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DS (Persecution- Risk-Return) China CG [2002] UKIAT 02340
HX43480-2001

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing: 3 May 2002

Date Determination notified:

.....4 July 2002

Before:

Mr M W Rapinet (Chairman)
Mrs M E McGregor

DICKEY SHERPA

APPELLANT

and

Secretary of State for the Home Department

RESPONDENT

Representation

For the appellants : Mr M. Braid, counsel, instructed by Gillman-Smith Lee

For the respondent : Mr M. Davidson, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of China from Tibet who appeals by leave of the Tribunal against the decision of a special adjudicator (Mr N.J. Bennett) dismissing his appeal against the refusal of the Secretary of State to grant asylum and for her removal as an illegal entrant to China or, to be exact, Tibet.
2. The only issue for the Tribunal to decide, and which forms the basis of the grounds of appeal, is the question of the safety of return of the appellant now.
3. In paragraph 30 of the determination the adjudicator points out that no submissions were made that failed asylum seekers cannot be returned to Tibet, but he does go on to consider the report of TCHRDT to which reference is made in the grounds of appeal. He refers to the fact that

detainees undergo harrowing interrogation sessions concerning the motivation for their visit and their future objectives. Life in Tibet becomes one of captivity, without actual imprisonment; random surveillance and regular enquiry become a part of everyday life for these returnees. A further area of discrimination awaiting returning exiles is in the sphere of job opportunities because they are rendered officially unemployable.

4. In paragraph 31 the adjudicator goes on to say:

‘Quite how the respondent intends to return the appellant to Tibet is not clear, but none of the foregoing indicates that the appellant will be persecuted or subjected to inhuman or degrading treatment on her return to Tibet. Although the interrogations may be harrowing, there is nothing to suggest that she would be tortured or physically or mentally ill-treated whilst being detained or whilst being interrogated.’

5. Mr Braid put before us a very helpful skeleton argument in which he refers extensively to the objective evidence to support his contention that there was a reasonable likelihood that the appellant would be subjected to inhuman and degrading treatment or tortured upon return. He refers in particular to the US State Department Report, to Amnesty International Reports and to a TCHRDT report, and in his submission these reports indicate overwhelmingly that there is a reasonable likelihood that the appellant would be detained and maltreated upon return.
6. Mr Davidson, in his submissions, urged us to accept that it cannot be argued that every returnee would be subjected to the treatment referred to by Mr Braid in his skeleton argument. He referred in particular to the reports which indicate that there is a strong discrimination against those who are returning from India or from Nepal. He submitted that there was nothing in any of the reports before us to indicate that those returning from the west, and Europe in particular, with proper documentation would be subjected to detention and possible torture.
7. We find ourselves in considerable sympathy with Mr Braid’s submissions as expressed in his skeleton argument. In considering the objective evidence we apply the test of a reasonable likelihood as set out in Sivakumaran and more recently in Karanakaran.
8. Unfortunately, neither Mr Braid nor Mr Davidson were able to assist us as to whether or not it is illegal for Tibetans to leave the country without the permission of the Chinese authorities, and nothing in the objective evidence before us indicates that this might be the position. What is clear from the US State Department Report for the year 2000, however is that those fleeing the country are subjected to arrest and detention and that this is ‘a common feature of repression of Tibet today’. The paragraph to which we refer on page 5 states: ‘Whilst it is impossible to accurately monitor the number of prisoners detained on the border whilst trying to exit or re-enter Tibet, the fact that these detainees go through interrogation, beatings and other forms of

punishment is certain'. We note in particular the reference to re-entering Tibet.

9. The report of the Tibetan Centre for Human Rights and Democracy states:

'Increased restrictions were imposed during 2000 on Tibetan returnees from exile leading to the alleged detention of approximately fifty students and the expulsion of twenty-nine Tibetan tour guides. The movement of exiled returnees, who are viewed with suspicion while being involved in political disturbances, are monitored closely through China's pervasive espionage network and interrogation procedure. The possibility of securing any government related jobs is non-existent for Tibetans returning to their home lives from a period in exile.'

10. The preceding paragraph of the same report which refers to prison malpractice in the form of torture would appear to be well recorded and documented.

11. We accept that there is particular emphasis in these reports of those Tibetans returning from India or Nepal and we accept that it is not being alleged by the appellant that she would be returning from either of those countries, though quite which route the respondent would chose for her is far from clear. Further, the general tenor of the objective evidence, would appear to refer to returnees from any country, but with particular emphasis on India and Nepal.

12. The grounds of appeal and the submissions made by Mr Braid do not question the adjudicator's finding that the appellant's claim to have been a participant in a demonstration in 1999, or that her parents disappeared immediately following that demonstration, and that a friend of hers was arrested by the authorities, is not sustainable, for the reasons which he has set out. However, in paragraph 19 he states:

'Against that background I am prepared to accept that if the appellant were to be arrested for participating in a demonstration held in March 1999, demanding independence for Tibet and commemorating the fortieth anniversary of the unsuccessful Tibetan uprising against the Chinese in 1959, she would have a well-founded fear of persecution because of her political opinions and that there would be a real risk of her rights under Article 3 of the Human Rights Convention would be infringed thereafter, even though she is not a nun.'

13. The backboard information referred to an analysis contained in the preceding 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 her 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 to 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 many 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.

15. We make this finding in the particular circumstances of this case because the adjudicator has rejected the basis of the claim very largely upon the fact that there is no record in the objective material before him of the particular demonstration having taken place. He may or may not be right in that conclusion, but what does concern us is that the objective evidence relating to the suppression of information, in particular anything indicative of action against the Chinese government, might have led to the possibility that no record of this demonstration was allowed to reach the outside world. The objective evidence indicates a very substantial suppression by the Chinese authorities of all personal freedom and in particular freedom of information and press freedom. Therefore, we are left in considerable doubt as to whether or not there is a reasonable likelihood that the demonstration did take place but that its existence was never disclosed to the outside world. Because of our doubts, we are left with the feeling that there is more than a reasonable likelihood that this appellant would face the exigencies to which we have referred above were she to return. It is also clear to us that there is more than a reasonable likelihood that she would be discriminated against in relation to employment, even if she were able to enter the country without risk to her person.
16. For these reasons, therefore we allow this appeal.

**M W RAPINET
VICE PRESIDENT**