H-PA-V1

TT (Risk-Return- Snakeheads) China CG [2002] UKIAT 04937
HR/06254/2002

IMMIGRATION APPEAL TRIBUNAL

Heard at : Field House
on : 9th July 2002
Dictated : 23rd July 2002

Determination Promulgated

.....22/10/2002.....

Before:

Mr N H Goldstein - Chairman
Dr A U Chaudhry

between

Tein Yung TSENG

Appellant

and

The Secretary of State for the Home Department

Respondent

DETERMINATION AND REASONS

For the Appellant: Mr A Yuen an authorised representative from Phoenix Nova Solicitors
For the Respondent: Mr M Davidson, Home Office Presenting Officer

1. The Appellant, a citizen of China has been granted leave to appeal to the Tribunal against the determination of an Adjudicator (Mr P J Bryant) dismissing his appeal against the Respondent's decision that removal would not lead to a breach of his human rights.

2. The Appellant arrived in the United Kingdom on 29th November 1995 and claimed asylum upon arrival. The application was refused on 10th March 1999 and his appeal against that refusal was subsequently dismissed.

3. The Appellant then instructed new Solicitors on whose behalf an appeal was brought under Section 65(1) of the Immigration and Asylum Act 1999 alleging that the Respondent's decision to return the Appellant to China would breach his human rights. The appeal was heard before Mr P J Bryant, Adjudicator on 6th March 2002 and dismissed by determination notified on 21st March 2000.

4. The Appellant, a Buddhist made plans with a friend in his village to build a temple. A collection was made from the villagers for this purpose. Work on the temple began in March 1998 but it was torn down by the authorities on 20th March 1998. The Appellant was not present at the time. He claimed to have been in hiding in another village having been aware that the Chinese authorities were seeking to arrest him for collecting the contributions. A friend then arranged for an agen,t and the Appellant left China travelling via Vietnam to Bangkok. In so doing the Appellant left his wife and two children in his village.

5. The Appellant maintained that the Chinese authorities still wished to arrest, detain and torture him in connection with his fund raising for the temple. His wife had written to warn him not to return to China because the authorities were still looking for him. The Appellant claimed the Chinese authorities had been to his home on at least ten occasions. The Appellant had spoken to his wife on the telephone and it was clear the Appellant would be in danger if he returned.

6. The Appellant claimed that if arrested and detained he would be locked up indefinitely without charge. It would be known that he had fled China to apply for political asylum. He would be ill-treated if not killed. His human rights would be violated.

7. The Appellant expressed a further fear, namely that he was in debt to the Snakeheads who had brought him to this country. As the Adjudicator stated at paragraph 12 of his determination:

> "They pose a significant threat to his life. If he returns he will not be able to meet the debts that he owes them. They charge an extortionate amount of interest and are likely to use violence against him to enforce the debts that he owes. They may even kill him if they think he cannot pay the debt. His wife has informed him that the Snakeheads have visited the family home to ask when they will be repaid. On each occasion they have threatened to kill his wife and family if it remains unpaid. He thinks they will therefore kill him and his family as he cannot pay off the debt. There is nowhere in China where he can hide from the Snakeheads".

8. The Adjudicator explained that in assessing credibility he had placed the Appellant's account into the context of the situation in China as disclosed by the objective evidence that had been submitted to him and also took into account those conditions that prevailed at the time.

9. The Adjudicator had reviewed the evidence before the Adjudicator who had dismissed the Appellant's asylum appeal and had read her determination and findings. She had found that the Appellant feared prosecution for building the temple rather than persecution under the Refugee Convention and that the Appellant's claim had not engaged the Refugee Convention.

10. Mr Bryant has noted the first Adjudicator had made no findings as to the Appellant's credibility because the Appellant failed to attend the appeal and therefore the only evidence before her was the record of the Appellant's immigration interview. Mr

Bryant had considered that interview and the Appellant's statement in support of his human rights appeal and the evidence at the appeal itself. The Adjudicator concluded:

> "I am therefore in a better position to assess credibility than the previous Adjudicator in the asylum appeal".

11. The Adjudicator went on to conclude that he found the Appellant to be:

> "..wholly incredible, in his evidence as to the building of the temple and therefore that being the reason why he fled China".

12. At paragraph 31 of his determination the Adjudicator detailed what he described as the "many inconsistencies" within the Appellant's evidence which went to his credibility.

13. At paragraph 32 of the determination the Adjudicator found that:

> "..the discrepancies set above are such that I do not believe his evidence as to the building of the temple and the authorities seeking to arrest him in connection with that building. I also do not believe his evidence that the authorities there did not allow him to practise his religion and faith".

14. The Adjudicator concluded that he did not find that the Appellant fled China through fear of the authorities seeking to arrest him for the building of the temple and that the authorities had therefore no interest in the Appellant and accordingly upon the Appellant's return he would not be charged or prosecuted in relation to the building of the temple.

15. The Adjudicator then turned to the Appellant's other fear relating to that of the Snakeheads who had loaned the Appellant money to come to this country. The Adjudicator believed the Appellant's evidence that he owed money to the Snakeheads although the actual amount differed in his evidence being either 100,000 or 240,000 Yuan.

16. In this regard the Adjudicator considered the objective material particular paragraph 6.110 of the CIPU Report from which he noted that the Chinese authorities had publicly committed themselves to combating Snakehead operations and that arrests were made.

17. No submissions had been made to the Adjudicator on behalf of the Appellant that the authorities in China would be unable to provide a sufficiency of protection for the Appellant against the Snakeheads who sought repayment of their loan.

18. The Adjudicator found that the Appellant might be fined by the authorities for illegally leaving the country and in this regard and upon consideration of the objective evidence the Adjudicator was satisfied there was no real risk of the Appellant receiving treatment which would approach the minimum level of severity required for the terms of Article 3 to be fulfilled or indeed that such treatment as the Appellant

might receive would place him at risk of a breach of his human rights such as to engage the United Kingdom's obligations under the Convention.

19. At the outset of the hearing before us, Mr Davidson for the Respondent clarified that given the Adjudicator's findings the credibility of the Appellant's account in relation to his dealings with the Snakeheads was accepted, but not the rest of the Appellant's account. At this stage it was noteworthy that Mr Yuen for the Appellant informed us as follows:

> "The Appellant admits and apologises that the Temple story was a fabrication which he claims was coached to him by his first set of lawyers and he then followed on with it. Snakeheads are those whom the Appellant really fears".

20. In the course of Mr Yuen's detailed submissions we had the benefit of a comprehensive bundle that we understand he prepared, and in relation to which Mr Yuen referred us to relevant passages. We also had the benefit of his detailed Skeleton Argument.

21. Mr Yuen submitted that we should consider whether this Appellant could be regarded as a "safe or unsafe arrival". He explained to us:

> "If the Appellant was 'safe' then according to the Tribunal he can expect harassment which is the view of the Respondent as argued by Mr Graham in **Bin Hou (O1/BH/00059)**. It is not therefore now open to the Respondent to argue otherwise.
>
> This Appellant was a safe arrival. He was undetected granted Temporary Admission. He has been working and sending money home".

22. Mr Yuen referred us to paragraph 6.112 of the CIPU Assessment of April 2002 which states inter alia:

> "Success is measured in two ways: safe illegal entry initially, plus independence from Snakehead ties ultimately (for the customer) and payments (irrespective of source, be it from the customer or their families) for the Snakehead. Experts consulted by the IRB say payment is usually broken down into a deposit (typically of about $1,000 to $3,000) and a final payment (usually $33,000) payable on a 'safe' (i.e. undetected) arrival in the US. The experts consulted by the IRB gave similar accounts of how the Snakehead will discount part or the full final payment if the arrival is 'unsafe' i.e. the customer is detected by Immigration Authorities and returned to China".

23. Mr Yuen submitted that anyone admitted to the country as a 'safe' arrival was held hostage by Snakeheads and only released after the money due was paid over which signalled completion of the contract. He maintained that upon arrival the customer was met by a Snakehead's agent and a lawyer present to secure his release if detained and/or to help him apply for asylum. The Applicant would then be taken to a safe house and held until the balance of monies owed was paid over to the Snakehead in China and only then would such a person be released.

24. Mr Yuen continued that on arrival such a person would be confident the debt would be repaid by himself through work. The Applicant's family in China would wait until it was confirmed that their relative had arrived at his proposed destination. They would then collect the money from the lender who might be another Snakehead or an independent loan shark. Some could then be used to pay over to the Snakehead with whom the contractual fee was due and the Appellant upon payment would then be released. If the balance of the debt was not paid namely the balance of the 'fee' then the captive would be subjected to some serious harassment by the Snakeheads in for example the United Kingdom.

25. Mr Yuen referred to objective evidence within his bundle which he claimed supported his submission that a form of such harassment could include the cutting off of ears to be sent to relatives at home and that women were raped. Mr Yuen continued:

> "The Snakeheads guarantee safe delivery so if you do not arrive safely the fee is not owed as the contract is to gain admission…
>
> In the present case the Appellant borrowed 80,000 from the loan shark and the rest of the fee for the fee balance from a Snakehead...therefore if this Appellant was an unsafe arrival he would not be discharged from the debt to the loan shark but he would be discharged from the debt to the Snakehead. This Appellant was a safe arrival however. He was granted Temporary Admission and he sent money home. He managed to pay 180,000 Yuan a low price because he had paid a high deposit on the fee in order to get an overall lower fee".

26. Mr Yuen explained that the Appellant was now:

> "..free of the smuggling contract with that group of Snakeheads but he is tied down for the debt he incurred in paying off the contract to the Snakehead who loaned him 100,000 and the loan shark who loaned him 80,000 with which to pay the fee. The Adjudicator accepted this account..

I say to return the Appellant would be in breach of Articles 3, 4 and 8".

27. When asked Mr Yuen was unable to tell us of a single case where Article 4 had been upheld by the ECHR and could only point to his interpretation of a view expressed by an Adjudicator in an unrelated determination, indeed an appeal that the Adjudicator dismissed.

28. Mr Yuen submitted that the Respondent's conclusion that the Appellant could look to the Chinese authorities for protection was based solely on two paragraphs 6.120 and 6.121 of the CIPU Assessment which placed over reliance on the indications from Chinese media reports and therefore failed to take into account Chinese censorship and the manipulation of news. Mr Yuen submitted that the reports concerned arrests of Snakeheads for 'smuggling' and there was no indication that the Chinese authorities were protecting victims from Snakeheads' "harassment".

29. Mr Yuen maintained that there was evidence that the Chinese authorities did not act against loan sharks.

30. Mr Davidson for the Respondent pointed out that the Appellant had arrived in the United Kingdom in 1999. Therefore four years after his arrival he had still failed to pay the Snakeheads any money. There was nothing in the Appellant's statement or other evidence to suggest it was the case that people would be detained as Snakeheads in this country or that this Appellant had actually undergone any such detention in this country. This Appellant had not been ill-treated in this country by Snakeheads. Indeed the Appellant's own account differed greatly from the picture described by Mr Yuen with reference to the objective material as to what happened to people who had been assisted to travel to this country or elsewhere by Snakeheads.

31. We were referred to paragraphs 6.143 and 6.144 of the CIPU April 2002 Assessment which outlined a typical journey of those smuggled across Europe and then to their final destination. The usual mode of travel was in the back of lorries or travelling in freight trains as was revealed in the Perry Wacker/Yang Gou trial held in the United Kingdom on April 2001. Mr Wacker was a Dutch lorry driver and Yang Gou a Chinese translator. They had given details about Snakehead operations. Mr Wacker was the driver of the lorry transporting 60 stowaways involved in the events of Dover on 19th June 2000 that led to the death of 58 people and Gou was charged with being a contact between legal arrivals and various firms of London Solicitors. Other members of the same operation had stood trial and were found guilty of people trafficking offences in May 2001 in the Netherlands.

32. Mr Davidson pointed out that although this was a typical example it was not the only means of travel. In this regard he referred us to the actual circumstances of the Appellant's case. He had arrived in the United Kingdom on 29 November 1999 on a flight from Bangkok. The Appellant had arrived here without any documentation and claimed asylum upon arrival. The Appellant's mode of arrival differed from the account given in the objective material of people being smuggled brutally in captivity and then being detained by Snakeheads on arrival in the United Kingdom until payment of a fee had been received. Mr Davidson continued:

> "I submit that to try and paint this man's circumstances as being at issue with the objective material referred to is a totally unrealistic submission. The Adjudicator had found at paragraph 35 of his determination that money was owed. He had accepted the Appellant did owe money to Snakeheads (whether he meant Snakeheads and/or loan sharks was not entirely clear)."

33. Mr Davidson referred us to the confusion that appeared to have arisen as to the amount actually owed by the Appellant. He had claimed at one stage that he had borrowed 1,000 Yuan from two friends in China. He later claimed that a friend had paid on his behalf 10,000 who borrowed it from someone else. Mr Davidson continued that this:

> "Exemplified the confusion which the Adjudicator had already noted."

What we are left with is not knowing how much the Appellant owes or even who to? On his own evidence his claim has not been made out to the necessary standard when the evidence is examined.

> "The Adjudicator in paragraph 35 has made a finding that it is the Snakeheads whom the Appellant fears. If he is correct then we turn to 'safe' or 'unsafe' arrivals again".

34. Mr Davidson continued that it was remarkable that if the Snakeheads were really operating a business type operation where it would be in their interests to secure the safe arrival of their clients in this country that they should simply put the Appellant on a flight to Heathrow where he would undoubtedly have been detected, particularly as the Appellant had arrived without any documentation.

35. Both parties' representatives had referred us to the Tribunal determination in **Bin Hou** where we have noted that the learned Chairman Mr D K Allen had gone through much of the same information as submitted and had reached the conclusion that those returned would not be at risk particularly those of unsafe arrivals.

36. We agree with Mr Davidson's submission that in contrast this Appellant could not be viewed as anything other than an "unsafe" arrival given the manner in which he arrived. He arrived from Bangkok and claimed asylum on arrival and based upon Mr Yuen's definition of "safe" and "unsafe" arrivals, it followed on the facts of this Appellant's account that the contract had not been concluded and the Snakeheads would not expect payment of their fee.

37. In relation to the Appellant's claim to have borrowed money from a loan shark we were again referred to the Tribunal decision in **Bin Hou**. In this regard we have indeed noted that it was submitted to the Tribunal in **Bin Hou** that there were references in the objective evidence to government corruption being involved. The fact that there was no awareness of violence being meted out to non-re-payers did not mean it did not happen. Hard evidence was difficult to find with so few returnees and even fewer people were in debt to loan sharks. Loan sharks and Snakeheads were ruthless criminals and organised groups whom if carrying out reprisals would obviously not tell the authorities. The victims would be unlikely to report and even the relatives of people killed as they would fear reprisals. The most up to date US State Department Reports were silent on the point.

38. At paragraphs 42 and 43 of his determination the learned Chairman Mr Allen observed inter alia:

> "We do not consider that the fact that…the loan sharks and Snakeheads are ruthless practitioners of violence when those who have successfully reached the United Kingdom and the United States of America or other country of choice failed to repay them, can be said thereby to involve the same treatment being meted out to persons who are unsuccessful in their efforts to settle in and earn money in a wealthier country. In this context we note also the comment we have referred to above from Mr Fisher of the RCMP Criminal Intelligence Service that he was not aware of reports of loan sharks pursuing returnees or their families…

> In conclusion therefore we find the evidence to be such that even on the basis of a reasonable degree of likelihood, we do not consider that either Respondent has made out his case for showing that he is at risk of treatment contrary to Article 3 on return to China. We consider the weight of the objective evidence is very much against the argument they raised and we do not consider that that evidence is in any sense outweighed by the wealth of evidence concerning the practice of loan sharks and Snakeheads towards people whose contracts with them have succeeded and who have failed to repay them. We therefore allow the Secretary of State's appeal in each case in relation to the Article 3 claim."

39. We have carefully considered the objective evidence not least that to which Mr Yuen has referred us. Having done so we find ourselves in agreement with Mr Davidson's submission, that even if money was owed by the Appellant to Snakeheads or loan sharks there is indeed a lack of evidence that the Appellant would be actually pursued for the debt particularly in the circumstances of this case. The Adjudicator found that the Appellant did owe money to Snakeheads. We find ourselves in agreement with Mr Yuen that he was probably using the expression "Snakeheads" in the generic sense and was incorporating the possibility that money was also owed to a loan shark. However the basis of that finding remains unclear as to the amount that the Appellant actually owed and to whom such money was owed.

40. Mr Yuen described to us his understanding as to how Snakeheads could detain and mistreat people to whom they were owed money. It is however noteworthy that it does not appear to be the Appellant's claim that he has experienced such treatment whilst in this country. As Mr Davidson rightly submitted if the Appellant was not being pursued here for any debt then it would be unlikely that he would be pursued by Snakeheads upon return for this alleged debt if indeed it was owed in any part to them.

41. Mr Davidson submitted that if a debt was owed to individuals or loan sharks there would be a sufficiency of protection available from the Chinese authorities were the Appellant to report any problems with them that he might experience upon return. There was an effective police force and judicial system in China.

42. Mr Yuen's submitted that there is a level of corruption within China which involves collusion on the part of elements of the Chinese authorities with organised crime.

43. Mr Davidson submitted this in no way included a failure in the government to such aextent as would place the Chinese authorities outside the terms of the **Horvath** definition in their effort to combat crime particularly if it was loan sharks who were the perpetrators of that crime.

44. Mr Davidson further submitted that if the Tribunal concluded that it was other than Snakeheads from whom the Appellant had borrowed money such as loan sharks, then there was the issue of internal relocation which the Adjudicator had not addressed. In that regard, one had to bear in mind the sheer size and population of China which totalled 1.261 billion people as at the year 2000. The Appellant could in such circumstances safely relocate elsewhere in China.

45. Following the appeal hearing the Tribunal received a letter together with enclosures from Mr Yuen dated 10th July 2002 (the day following the hearing) which sought to address questions raised at the close of the hearing as to whether there was a time limit imposed upon the Appellant to pay off his loan. Mr Yuen maintained that the evidence that he attached supported his response that a lender was not normally concerned with the repayment of capital as long as he believed that his loan was safe. Further:

> "a loan shark's main concerns are security and profit maximisation...the loan shark is normally delighted to extend a loan as long as he is convinced of the borrower's ability to meet his obligations. Matters therefore only become nasty when a borrower is returned to China where he will have no ability to meet interest charges let alone to repay the capital. It is what the loan shark would do to him and his family in that eventuality that the Appellant fears."

46. We are grateful to Mr Yuen for the meticulous manner in which he prepared his most helpful bundles of objective evidence together with a detailed Skeleton Argument in support of the Appellant's appeal.

47. We have however concluded that we must dismiss this appeal. We do not share Mr Yuen's criticisms of the April 2002 CIPU Country Assessment. We consider it to be a well sourced objectively well balanced assessment of the evidence. Upon our consideration of that evidence in conjunction with the objective evidence which Mr Yuen most helpfully referred to us, there is evidence to indicate that individuals and their families or guarantors in certain circumstances in China may be at risk. That Snakeheads are violent and ruthless towards those who they believe can repay their debts but fail to do so.

48. The evidence does not satisfy us that those who cannot pay because they have returned to China would meet with similar treatment. We are of course concerned with the particular circumstances of this Appellant. It is a noteworthy feature of this case that Mr Yuen opened his submissions by making clear that this Appellant had lied in the account that he gave to the Adjudicator albeit, he claims, on the instructions of his former Solicitors. The Adjudicator properly rejected that evidence as incredible but had found credible the Appellant's claim to owe money to Snakeheads. The amount that was owed and to whom it was specifically owed is unclear not least because of the inconsistencies of the Appellant's evidence in that regard.

49. Four years have passed since the Appellant's arrival in the United Kingdom and it is the Appellant's account that he has still not paid the money owed. As Mr Davidson rightly submitted there was nothing in the appellant's statement or other evidence to suggest that it was the case that people would be detained by Snakeheads in this country or that the Appellant actually had undergone any such detention in this country or that he had been ill-treated in this country by Snakeheads.

50. Further this Appellant did not fall within Mr Yuen's definition as to the distinction between categories of arrival which he described as either "safe" or "unsafe". Mr Yuen had maintained that if this Appellant was an unsafe arrival he would not be discharged from the debts to the loan sharks but would be discharged from the debt

to the Snakeheads. He maintained that the Appellant was a safe arrival who had arrived undetected and subsequently been granted Temporary Admission. We had asked Mr Yuen that if as claimed the Appellant was a safe arrival it followed that he would have been discharged from the fee owed to the Snakeheads. Mr Yuen accepted the Appellant was:

> "..free of the smuggling contract with that group of Snakeheads but he is tied down for the debt he incurred in paying off the contract to the Snakehead who loaned him 100,000 and the loan shark who loaned him 80,000 with which to pay the fee".

51. We have noted however that the description given in the CIPU Assessment as to the usual manner of travel of those in the debt of Snakeheads upon arrival differs greatly from that of this Appellant who travelled by air to this country via a flight from Bangkok. The appellant clearly had not sought to arrive here undetected and indeed had claimed asylum immediately upon arrival at Heathrow Airport. We agree with Mr Davidson who maintained that Mr Yuen was attempting to place this Appellant's circumstances as being "at one with the objective evidence referred to...(which is)...a totally unrealistic submission".

52. We do not find that the evidence before us supports Mr Yuen's attempt to establish a distinction between what he describes as "safe" and "unsafe" arrivals.

53. There is a lack of any Country information before us to indicate that this Appellant would be at risk upon return but we accept that Snakeheads and loan sharks are violent and determined people involved in lucrative and high profit enterprises. We find however that as such it would fly in the face of logic that they would seek out debtors in such a way as to place fear in the hearts of those whom they sought to ensnare in their highly profitable loan arrangements. It follows that to take the kind of action described by Mr Yuen against those who are returned would be highly likely to result in deterring future customers. We have found no evidence that indebted returning failed asylum-seekers have body parts removed or that debtors are in such circumstances forced into activities such as prostitution and drug trafficking. We have been unable to find sufficient evidence to establish a reasonable likelihood that such persons would be forced by the Snakeheads or loan sharks to leave China once again in order to repay the debts owed.

54. Even if, as Mr Yuen submits this Appellant was a "safe" arrival in the United Kingdom we have concluded that he would not be at risk on return. In such circumstances it follows that the question of sufficiency of protection does not arise.

55. We have noted with interest, Mr Yuen's submission at paragraph 55 of his Skeleton Argument which seems to place into question the placing of the burden of proof upon the Appellant. He refers to Article 19 of the ECHR and argues that it would be incompatible with the Convention if the Secretary of State was to return the Appellant to China without first ensuring that it was safe to do so. We reject that argument. In this regard we refer to the findings of the learned President Mr Justice Collins in Kacaj*. It is for the Appellant to discharge the burden upon him of proving that his human rights would be infringed. It is for him to establish the same standard, a reasonable likelihood to the same standard applicable to both the Refugee and

Human Rights Conventions. The Adjudicator had concluded for reasons which we uphold that the Appellant had failed to discharge that burden to the requisite standard.

56. The appeal is dismissed.

Mr N H GOLDSTEIN
CHAIRMAN