



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: AA/08228/2012

**THE IMMIGRATION ACTS**

**Determined on the Papers at Field House**

**Determination**

**On 11<sup>th</sup> September 2013**

**Promulgated**

**On 9<sup>th</sup> October 2013**

**Before**

**UPPER TRIBUNAL JUDGE D E TAYLOR**

**Between**

**YUN ER LIN**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**DETERMINATION AND REASONS**

1. The Appellant is a citizen of China born on 16<sup>th</sup> September 1987. She claimed to have left China on 17<sup>th</sup> July 2008 and travelled to Malaysia before travelling to the UK on 18<sup>th</sup> August 2008. She entered using a passport that did not belong to her and claimed asylum on 29<sup>th</sup> April 2009. She was refused on 4<sup>th</sup> September 2012. Her subsequent appeal was dismissed on 9<sup>th</sup> October 2012 by Judge Fox

2. The Appellant says that she was arrested and detained for two months in October 2007 following a dispute about compensation for land which the government wanted to acquire. She was released with her father and other villagers on 14<sup>th</sup> December 2007. From then until 10<sup>th</sup> June 2008 she was a part of the Hai Men Committee in charge of going to other villages informing them of what had happened and asking for their support. On that date the government came to the village to start building an expressway. There was a fight between the villagers and the police and the Appellant's father was arrested. He was sentenced to five years' imprisonment. The Appellant ran away first to Malaysia and then to the UK. Whilst here she has had two children but is not married to their father.
3. The judge found that the Appellant's father and other villagers were arrested for either breaching the peace or potentially causing a breach of the peace. He said that if the matters happened as the Appellant described, then all that would happen is that the authorities would want to talk to her and she should answer to various charges which may be put to her. That was no more than a criminal investigation with a potential prosecution and does not amount to persecution.
4. He was satisfied from the cumulative discrepancies and inconsistencies that the incidents described by the Appellant did not happen. The later claim for asylum nearly nine months after her arrival without a satisfactory explanation undermined the credibility of her claim to have come to the UK to escape persecution.
5. The Appellant sought permission to appeal against his decision on the grounds that the judge had taken no account of the pressure brought to bear on villagers to accept the compensation offered and it was insufficient for the judge to indicate that the Appellant was maltreated without any consideration of whether the treatment meted out to her was persecutory in nature. Her evidence was that she was severely beaten and interrogated. Her father is still in prison more than four years after the incident, having committed no crime which legitimises the Appellant's fear of placing trust in the authorities in China. Moreover the judge referred to discrepancies and inconsistencies but failed to set out exactly what they were.
6. Permission to appeal was granted by Judge Nicholson on 14<sup>th</sup> November 2012 for the reasons stated in the grounds.
7. On 4<sup>th</sup> December 2012 the Respondent served a reply stating that the judge clearly found the Appellant to be lacking in credibility, a conclusion which was reasoned and sustainable. He also considered the alternative position. Firstly, the Appellant's case was that her father was an important person in the village and his position and profile were significantly different from hers and, secondly, there was no evidence as to what charges he faced. The grounds were simply a disagreement with the findings of fact.

8. With the grounds were served directions inviting the Appellant to file with the Upper Tribunal a skeleton argument or written submissions setting out all lines of argument pursued both as regards reasons why the determination of the First-tier Tribunal should be set aside and whether the Appellant wanted the case to be dealt with at the hearing or decided on the papers without an oral hearing. The Appellant was put on notice that the Upper Tribunal would consider everything received by it in response to the directions including any submissions upon the need to have an oral hearing before deciding under Rule 34 whether it is necessary to have an oral hearing of any aspect of the appeal. A failure by a party to comply with any of these directions may lead the Upper Tribunal to proceed on the basis that nothing or nothing further is to be said or advanced in support of that party's case before the Upper Tribunal.
9. There was no response from the Appellant to the directions. The Respondent requested an oral hearing.
10. On 17<sup>th</sup> January 2013 I sent out further directions stating that the Upper Tribunal would proceed on the basis that neither party wished to say anything further and I proposed to determine the appeal without a hearing and would proceed to do so subject to any request to the contrary received by 4 p.m. on the fifth working day following the date upon which the directions are sent to the parties.
11. Again there was no response from the Appellant's representatives save for a letter received on 15<sup>th</sup> April 2013 asking about the progress of this appeal.
12. Under Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 the Upper Tribunal may make any decision without a hearing having regard to any view expressed by a party when deciding whether to hold a hearing to consider any matter and the form of any such hearing.
13. I am satisfied, having regard to the issues in this appeal that it is appropriate to deal with this matter without a hearing. The Appellant has been given two opportunities to provide any further documentation upon which she wishes to rely and has decided not to do so.

### **Findings and Conclusions**

14. It is clear that the judge dealt with this matter in the alternative, namely that he did not believe that the Appellant's account of events prior to her leaving China was true but even if they were, she would face prosecution and not persecution. He did not believe that there was any warrant issued for her arrest because the Appellant was in close contact with her mother who could have obtained a copy of the document and had not done so. Furthermore, she failed to claim asylum until nine months after her arrival in the UK and had travelled here via a safe country, Malaysia, where she had spent two months but had not made any claim. Even on her own account after she was released on 14<sup>th</sup> December 2007, she had no further

problems with the authorities before she left China on 17<sup>th</sup> July 2008 travelling to Malaysia where she remained for one month. It was open to the judge to find that the lack of any confirmatory evidence which could have reasonably easily been obtained, and the substantial delay in the claim significantly undermined the credibility of the Appellant's account.

15. In any event, the fact that her father remains in prison does not affect the Appellant's position. He had a significant role within the village whereas on her account all she did was to take minutes of a meeting of the village committee and accompanied other villagers to Hangzhou to protest against the land acquisition. The judge found that the fact that she was allowed to go to other villages to gain support would have been known to the authorities who took no steps to prevent her. It was most unlikely that they had any interest in her but if they did she should answer any charges that may be put to her.
16. The Appellant has had two children whilst being in the UK but she has not put forward any claim on that basis to be at risk on return to China. Nevertheless this was a matter which was considered by both the Respondent and the judge but no challenge has been made to this aspect of his decision. Neither was there any challenge made on Article 8 grounds.

### **Decision**

17. The original judge did not err in law. his decision stands. The Appellant's appeal is dismissed.

Signed

Date 9<sup>th</sup> October 2013

Upper Tribunal Judge Taylor