



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/06504/2013

**THE IMMIGRATION ACTS**

Heard at Bradford  
On 6<sup>th</sup> November 2013

Determination Promulgated

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

MS HUI PING KANG  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr J Ficklin  
For the Respondent: Mr M Steward, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This is an appeal brought by the Appellant, a citizen of China who was born on 16<sup>th</sup> September 1985 against the determination of a First-tier Tribunal Judge (Judge Manuel) dismissing her appeal against the Respondent's decision of 20<sup>th</sup> June 2013

refusing her leave to enter the United Kingdom and refusing to grant her asylum or any other form of international protection.

2. The Appellant entered the United Kingdom on 15<sup>th</sup> June 2007 and claimed asylum at port. She then absconded and her claim for asylum was refused on noncompliance grounds. She submitted further grounds on 25<sup>th</sup> November 2011 and these were accepted as a fresh claim.
3. In pursuing her claim she stated that she could not return to China as she would be persecuted on account of her Christianity and the fact that she has now become a Jehovah's Witness. In addition she has given birth to a child and by the time of the hearing before Judge Manuel in August 2013, was pregnant with her second child. She claimed therefore that she would also face persecution in China and possible forcible sterilisation.
4. Judge Manuel did not accept the Appellant's account of events and concluded therefore she would not be at risk on return to China. Further it would be in the best interests of her child to accompany her.
5. The grounds of application for permission to appeal to the Upper Tribunal take issue with aspects of the Judge's adverse credibility assessment. It is contended that the findings on the Appellant's faith are flawed because the Judge has attached too much weight to the Appellant's morals (or rather lack of them) when assessing the genuineness of her faith as a Jehovah's Witness. Further there is error in the assessment of the Appellant's account of there being an outstanding arrest warrant against her in China.
6. On 11<sup>th</sup> September 2013 Judge Gibb granted permission to appeal in the following terms.

*"The grounds, which were in time, complain that the judge erred in: (1) reaching his (sic) adverse findings as to her faith as a Jehovah's Witness, through giving weight to her sexual relationships outside marriage, which were prohibited; (2) his (sic) adverse findings as to the behaviour of the Chinese Police, which were contrary to background evidence, failing to take account of widespread corruption and actual police practice.*

*The grounds are arguable. The last sentence of para 60 of the determination could arguably be said to show flawed reasoning, in that the adverse findings referred to as justification for not applying the sensible comments of HHJ Gilberts QC rest in part on the very approach warned against. It is arguable that the approach in para 55 gives the unfortunate appearance of a failure to understand that may with genuine religious faith do not follow at all times the behaviour suggested by their faith, for all sorts of reasons (consider devout Catholics who do not follow the line of the Church on contraception); and the equally unfortunate impression, even if unintended, of condemnation by the judge of the Appellant's choices. The second ground is also arguable, particularly in relation to the observation at the end of para 68".*

Thus the matter comes before me to decide if the Judge's determination discloses an error requiring it to be set aside and the decision remade.

### Submissions

7. Mr Ficklin relied on the grounds seeking permission. In amplification he submitted that the Judge's determination relies too much on the moral failings of the Appellant rather than the evidence which was before her. The fact of the Appellant's breach of the moral code of Jehovah's Witnesses is not the same as determining whether someone is a genuine follower or not. In any event what has to be looked at is what assessment the Chinese authorities would make of her religious views. He referred generally to RT (Zimbabwe) [2012] UKSC 38 and specifically to paragraphs 51 and 52 of that judgment. He submitted that the core question is what would be the reaction of the Chinese authorities to the Appellant's beliefs? Would the Chinese authorities' reaction amount to persecution?
8. He asked me to note paragraph 48 of the Judge's determination wherein she found adversely, after dispersal, the Appellant had not sought out the Jehovah's Witnesses for some time. He wished to emphasise that at the time of dispersal the Appellant was a single mother relying on NASS support and no adverse criticism should be drawn from her lack of seeking out the Jehovah's Witnesses.
9. The second point where the Judge fell into error is contained in her conclusions in paragraphs 66 and 67 of the determination. Those findings based on the risk from the Chinese police are flawed. He submitted that there was no background evidence put before the Judge to allow her to interpret and reach a conclusion that six years after the Appellant's departure from China, the police would not be interested in her. He added, that it was wrong of the Judge to conclude that, because she had left China without any apparent trouble from the authorities, they were not interested in her. The Appellant left with an agent and she had no knowledge of the documentation that the agent had used. In all the circumstances the determination should be set aside and the decision remade.
10. Mr Steward on behalf of the Respondent submitted that ground 1, amounted to no more than a disagreement with the clear findings and conclusions reached by the First-tier Tribunal Judge. The Judge, did not rely exclusively on findings of moral failings, to come to her conclusions that the Appellant was not genuine in her profession of Christianity nor genuine in her claimed membership of the Jehovah's Witnesses. He referred to paragraph 48 of the determination and submitted that there was a full exploration of the Appellant's strength of faith. The Judge had found a lack of consistency in the Appellant's accounts and had based her findings on the evidence as a whole. This is what she was entitled to do and having done so, ground 1 fell away.
11. With regard to the second ground there was no inconsistency between paragraph 66 and 67. Those paragraphs had to be read in the context of paragraphs 64 and 65 which is where the Judge had started her reasoning on the credibility of the claimed risk from the Chinese police. The Judge was correct at paragraph 67, to question the

credibility of the warrant and having done so, found that the Appellant was not at risk from the Chinese police as claimed. The determination was sustainable, contained no error and should be upheld.

12. After hearing submissions I reserved my decision on whether the determination of Judge Manuel contained a material error of law such that it should be set aside. Having carefully considered matters I have concluded the determination does not contain a material error of law. I set out my reasoning below. Much has been made by Mr Ficklin on how the Judge gave too much weight to what he describes as a moral judgment – the Appellant being an unmarried mother; and sex outside marriage being against the beliefs of Jehovah’s Witnesses. In my judgment that is only one part of the evidence which the Judge took into account. The task of the Judge in an appeal of this nature is to take into account all the relevant evidence in the round. That is precisely what the Judge did. She evaluated the evidence before her and formed a judgment that the Appellant was an unreliable witness. She took into account not only the evidence of the birth out of wedlock but, set that out in the context of the Appellant’s lack of knowledge of the faith that she was professing to follow. The Judge spent a great deal of the determination outlining why the Appellant’s evidence was unreliable. For example in paragraph 28 the Judge finds it not credible that the Appellant was unaware of which branch of Christianity she and her family claimed to follow particularly bearing in mind the restrictions placed on unregistered and illegal religious groups in China. In paragraph 29 when asked if the church she attended had a name she responded that she did not remember. In paragraph 30 when asked why she was not baptised, she claimed it was because she did not have sufficient knowledge. The Judge found this evidence to be inconsistent with the Appellant’s claim to have attended church regularly for two years between 2004 and 2007. This was an assessment fully open to the Judge on the evidence before her.
13. Whilst I acknowledge Mr Ficklin’s explanation for the Appellant not immediately seeking out Jehovah’s Witnesses on her dispersal, it is simply one more factor which the Judge was entitled to take into account. There is nothing perverse in the Judge’s findings, when looked in the context of her findings as a whole.
14. So far as ground 2 seeking permission is concerned, it is claimed that the findings of paragraph 67 do not follow on from paragraph 66. As Mr Steward correctly pointed out however paragraph 66 and 67 have to be looked at in the context of paragraphs 64 and 65. It is there that the Judge begins setting out her reasoning and her analysis of why she did not find that the history of the arrest warrant would pose a threat to the Appellant. Whilst I agree that the Judge may have overstated the case in paragraph 68; it nevertheless does not detract from the sound reasoning of paragraphs 64 to 67. In paragraph 64 the Judge records that the Appellant claimed that she threw a small stone at one of three policemen who were called by a local authority official and she was told she would be arrested. The Judge formed the conclusion that given her claim that there were three police officers present, it was not credible that she would not have been arrested immediately. Instead the Appellant claimed that she managed to escape whilst her father held on to a

policeman's leg. The Judge records that the Appellant's account is lacking in detail and on the basis of this information found it not credible that if a warrant had been issued, the police would be intent six years later, on arresting her. On a full reading of the determination the Judge is stating that she comprehensively disbelieves the Appellant's version of events. That is a conclusion she was entitled to reach when assessing the evidence before her.

15. For the sake of completeness I record that no issues were put before me concerning that part of the Appellant's claim on the Chinese family planning scheme. There were no Section 55 best interests of the child points raised either.
16. For the above reasons, my conclusion is that the determination of the First-tier Tribunal Judge does not contain a material error of law. The determination shall stand.
17. Judge Manuel did not make an anonymity direction. I have not been asked to. The Appellant has been competently represented throughout and I am sure if it were felt such a direction was appropriate or necessary it would have been sought.

## **DECISION**

18. The appeal is dismissed.

No anonymity direction is made

**Signature**  
Judge of the Upper Tribunal

**Dated**

## **Fee Award**

To the Respondent fee award. No fee is payable so there can be no fee award.

**Signature**

**Dated**