



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/03355/2013

THE IMMIGRATION ACTS

Heard at Field House
On 25 July 2013
Prepared on 25 July 2013

Determination Promulgated
On 16 August 2013

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

MR YAOJUN MO

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Smith, Counsel, instructed by Asylum Aid
For the Respondent: Ms H Horsley, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, who was born on 4 September 1986, is a national of China. He originally entered this country in 2008 with a student visa valid from 25 February

2008 until the end of February 2009. This visa was extended twice, and, while here lawfully, on 26 August 2011, the appellant claimed asylum, on the basis that as a Roman Catholic he would be persecuted if he returned to China.

2. This application was refused by the respondent on 21 March 2013, and the refusal letter is dated the same date. Notice of this decision was served on the appellant four days later.
3. The appellant appealed against this decision, and his appeal was heard before First-tier Tribunal Judge Meadows, sitting at Hatton Cross on 8 May 2013. In a determination prepared two days later and promulgated shortly thereafter, Judge Meadows dismissed the appellant's appeal on asylum and humanitarian protection grounds, and also under Article 8.
4. The appellant now appeals against this decision, with leave granted by First-tier Tribunal Judge Hemingway on 13 June 2013.
5. Before me, on behalf of the respondent, Ms Horsley accepted that there were shortcomings in Judge Meadows' determination, primarily in relation to how he dealt with the expert report. His consideration of this report was insufficient. Also, Judge Meadows had not given proper consideration to the issue of whether or not he was a refugee sur place. Although the respondent would say that he was not, and would raise credibility issues, this was not dealt with by a judge. It was accordingly accepted that the appeal needed to be re-heard. Also, a country guidance decision had been promulgated a month ago regarding the position of Christians in China, which needed to be considered when the Tribunal assessed the risk on return for this appellant.
6. It was agreed by the representatives for both parties that there would have to be a complete re-hearing, and that none of the findings of the First-tier Tribunal could stand.
7. Having considered the representations made on behalf of both parties, I agree that Judge Meadows' determination did contain material errors of law, such that his decision must be re-made. My reasons are as follows. Judge Meadows failed to make credibility findings with regard to the evidence of the appellant and his witness, failed further to give proper consideration to the expert report adduced on his behalf and failed to address adequately the primary issue, which was whether or not the appellant would wish to join the underground Catholic Church in China and if he did, whether he would be persecuted on return.
8. Having regard to paragraph 7 of the Practice Statements of the Immigration and Asylum Chamber in the Upper Tribunal, I consider that the effect of the errors contained within the determination is such that the appellant was effectively deprived of a fair hearing. I also consider that the nature and extent of the judicial fact-finding which will now be necessary in order for the decision to be re-made (effectively all the issues will have to be considered de novo) are such that, having

regard to the overriding objective, it is appropriate to remit the case to the First-tier Tribunal, which I shall order.

Decision

I set aside the determination of Judge Meadows as containing a material error of law.

I direct that this appeal be remitted for a re-hearing by the First-tier Tribunal, sitting at Hatton Cross, to be put before any judge other than First-tier Tribunal Judge Meadows.

Signed:

Date: 13 August 2013

Upper Tribunal Judge Craig