear on the United Kingdom based website in question.

32. I note that at 9.1 of the October 2018 report by the United Nations Human Rights review it states:

> "Members of the CAG throughout China continue to be subjected to systematic surveillance of their movements, arbitrary searches of their homes, and monitoring of private communications. Local '610 offices', whose mandate is it to repress *xie jiao*, routinely order 24-hour surveillance of devotees' homes, try to maintain databases of members of the CAG, and make harassing visits to practitioners released from custody..."

33. Further the European Federation for Freedom of Belief state that the Chinese government have employed media attacks against CAG in Korea, Taiwan and Hong Kong. Other sources confirm this tactic, to the effect that the Chinese state uses fake news to discredit the group, including accusations that it is involved with murder and child abuse.

34. This evidence indicates that *inside* China the state uses surveillance against its citizens, and that outside China it uses fake media stories to discredit CAG. I could find nothing in the material before Judge Pickup capable of even suggesting that the Chinese state would be a) monitoring websites abroad b) using intelligence to identify individuals seen on such websites or c) using such intelligence to persecute them upon return to China. Ms Patel asked me to infer from the generality of evidence on human rights abuses in China that they would do all three. She placed reliance upon YB (Eritrea) v Secretary of State for the Home Department [2008] EWCA Civ 360 in which Lord Justice Sedley held:

> "Where, as here, the tribunal has objective evidence which "paints a bleak picture of the suppression of political opponents" by a named government, it requires little or no evidence or speculation to arrive at a strong possibility – and perhaps more – that its foreign legations not only film or photograph their nationals who demonstrate in public against the regime but have informers among expatriate oppositionist organisations who can name the people who are filmed or photographed. Similarly it does not require affirmative evidence to establish a probability that the intelligence services of such states monitor the internet for information about oppositionist groups. The real question in most cases will be what follows for the individual claimant. If, for example, any information reaching the embassy is likely to be that the claimant identified in a photograph is a hanger-on with no real commitment to the oppositionist cause, that will go directly to the issue flagged up by art 4(3)(d) of the Directive".

35. I confess I have some difficulty in transposing the findings on Eritrea made in 2008 to the absence of evidence on Chinese state surveillance in 2019. The media is full of stories about Chinese espionage (see for instance the recent Huawei controversy). Human rights groups are plainly alive to the very real persecution of CAG adherents in the country itself. The reports before me do indicate that the Chinese state is actively working against CAG abroad, but only to the extent that it plants fake news stories about its followers in the foreign press. Given those three things one would imagine that if there was any evidence that the Chinese state monitors CAG abroad, and that consequences follow, that this fact would have emerged in the very many human rights reports written about China. The Chinese diaspora is estimated to consist of over 50 million people. I cannot simply assume that the Chinese state has the means or inclination to monitor them all. If there is evidence of such surveillance, it was not before Judge Pickup.

36. If I am wrong, I focus on Lord Justice Sedley's final comment in YB. The real question is whether the Chinese authorities would persecute a man who has falsely claimed to be a member of CAG in order to found a bogus asylum claim, that being the finding of Judge Pickup. There was nothing in the evidence before the First-tier Tribunal to indicate that to be the case. The surveillance mentioned in the human rights reports is, apparently, targeted against practising adherents who first draw themselves to the authorities' attention by attending church etc. There being no danger of that here, I am unable to find Judge Pickup's omission to be material. It follows that the appeal is also dismissed on this ground. The Appellant has not demonstrated, even to the lower standard of proof that he faces persecution for minimal involvement in this movement, involvement that has been found to be wholly opportunistic and cynical.

Decisions

37. The determination of the First-tier Tribunal contains no error of law and the decision is upheld.

38. The appeal is dismissed.

39. This appeal concerned a protection claim. I therefore consider it appropriate to make an order for anonymity in the following terms:

> "Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings"

Upper Tribunal Judge Bruce
Dated 10th July 2019