

HL (Risk –Return - Snakeheads) China CG [2002] UKIAT 03683
CC/21125/2001

IMMIGRATION APPEAL TRIBUNAL

Date of hearing: 14 May 2002
Date Determination notified:
13TH AUGUST 2002
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Before:

Mr. P. R. Moulden (Chairman)
Mr J. Freeman
Mrs L. H. S. Verity

Between

HUI MEI LUI

Appellant

and

THE SECRETARY OF STATE FOR
THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. The Appellant is a citizen of China who has been given leave to appeal the determination of an Adjudicator (Miss A. D. Baker) dismissing her appeal against the Respondent's decision to refuse to grant her asylum.
2. Mr A. Yuen, an authorised representative from Phoenix Nova, Solicitors appeared for the Appellant. Mr I. Graham, a Home Office Presenting Officer, represented the Respondent.
3. The Appellant left China in May 2000 and arrived in the United Kingdom on 7 August 2000. Her application was refused on 9 February 2001. The Adjudicator heard the appeal on 1 October 2001 and leave to appeal was granted on 9 January 2002. The Adjudicator dismissed the appeal on both Refugee Convention and human rights grounds. The current appeal is on human rights grounds only.
4. The Adjudicator found the Appellant to be a credible witness. It is clear that in doing so the Adjudicator gave the Appellant some benefit of the doubt. She had come to the United Kingdom to find work. Her passage had been arranged by snakeheads. She was a country girl and illiterate. Her family were farmers. She did not know that she had paid more than the usual fee for

the package to travel to the United Kingdom. She had been told to claim that she was a member of Falun-gong, which was not true. She feared that if she returned to China she would not be able to repay her debt to the snakeheads and they would kill her. She was more concerned about the dangers to her family than for her own personal safety. She had to pay interest equivalent to the whole of her annual earnings in China each month. The interest would mount up. The Appellant refused to give the name of the family friend of her elder brother who had put her in touch with the snakeheads. She refused to say which Province or town she came from.

5. After reviewing the country information the Adjudicator found that the Appellant was persuaded to travel to the United Kingdom to seek a better life. Her family were very poor. Her father had been ill with liver cancer and had died before she left China. She was told to tell a false story: she had not been involved with Falun-gong. The Adjudicator found that the Appellant had not been able to obtain work in the United Kingdom. However, the situation appears to have changed. Mr Yuen informed us, on instructions, that the Appellant was working and up-to-date with her payments to the snakeheads. The Adjudicator found that the Appellant was afraid that if she returned to China she would not be able to repay the debt to the snakeheads, who would kill her. She was concerned about the dangers to her family. She was afraid that she would be attacked, lose her eyes, or have other body parts removed for transplant.
6. We need not deal with the Adjudicator's findings in respect of the Refugee Convention appeal against which there is no appeal. In respect of the human rights appeal the Adjudicator found that corruption was a problem in China but this did not have any effect on the risks facing this Appellant on return. There were reports of terrifying attacks by snakeheads on Chinese "illegals" in Europe but no reports of retribution in respect of failed illegal immigrants forcibly returned to China. There are reports of visits by reporters to snakehead homes of great affluence in China and interviews with those involved in human trafficking. The illegal trade had continued for many years and there was no reliable evidence of the type of punishment meted out to failed asylum seekers which the Appellant claimed to fear. The evidence relied on by the Appellant and the claim that some had been killed, related to deaths outside China, not the fate of those who returned. Reports of extortion from family members remaining in China related to those whose relatives failed to make payment whilst in foreign countries. The Adjudicator concluded that the Appellant had not made out a real risk that her human rights would be infringed.
7. We are grateful to Mr Yuen for the carefully prepared and comprehensive bundle. The Respondent has submitted the April 2002 Country Assessment. The Appellant's Skeleton Argument adds some further information to her account, which is helpful but does not make a material difference to our conclusions. It alleges that the Appellant fears not only snakeheads but also loan sharks. The snakeheads are the gangsters who make and often implement

is the arrangements for an individual's journey to the United Kingdom whilst the loan sharks lend some or all of the money to pay the snakeheads.

8. We do not accept that the credibility of the evidence submitted by the Secretary of State is in issue in this appeal, except to the extent that the appeal turns on an assessment of the Appellant's circumstances in the light of the country information. We must make an objective assessment of all the country information, whether submitted by the Appellant or the Respondent. Mr Yuen's submission that we should look at the credibility of the Respondent's evidence flows from the submissions set out in paragraphs 64 and 70 of the skeleton argument that the burden of proof falls on the Respondent to establish that the Appellant's human rights will not be infringed. This is summarised in paragraph 68 in the statement, "the Secretary of State, in receipt of an application, is bound to provide protection unless he can show substantial grounds for believing that the alleged risks are not real, for it would clearly be incompatible with the underlying values of the Convention were the Secretary of State to return the Appellant to China without first ensuring that it is safe to do so". We find no merit in these submissions, which are misconceived. The burden of proving that her human rights will be infringed falls on the Appellant who must establish this to the same standard, a reasonable likelihood, which applies both to Refugee Convention and human rights claims. This is made clear in the starred Tribunal determination in **Kacaj**. We can find no merit in the submissions which appear between paragraphs 71 and 75 of the skeleton argument that Article 19 or the obvious purposes of the Human Rights Convention support the view that the burden of proof falls on the Respondent or that to place the burden of proof on the Appellant puts the Respondent in breach of his duties.
9. In his skeleton argument Mr Yuen criticises the Country Assessment, arguing that the different threads and contradictions make it impossible to interpret the assessment correctly and that the Home Office, with an interest in returning illegal immigrants, has not made an impartial or objective assessment. We do not accept this criticism. The Assessment is sourced and, in our judgment, makes a balanced and careful assessment of the available evidence. A comparison of Mr Yuen's evidence, which appears to have been given to a Parliamentary Committee, and is set out between pages 98 and 100 of the Appellant's bundle, with the Country Assessment leads us to prefer the latter. Mr Yuen's evidence relies heavily on newspaper reports and, although he criticises contradictions between the reports of the experts referred to in the Country Assessment, he does not indicate what expert evidence he prefers or refer to any other expert evidence which might support the conclusions for which he argues. We have treated Mr Yuen's submissions to the Parliamentary Committee as submissions to us. Had we not done so he would have faced the obstacle of attempting to provide expert evidence in a case in which he appears as an advocate.
10. We find considerable force in the reply to Mr Yuen's submissions from Mr Carlyle of the China and Far East and the Americas section of the Country

Information and Policy Unit, which appear between Pages 121 and 124 of the Appellant's Bundle. On page 123 Mr Carlyle lists the experts whose reports are relied on in the Country Assessment. Their qualifications are impressive. There is no justification for dismissing their views out of hand, as Mr Yuen suggests. We do not accept that the Home Office has produced a biased assessment. There is clear evidence of a balanced approach and no relevant evidence appears to have been ignored. There are no clear-cut conclusions adverse to the interests of Chinese asylum claimants, which might have lent some support to his submissions.

11. We can find no merit in the criticism contained in paragraphs 27 and 28 of the skeleton that the Respondent should have produced evidence from, for example, Scotland Yard or the National Crime Squad following the tragic deaths of a number of Chinese in a container lorry. There is no duty on the Respondent to produce such evidence and it is not self-evident that, if such evidence exists, it would be relevant to the question of the risk on return to China for those individuals who are indebted to snakeheads or loan sharks.
12. There is an important fallacy in Mr Yuen's submissions. On more than one occasion (for example paragraphs 29 and 42 of the skeleton) he refers to the lack of evidence "that a returnee indebted to criminal elements has ever been left unharmed". It is unrealistic to expect any source or combination of sources to establish that every indebted returning failed asylum seeker has come to no harm. Furthermore, as we have already stated, no such obligation to establish this falls on the Respondent. It is for the Appellant to prove the risk of harm based on the experiences of others and expert opinion. Whilst we accept that China is a country from which it is difficult to obtain comprehensive and relevant information, it is not impossible, as is borne out by the Country Assessment and the other reports before us. Quite simply the totality of the evidence does not establish that a returning failed asylum seeker who is indebted to snakeheads or loan sharks will come to harm on return to China. If this had happened to returning failed asylum seekers from the United Kingdom or other countries it is likely that relevant evidence would have become available.
13. In this appeal we do not need to consider or make specific findings in relation to what might happen to an individual who owes money to snakeheads or loan sharks, remains in the United Kingdom and does not for whatever reason make the required payments. Suffice it to say that there is evidence before us to indicate that such individuals and their families or guarantors in China may be at risk. There are strong indications that the snakeheads are violent and ruthless, at least towards those who can pay but do not do so. This does not mean that they will be equally ruthless towards those who cannot pay because they have been returned to China.
14. Mr Yuen seeks to establish a material difference between successful and unsuccessful arrivals. He argues that the debt crystallises as soon as the individual arrives in the United Kingdom. The debt does not crystallise and

the individual is not expected to pay if the snakehead organisation is not successful in getting him onto UK soil. If, on the other hand, the individual arrives in the United Kingdom then the debt crystallises and, whatever happens subsequently, the individual is expected to repay the extortionate interest and the capital. The evidence before us does not support so precise a difference of approach. We are told that this Appellant has made payments since her arrival and is up-to-date with them. It is not suggested that she has anything to fear whilst she maintains the payments. If her appeal fails and she is returned to China it is common ground that she is never likely to earn enough in China to pay even a small part of the interest, let alone the capital. There is no suggestion that her family or any guarantor would be in any substantially better position. If, as the country information indicates, most illegal entrants come from an impoverished background, their situation is likely to be similar.

15. The principal reason for our conclusion that the Appellant would not be at risk on return is the lack of any country information to indicate that she would be at risk. Nevertheless, logic also supports this conclusion. The snakeheads and loan sharks are violent and unscrupulous, but they are running what is likely to be a highly profitable business and would prefer to avoid actions which might damage that business. Violent or other persecutory action against those who are returned to China would be unlikely to result in the recovery of much money, but would be likely to discourage future customers. Amongst the press reports submitted by Mr Yuen are reports of snakeheads going to great lengths to build spectacular houses to show to potential customers, as an indication of the sort of accommodation and lifestyle they can expect if they travel to a western country. If the snakeheads or loan sharks go to these lengths it is not likely that they would risk deterring potential customers by taking hostile action against those who are returned, usually through no fault of their own. Clearly it is a different matter to ensure that those who remain abroad and are able to pay continue to pay for fear of what might happen to them or their relatives at home.
16. Whilst there is some evidence of the removal of body parts for transplant, this relates to executed criminals and countries other than China. We can find no evidence that indebted returning failed asylum seekers have body parts removed and sold as a means of recovering the money they owe. We can find no evidence that individuals in this position are forced into prostitution, drug trafficking or other crime. There is speculation, but no evidence that indebted returning failed asylum seekers may make further efforts to travel to remain in a western country. There is insufficient evidence to establish a reasonable likelihood that snakeheads or loan sharks would force such a person to try again.
17. We can find no merit in the submission set out in paragraph 44 of the skeleton argument that the Secretary of State is in any way bound by the submissions of his Counsel to the Tribunal in *Hou and Wu* (01/BH/0059). The Secretary of State did not concede that an individual who effected a "safe" arrival in the

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United Kingdom would be at risk on return.

18. The Appellant is not at risk on return. In the circumstances the question of sufficiency of protection does not arise. The Appellant has not established a reasonable likelihood that her human rights will be infringed under any Article in particular under Articles 3, 4, or 8.

19. We dismiss this appeal.

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P. R. Moulden
Vice-President