Upper Tribunal
(Immigration and Asylum Chamber) PA/09340/2019 (V)

THE IMMIGRATION ACTS

Heard by *Skype for Business*
On 21 April 2021

Decision & Reasons Promulgated
On 30 April 2021

Before

UT JUDGE MACLEMAN

Between

JIE HE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by Katani & Co, Solicitors
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of China, born on 19 May 1996. The SSHD refused his asylum claim by a letter issued on 17 September 2019. FtT Judge David C Clapham SSC refused his appeal by a decision promulgated on 10 December 2019.

2. The appellant's grounds of appeal to the UT are set out in his application dated 28 January 2020.

3. The grounds, in summary, and omitting citations, are:

   (1) – evidence from witness:

(i) at [57], rejection of evidence from a witness that police showed her an arrest warrant, and evidence from the appellant that immigration officials were bribed: to dismiss evidence as "self-serving" is inadequate;

(ii) at [57], error to discount evidence from witness because account of appellant already found to be false.

(2) – inadequate reasons:

(i) at [53] inadequate reasons for finding it unclear why police would be interested in appellant, when it was to be inferred his friend gave his name to police who aimed to arrest demonstrators;

(iii) at [53], inadequate reasons for finding no specific reason for Xin He to disclose appellant's details to police; by inference, the reason was that when interrogated and / or ill-treated he would give names;

(iv) at [54], inadequate reasons for not accepting claimed frequency of police visits;

(v) at [56], inadequate assessment whether there might have been a typographical error in the interview, "2001" instead of "2011".

4. By a skeleton argument dated 27 April 2020 the SSHD responds to the grounds, in summary as follows:

(1) is only disagreement; judge reviewed evidence in detail, and had to do so in some order; unsurprising to start with appellant; findings on his evidence include:

(i) incorrect on date of Jasmine Revolution;

(ii) no adequate explanation for failing to mention demonstration the previous day, but then claimed it was one of the reasons for the one he attended;

(iii) no explation for there being news reports about the demonstration the day before, but not the one he attended;

(iv) no explanation, given very limited involvement, why of interest to the police, or his name disclosed;

(v) no explanation for no knowledge of other members of his group.

Cogent reasons for finding about warrant.

(2) only further disagreements; suggestion of typographical error not advanced at the hearing.

5. The appellant's response dated 29 April 2020 does not add substantially to the grounds.

6. In his oral submissions Mr Winter drew attention to passages in the cases cited in support of ground 1:

MJ (Singh v Belgium: Tanveer Ahmed unaffected) [2013] UKUT 00253, at paragraph 33:

> We should say in passing that we agree with the point made by Ms Laughton in submissions concerning the use of the term "self-serving". If that were the only basis upon which the judge had rejected evidence then we would find it to be lacking in proper reasoning. No doubt an appellant will generally, if not always, find it of assistance to put forward evidence that assists his case and to that

> extent such evidence may be regarded as "self-serving", but that cannot in any sense be said to be a reason for marginalising it. The use of this term is, in general, unhelpful, but in this case it does not in our view materially flaw the determination because of the other matters we have identified above which justified the judge in coming to the findings that he did.

R (on the application of SS) v Secretary of State for the Home Department ("self-serving" statements) [2017] UKUT 00164 (IAC), as headnoted:

> The expression "self-serving" is, to a large extent, a protean one. The expression itself tells us little or nothing. What is needed is a reason, however brief, for that designation. For example, a letter written by a third party to an applicant for international protection may be "self-serving" because it bears the hallmarks of being written to order, in circumstances where the applicant's case is that the letter was a spontaneous warning.

In *AR v SSHD* [2017] CSIH 52, where after dealing with a question of verification of documents, and of viewing all the evidence in the round, the Court said at paragraph 36:

> Similar comments apply to the lack of any proper consideration and assessment of the evidence from the supporting witness and the statement from the proprietor of the gay club. One cannot simply dismiss this evidence, or in effect ignore it, because one has already decided that the claimant's account is false. No finding was made by the First-tier Tribunal judge as to whether the evidence was credible and reliable, and if not, for what reason.

Mr Winter referred to *S v SSHD* [2011] SLT 1058, [2010] CSIH 90, at [9 – 12]; the point of principle is clear from [9]:

> We are of the view that the Tribunal did err in law in assessing the credibility of the first applicant and his wife. We consider that the Determination discloses a structural failing in the approach of the Tribunal in that it indicates that the Tribunal reached conclusions as to the incredibility of the accounts of the first applicant and his wife before considering the significance of the evidence of other witnesses. The evidence of F A S in particular was of direct personal experience and contained details which were plainly material in relation to the credibility of core elements of the account of the first applicant and his wife about their origins, nationality and clan membership as well as their experience of mistreatment. It was thus corroborative evidence on material aspects of the evidence of the first applicant and his wife that ought to have been considered along with their evidence and any other relevant evidence in the round before final conclusions in relation to the credibility of the first applicant and his wife were reached. To leave such significant material out of account in assessing credibility in this case was an error of law of such significance as to vitiate the decision of the Tribunal.

7. On ground 2, Mr Winter submitted that the evidence yielded a clear inference that the appellant's name might have been disclosed to the police; the judge did not analyse his evidence at interview that phone messages passed between him and the group leader; and the judge stated various findings baldly, without reasons.

8. Summing up, Mr Winter submitted that grounds 1 and ground 2, separately or together, left reasoning by which the outcome would not inevitably be the same, and so a rehearing was required.

9. Ms Isherwood in her submissions sought to identify reasons in the decision, to show that it disclosed no error once read as a whole. On ground 2 (v), she said it was not for the judge to search for possible explanations in favour of the appellant when those were not suggested. Further, she referred to the decision at [16], where the appellant confirmed that he had thought the group behind the Jasmine Revolution formed in 2001 not 2011, having been told so by a senior member. She argued that the judge's findings, including those on the evidence of the appellant's girlfriend, were not reached in isolation but in the round. The judge was entitled to note, for example, that the witness carried little credit, given her devious immigration history, and that the allegation of bribery to transit the airport was made up only in course of oral evidence.

10. Mr Winter replied that even if the respondent was right about ground 2 (v), that was not key; some of the respondent's points were re-argument on the merits, based on the decision where it set out evidence and submissions, but it was the reasons which were crucial; and there was a lacuna regarding the evidence from the witness, as in the cases cited, where decisions were not saved by formal recitals of considering evidence in the round.

11. I am obliged to both representatives for their helpful submissions.

12. The epithet "self-serving" is unhelpful, and best avoided.

13. The passage from [57] in which the term appears is:

> The speculation is that the group leader disclosed the appellant's name to the police, but speculation is all it is and the claim that there is an arrest warrant does not … sit with the fact that the appellant was able to leave the airport and exit China … despite a facial recognition system … that officials had been bribed is a convenient and self-serving suggestion … weakened by the fact that it was only under cross-examination that the appellant suggested that officials had been bribed …

14. The judge does not use the term without "a reason, however brief". He mentions inconsistency with background evidence and the late emergence of the explanation. Those are factors he was entitled to consider, in which no error has been alleged.

15. In further context, the passage appears after a cautious analysis of the absence of news reporting of the claimed event; a self-reminder to look at the evidence in the round; a reference to supporting evidence "from those who claim to have seen the arrest warrant"; and a comment on lack of explanation why there would be an arrest warrant.

16. Amongst that the judge says that he regards the evidence of witnesses to the warrant as "designed to bolster the case of the appellant". That phrase is rather ambivalent, along the same lines as the term "self-serving"; but it also must be read in context.

17. Looking both at [57] and at the decision in full, the appellant has not shown that the judge classified evidence as "self-serving", or used similar terms, as a reason, on its own, for not accepting that evidence.

18. The appellant has not shown a structural failing by reaching conclusions on the incredibility of the account of the appellant before considering the significance of the evidence of anyone else. The approach in the decision is holistic.

19. Neither part of ground 1 is established.

20. Ground 2 challenges adequacy of reasoning, but selectively. It does not acknowledge the judge's full reasoning, as relied upon by the respondent in written and oral submissions.

21. Sub-grounds (i) and (iii) overlap. The appellant suggested that his name had been disclosed to the police. Whether that allegation was speculative, or a reasonable inference, was for the judge to decide, after weighing all the evidence. Whether his resolution is legally supportable depends on all the reasons he gave.

22. There is no sub-ground (ii).

23. Sub-ground (iv) blandly asserts absence or inadequacy of reasons for not accepting the claimed frequency of police visits.

24. At [54] the judge firstly notes some inconsistency in the appellant's evidence about this, and secondly declines to accept what he says, on the view that the police would not waste time and resources in this way. The appellant has made no direct challenge to that specific reasoning. This must be put in context of China being a highly policed and authoritarian society, as the judge was aware, but also of the relative triviality of the suspected offending, and of what the judge made of the appellant's other allegations.

25. On ground 2 (v), the respondent's submissions were sound. The suggestion of a typographical error is a possibility on the face of the interview record, but this is an afterthought. Even if the judge should have perceived the possibility, the issue is extinguished by the fact that the appellant, as recorded by the judge, stood by the 2001 date in his oral evidence.

26. Ground 2 does not show that the reasons in the decision are less than legally adequate, either on the issues selected, or on a fair reading of the entire decision.

27. The decision of the FtT shall stand.

28. No anonymity direction has been requested or made.

Hugh Macleman

22 April 2021
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.