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Heard at: Field House
On 4 November 2004

PW (Tibetan – Failed asylum seeker – risk)
China [2005] UKIAT 00051

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:
13/01/2005

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Before:
Miss K Eshun – Vice President
Mr B D Yates
Mr P S Auja

Between

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

Representation

For the Appellant: Mr M Braid, of counsel instructed by Gillman-Smith Lee Solicitors

For the Respondent: Ms K Pal, a Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a Tibetan from the People's Republic of China appeals with leave of the Tribunal against the Determination of an Adjudicator (Mr D W Mayell) dismissing his appeal against the decision of the respondent taken on 31 December 2003 to refuse his asylum and give directions for his removal from the United Kingdom as an illegal entrant.
2. The facts upon which the appellant based his asylum claim were found not to be credible by the Adjudicator.
3. The issue before the Tribunal was whether the appellant, as a Tibetan failed asylum seeker, would face persecution on his return to China.
4. In dealing with the risk on return as a failed asylum seeker, the Adjudicator said the following at paragraph 71:

“It is claimed, on his behalf, that, in any event, as a returning failed asylum seeker he would be at risk of persecution. It was acknowledged on his behalf that there was no direct evidence that asylum seekers returning from the west, as opposed to from Nepal or

surrounding countries, would be at risk of persecution. I was, however, referred to the Tribunal case of **Sherpa**. In that the Tribunal said, at paragraph 14 “Whilst we would normally agree with the Adjudicator that if the appellant has acted or been involved as she claimed, then there is a real risk of persecution and a risk of a breach of human rights, we do not, in this particular case, however, agree with his view that a finding to the contrary means that there is no risk for the appellant upon return. The overwhelming tenor of the objective evidence, from which we have quoted some small extracts, leads us to the view that as a person who has gone into self-imposed exile, whatever her activities may or may not have been before she left Tibet, there is nevertheless a reasonable likelihood that she would be questioned and detained upon return. This questioning and detention would not necessarily arise out of her possible activities prior to departure but arise out of the fact that she is returning from the west. The evidence would also indicate to us that such questioning and detention could lead to a reasonable likelihood of punishment, torture and inhuman and degrading treatment.” I do not, unfortunately, know what background material was placed before the Tribunal. The US State Department Report, to which I was referred, does refer to reports of arbitrary detention of persons, particularly monks, returning to China from Nepal. I have not been able to find, nor has my attention been drawn, to any particular documentary evidence which suggests a likelihood of questioning and detention arising out of the fact that a person is returning from the west.”

5. The Adjudicator did go on to say that the respondent will not return this appellant to Tibet unless proper documentation is available. In the circumstances he did not find that the appellant would be at real risk giving his findings as to his lack of activity in the past, that he would be subjected to a real risk of persecution or treatment contrary to Article 3, simply because he is a failed returning asylum seeker.
6. Counsel said that the objective information which the Tribunal relied on in **Sherpa** was a report from the Amnesty International website of 27 June 2003. Amnesty International said this:

“It is extremely difficult to consider the fate of those returned to Tibet, due to the tight controls on information imposed by the Chinese authorities. However, Tibetan asylum seekers and refugees who are returned to China face at the least detention for interrogation where they are at serious risk of torture and ill-treatment.”

Counsel said that that view reflects information in most of the reports contained in the appellant’s bundle of documents. Counsel then took us through these reports.

7. According to the 2000 Annual report of the Tibetan Centre for Human Rights and Democracy (TCHRD) prison malpractice in the form of torture was a recurring element in all the testimonies provided to monitoring agencies by former prisoners. Increased restrictions were imposed during 2000 on Tibetan returnees from exile leading to the alleged detention of approximately 50 students and the expulsion of 29 Tibetan tour guides. The movements of exile returnees - who are viewed with suspicion of being involved in political disturbances – are monitored closely through China’s evasive espionage network and interrogation procedures. The possibility of securing any government related job is non-existent for Tibetans returning to their home land from a period in exile. Tibetans in their home land with a history of

visiting India are treated with suspicion; it is assumed that they have political involvement and association with “splittists”. Tibetan returnees from India are invariably detained at the Nepal/Tibet border although the duration of the detentions may differ. At the time of detention, the detainee undergoes harrowing interrogation sessions concerning motivation for the visit and future objectives. Life back in Tibet thereafter becomes one of captivity without actual imprisonment. A further venue of discrimination awaiting the exile returnees is the fear of job opportunities. They are discriminated against simply because they are exile returnees. The report goes on to say that almost all of the prisoners arrested have at some stage undergone serious physical abuse at the hands of either public security bureau officers or prison guards – or often by both. Torture is a prevalent occurrence in detention centres and prisons in Tibet, resulting in many deaths.

8. According to the 2001 annual report of TCHRD, Tibetans seeking to travel outside their place of abode even to another country, experience bureaucratic obstruction. They have to acquire specific documents. Tibetans are required to procure a travel pass to enter restricted border areas and this pass must cite the purpose of travel. To leave Tibet legally citizens have to apply for a PRC passport. Such a passport is often difficult to obtain and the procedures are lengthy.
9. Counsel said that the appellant left China illegally. According to paragraph 6.181 of the October 2004 CIPU report on China, under Article 3.22 of the Criminal Code, anyone who leaves the country illegally will be sentenced to not more than one year of fixed term imprisonment and criminal detention or control. Counsel therefore argued that on his return to China the appellant will immediately become exposed to the authorities. He will then immediately face some form of persecution highlighted by TCHRD in their annual report of 2001. In that report the TCHRD states that the standard punishment for those caught attempting to leave Tibet ranges from ten days detention in a police station to one to three months imprisonment in a detention centre or prison. Detainees reported that Chinese police routinely tortured and beat their captives. According to testimonies it is common for those arrested to be moved between several police stations, detention centres and prisons during detention. The report goes on to say that the fact torture is a regular feature of detentions is evidenced by Amnesty International’s Report of 12 February 2001 on torture. According to Amnesty, reports from China in recent years include a high proportion of victims who are killed or fatally wounded by torture during interrogation within the first 24 hours of detention.
10. In the light of the objective information, counsel argued that as a Tibetan returning to China after having left illegally, the appellant would face harsher punishment amounting to persecution. He said that the system of household registration (Hukou) and identity cards, is extremely important in China as noted at paragraph 1.61 of the CIPU. Each urban administrative entity issues its own Hukou, which entitles only registered inhabitants of that entity formal access to social services like education. However, counsel argued that the real risk the appellant faces is persecution at the point of entry in China.
11. Miss Pal on the contrary argued the appellant is not likely to face persecution or ill-treatment at any point of entry were he to be returned to China. She said that the objective information we have on returns to China is based on information of returns from Nepal and India. Returnees from India come to the attention of the Chinese authorities because India is the home of the Tibetan government in exile, as evidenced by the CIPU report at paragraph 6.211. Similarly Nepal is also home to an estimated 20,000 or more Tibetans many of whom arrived in 1959 – 60 around the time the Dalai Lama fled there from

Tibet (paragraph 6.212). Therefore as Nepal is also viewed as a home land for Tibetan dissidents, returnees from Nepal come to the attention of the authorities. Miss Pal said that her submissions are confirmed by the TCHRD who state that Tibetans in their home land with a history of visiting India are treated with suspicion. It is assumed that they have political involvement and association with “splittists”. Tibetan returnees from India are invariably detained at the Nepal-Tibet border although the duration of their detentions may differ. She therefore argued that as there was no information on how Tibetan returnees from the west are treated, and given that the appellant was not found credible as to his asylum claim and did not have a political history in Tibet or in the UK, it was unlikely that he would be at risk on return.

12. Miss Pal referred us to paragraph 6.163, which states that there is a floating population of between 100 and 150 million economic migrants who lacked official residence status in cities. She said that the appellant could assimilate into the floating population although she accepted that without household registration it would be difficult for him to get access to social services.
13. Miss Pal also referred us to the CIPU bulletin of 5/2003, which states at paragraph 6.1 that the Chinese government accepts the repatriation of citizens who have entered other countries or territories illegally. Returnees are generally fined. Those who have been repatriated a second time typically are sent to labour camps in addition to being fined. According to paragraphs 6.2 in January 2000 the political councillor of the Canadian embassy visited Fuzhou City in Fijian province on a fact finding mission, to ascertain conditions of returnees, and allied general conditions of life in Fijian province. The main conclusion of their political councillor’s fact finding report with regards to returnees was this:

“There is evidence of wilful deception of foreign governments as to sanctions against returned illegal migrants. Much touted policies of prison sentences and extensive re-education programmes are apparently mostly not implemented. Rather we have become aware of preferential economic policies and business loans made available to returnees by local governments. We are assured that children under sixteen returned to China would not be subject to incarceration under any circumstances.”

14. As already stated above, the issue before us is whether as a Tibetan failed asylum seeker, there is a reasonable degree of likelihood that the appellant will be persecuted on his return to China.
15. The background information which counsel relied on and which he said was before the Tribunal in **Sherpa** was the report from an Amnesty International website of 27 June 2003. This states as follows:

“It is extremely difficult to discover the fate of those returned to Tibet, due to the tight controls on information imposed by the Chinese authorities. However, Tibetan asylum seekers and refugees who are returned to China face at the very least detention for interrogation, where they are at serious risk of torture and ill-treatment.”

We would question how Amnesty International is able to draw this conclusion if they have had extreme difficulty discovering the fate of those returned to Tibet. The Secretary of State proposes to remove the appellant to China. We know that Tibet is a part China and that there are no direct flights to Tibet. The information contained in the Home Office China extended bulletin 5/2003 indicates that the Canadian fact finding mission to the Fijian province in

January 2000 referred only to returnees from Japan and the US. The Japanese returnees were interviewed. Admittedly there was no information in that report that any of the returnees were Tibetan.

16. The information on returnees contained at paragraph 6.181 of the CIPU report October 2004 states that under Article 322 of the Criminal Code any one who violates the laws and regulations controlling secret crossing of the national boundary and when the circumstances are serious shall be sentenced to not more than one year of fixed term imprisonment and criminal detentions or control. Paragraph 6.182 highlights Articles 52 and 53, which cover financial penalties for returnees. Article 52 imposes a fine, the amount of which will be determined according to the circumstances of the crime. Article 53 states that a fine is paid in a lump sum or in instalments within the period specified in the judgment. Upon expiry of the period where a person is unable to pay the fine in full, the people's court may collect whenever that person is found in possession of executable property. If the person truly has difficulties in paying because he has suffered irresistible calamity, consideration may be given according to the circumstances to granting him a reduction or exemption.
17. We do not know what would constitute serious circumstances in Article 322, nor do we know whether the appellant might suffer imprisonment for leaving China illegally or even a fine. There is no evidence that a Tibetan who left China illegally is likely to suffer imprisonment or fine. In the absence of very clear evidence as to what is likely to happen to the appellant on return to China, we are unable to find that there is a real risk that he would suffer persecution or ill-treatment on return to China. There is no reason why the appellant should not become part of the floating population of between 100 and 150 million economic migrants who lack official residence status in cities.
18. On the totality of the evidence before us we find that the appellant's appeal cannot succeed. It is therefore dismissed.

Miss K Eshun
Vice President