



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

Appeal Number: AA/03355/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 24th March 2014**

**Determination Sent
On 8th May 2014**

Before

UPPER TRIBUNAL JUDGE KING TD

Between

MR YM

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Smith

For the Respondent: Mr G Jack

DETERMINATION AND REASONS

1. The appellant is a citizen of China born on 4th September 1986. He first entered the United Kingdom on 11th March 2008 with leave as a student. That leave was further extended until 27th August 2011. On 26th August 2011 the appellant applied for asylum and was interviewed on 7th September 2011, 10th October 2011 and 6th March 2013.

2. On 21st March 2013 the application for asylum was refused and directions given for his removal to China. He lodged an appeal against that decision.
3. His appeal was initially heard by First-tier Tribunal Judge Meadows on 8th May 2013. That decision was subsequently set aside for error of law. The matter therefore came before First-tier Tribunal Judge Blandy on 15th October 2013 for a full rehearing.
4. The determination is a detailed one and culminates in the decision dismissing the appellant's appeals in all respects.
5. Detailed grounds of appeal were submitted. Initially permission to appeal was refused but subsequently permission to appeal was granted. Thus the matter comes before me to determine the issue of error of law.
6. There was a substantial bundle of documents and statements entered before the First-tier Tribunal together with skeleton arguments from both parties.
7. The appellant indicated that he started going to church in China when he was 18 years old in 2004. He started going to the Catholic Patriotic Association Church but found the services long and boring. He decided to attend the Protestant Church. He attended that church for two years.
8. He expressed himself in paragraph 12 of his statement of 30th April 2013 as not being committed to a religion in China.
9. He came to the United Kingdom to study and began to attend a Protestant Church in the United Kingdom. In December 2010 he was robbed and mugged whilst on a train to Norwood Junction. He required hospital treatment and on return from hospital was befriended by a woman called Julie and later by her friend Emma, the kindness shown by them and others to himhim to reconsider the Catholic Church. In August 2011 he began to attend the Catholic Church in Norwood, attended a course from September 2011 to April 2011Christian Initiation of Adults course. He was baptised on 7th April 2012.his claim that he would be persecuted as a Roman Catholic if he returned to China or alternatively that he would be unable to practise his full Catholic faith to the extent that he enjoys doing so in the United Kingdom by reason of the restrictions placed upon that church by the Communist Government.
10. The Judge found there to be little real evidence of any real risk of persecutory ill-treatment of the appellant were he to follow his religious beliefs and worship in accordance with the practices of the Roman Catholic Church in his home city on return.
11. The Judge did not find that the appellant would be an activist or act in such a way as to draw adverse attention to himself by the authorities. The Judge concluded that the appellant could worship in China as he has done

in the United Kingdom without fear of retribution or duly limiting his religious perspectives.

12. Grounds 1 and 2 of the grounds of appeal essentially seek to criticise the Judge for his approach to credibility. This is in relation particularly to paragraphs 33 to 36 of the determination.
13. The Judge notes that it was undermining to some extent of his credibility that the appellant did not claim asylum when he was finally baptised in Easter 2012 and only claimed the day before his student visa was due to expire. The Judge comments that if he genuinely believed that he would be at risk of serious harm upon return because of his conversion to Catholicism that was something that he must have realised as a risk much earlier on. The Judge also found that the appellant had unreasonably delayed in claiming asylum and found that conduct damaging to his credibility having regard to the provisions of Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.
14. At paragraph 35 the Judge notes that the appellant has in the course of his claim significantly changed the grounds of the claim. In his screening interview he did not indicate that lack of religious freedom was the primary reason for his claiming asylum. He said that he disagreed with the Chinese Government policies and so was afraid of going back. When asked about those problems he had replied "I am the second child of the family and if I marry I cannot have more than one child". When asked if there any other reasons for his claiming asylum he said that there were not. It was only after he was asked again whether there were any reasons for claiming asylum that he mentioned that he could not have a religious life freely. Asked to explain why he could not return to his country he said he was afraid of the Government and when asked specifically what serious harm would come to him if returned he replied that pollution was very heavy.significant in the eyes of the Judge that in the screening interview there was little mention of the risk of harm by reason of a perceived lack of religious freedom.
15. At the hearing before the Judge the case was seen to be placed on a different basis. Reference to the one child policy was virtually ignored as was the issue of pollution. Neither of those matters were mentioned in the skeleton argument advanced on behalf of the appellant. The Judge noted that the appellant gave his evidence hesitantly and lacked spontaneity. The Judge found that his evidence as to precisely what he would do on return to China to be vague, contrived and unsatisfactory.grounds indicate that there was a factual inaccuracy in the comments made by the Judge as to when it was that the appellant first claimed asylum. He first attended the Roman Catholic Church in August 2011 and claimed asylum on 26th August 2011 the day before his student visa expired on 27th August 2011. It was not correct to say that he had claimed asylum after he had been baptised in Easter.

16. It is said that that fundamental misunderstanding of chronology renders the subsequent findings of the Judge to be unsustainable and that it is an error which has affected the whole approach to credibility.
17. As to the screening interview such should be viewed with caution and should not be treated as a definitive account of an appellant's asylum claim. Allowance is placed for that upon **YL (Rely on SEF) China [2004] UKIAT 00145**. He said that the screening interview is not a record of the exact questions asked and answers given in the same way as the substantive interview. Moreover at the substantive interview on 10th October 2011 the appellant had indicated that his claim was as a religious believer and that he did not agree with the political issues in China. He contended therefore that contrary to the findings of the Judge the appellant's claim had been consistent throughout the time.
18. Further it is said that the comments by the Judge that the appellant appeared to be tailoring his evidence to the report of the expert was irrational and the expert report was dated 1st May 2013 and the appellant gave detailed answers at his interview on 3rd March 2013 to the questions asked of him.
19. Mr Jack who represents the respondent invited me to find that the issue of credibility was not so much directed towards the belief of the appellant as being a Christian and a Roman Catholic but rather the views that he expressed as to the ability to practise his religion in China were objectively well-founded or substantively believed.not accepting the error that the claim was made before baptism nevertheless it was a claim made the day before the leave to remain as a student expired. In that connection paragraph 6 of the determination was significant. The appellant had confirmed that he had not tried to extend his student visa when it expired because there were health problems and secondly for financial reasons because his parents were not able to support him anymore. Mr Jack submits that the Judge was perfectly entitled to regard the matter with some concern that the appellant who claims to have been a Christian for many years should not have raised the concerns much earlier than he did given the strong way in which he puts the matter. Mr Jack invites me to find that the simple answer is that the appellant sought to prolong his stay in the United Kingdom by making a claim which was in substance ill-founded.
20. It was in that connection that he invites me to find that the screening interview assumes considerable relevance it being conducted on 7th September 2011 within days of the claim for asylum being made. If the issue of religious freedom was uppermost in the mind of the appellant as founding a proper claim for asylum Mr Jack submits that should have been reflected at some stage in the screening interview.
21. It is clear at paragraph 4.1 of the summary of evidence the appellant was asked:-

“What was your reason for coming to the UK?” “I applied for a student visa but my intention was to stay in the UK. I disagreed with the Chinese Government policies so I am afraid of going back”. When asked what were the specific problems he said “I am the second child in the family and if I marry I cannot have more than one child”. He was asked whether there were any other reasons for claiming asylum and he said no. When that question was repeated however the appellant said “In China I could not have a religious life freely I go to church right now at St Chad’s in South Norwood I go nearly everyday”.

22. He was then asked why he cannot return and he said “I can go back to China but I am really afraid of this Government. Pollution is very heavy very serious I think that is because the Government would not want to make more profit the people have no right to say no them air pollution will affect our health”.to find that although it cannot be discounted the religious aspect it was but a very minor aspect of the claim whereas now it essentially the centrepiece of it. He invites me to find therefore that the comments about the Judge were properly open to be made.
23. Mr Jack invites my attention to the interview conducted on 10th October 2011. He was asked in that interview what it was that he feared on returning to China and he said “I am a religious believer and I don’t agree with the political issues in China”. He explained that his parents have their own business they also work for other people in a shop. He said that his religion was Catholic and that he had converted “over four years ago around 2007. The first church I went to was a Roman Catholic Church (RC)”.
24. The appellant was asked “What led you to convert” answer “At the beginning because of the Western culture led me to interest in the religion later went into it deeper I believed all this religious philosophy”.
25. He was asked to describe the difference between the Catholic Church and the Protestant, how the services differ between the two services and he indicated that in the Catholic Church mass was celebrated whereas in the other church no mass only singing and praying.
26. The appellant indicated that he had been attending St Chad’s Roman Catholic Church for some two to three months, attends almost daily.
27. The returned to the question of what political situation in China the appellant disagreed with and he mentioned family planning, media freedom.
28. I was invited to find that contrary to the later evidence which the appellant seeks to give about the subtle differences in the denominations and the

religious importance in Catholicism that was altogether lacking in that interview.

29. It seems to me and I so find that the appeal of the appellant really revolves around two central issues. The first issue is whether practising Roman Catholics who wish to maintain their traditional links with Rome and the celebration of the mass will face persecution in China if they insist upon that practice.
30. The second and perhaps more nuanced issueif the appellant is forced to worship in a CPA Church such will compromise his integrity as a believer such as to amount to persecution or to offend the principles as set out in **HJ (Iran)**.
31. It is not in dispute and indeed the Judge made it clear that much of the appellant's case was credible. The Judge did not doubt the appellant's account of his experiences of attending Protestant and Roman Catholic Churches in China and of his differing experiences in each of them. There was no reason to doubt the genuineness of his dislike of the Chinese Government and its policies generally or of his strength of feeling about pollution.
32. The Judge had no reason to doubt the appellant's account of his increasing interest in Christianity and in Catholicism. The Judge did not doubt that he undertook an induction course and was subsequently baptised. Nor did the Judge doubt the sincerity of the Christian beliefs or his conversion to Christianity and to Roman Catholicism.
33. In one sense the first issue as to persecution was more a matter of background evidence than it was for the appellant, he having some experience in China but not much.
34. The issue of credibility if it bites at all lies in the area of the appellant's genuineness of concern for the subtle differences in Catholicism and why it is that he contends that he would not be able to worship in a CPA Church.
35. The starting point for the Judge in the latter matter was clearly to consider the experience which the appellant had of the Roman Catholic Church. Clearly it was not very much having more recently attended the Protestant Church. Accepting the error as to the time when the appellant claimed asylum it is to be noted it was made on the day before the current leave expired. It was made on 26th August 2011 according to the appellant in his later interview he had been attending the church only a month or so before that and was attending and had not completed an induction course.reading the matter the appellant's experience and knowledge of Catholic teaching and of the Catholic Church was at the time when he applied for asylum extremely limited. It raises in sharp contrast therefore the reason why the matter of religion was raised at all at that stage.

36. Although care must of course be taken in relation to screening interviews because they are but a preliminary discussion it is right as I so find for the Judge to regard it as important that the main reasons that were advanced for claiming asylum were not as described or developed in the later part of the claim and its subsequent proceedings.
37. It is significant that in the first interview conducted with the appellant in October that any basic knowledge of differences between Catholic and Protestant is outlined. Once again the motivation for claiming asylum seems to also revolve around the political concerns that the appellant has relating to freedom of speech and to other matters. The religious aspect if I can put it that way would not seem to be so central to the claim as it became. In those circumstances I find that it was properly open to the Judge to make the comments as to the development of the claim that were made.
38. It is correct to note that in the interview of 3rd March 2013 the concerns of the appellant as to the religious aspect of his faith and the subtleties of his religion are more developed, that be by reason of greater knowledge, greater experience or external coaching may be difficult to determine. It marks a distinct change in development from how matters had been expressed earlier. The fact that an expert report was prepared later does not necessarily exclude the element of coaching in the answers that were given.
39. Given the extreme simplicity of the answers in the interview in October compared with some rather sophisticated answers in the interview in March the question that does arise as to how the appellant came to express himself in that way. It is therefore relevant for the Judge to note the way in which the appellant expresses himself at the hearing whether that indicates the nature of coaching or of spontaneous understanding. Clearly care has to be exercised in determining matters upon demeanour but the Judge as I so find has been anxious in his comments to try and examine the development of the appellant's understanding as well as the genuineness of his concerns. A great deal of time has elapsed from the simplicity of the claim expressed in October 2011 and that in March 2013.
40. the replies particularly at paragraphs 61 to 77 of the interview in October the majority of the comments relate to his understanding of Catholicism in the United Kingdom. It is said at paragraph 68 "I really don't know because the situation of the Chinese Catholics and the Catholic Church in China is very difficult and complicated"outlines that the Pope has the authority to ordain someone as bishops the Communist Government has tried to take the authority of appointment to themselves. To what extent that that is an understanding of the appellant himself or on an understanding that he has understood from somewhere else it is far from clear.the appellant in his statement indicates that he was bored with the services in the Catholic services and did not really understand much of what was going on, it is of relevance for the Judge to raise the

inquiry as to how he comes by the subtlety of the knowledge.issue for the Judge which clearly he seeks to grapple with throughout a very detailed determination whether the appellant himself has a genuine belief in the truthfulness of what he seeks to claim and even if he does is that concern objectively well-founded.

41. The grounds of appeal seek to suggest that the appellant gave detailed answers in his interview of 3rd March 2013 to the questions asked about the Roman Catholic Church in China. They are perhaps of a different quality to the answers which he sought to give before the Judge at the hearing. The Judge having heard the expert evidence was well placed to compare that with the evidence of the appellant and to ask in the light of the history of the appellant's revelation of his claim whether the answers came fromknowledge and belief or from information and priming.
42. I do not detect an error in the approach by the Judge to these difficult matters. I find the comments made were generally properly open to have been made.
43. The third ground of appeal is to the effect that the Judge failed to give any adequate consideration to the evidence which supports the appellant's claim including the country expert report and the COIS Report. Numerous extracts from various reports are cited in support of the proposition that there was evidence particularly from Dr Sheehan and from other reports as to persecution of Catholics including the increased repression of Catholic house church worshipers in China and the arrests of ordinary worshipers as well as clergy.paragraph 18.10 of the COIS Reports which mentioned a continuing crackdown on unregistered religious organisations including underground Christian groups.
44. In connection with the issue of persecution the Judge noted specifically the evidence of Mr Turner at paragraph 21 of the determination. He did not however have any experience of the Roman Catholic Church in mainland China and he did not know if it had changed since he had been there in 1972. It was not surprising therefore that not great weight was placed upon his evidence by the Judge. Perhaps central to the contention of active persecution is the report by Dr Sheehan, a report she seeks to deal with the status of the Catholic Patriotic Association (the CPA) and its relations with the Vatican. The Judge pays note to that report as can be seen from paragraph 39 and noted that certain Chinese Catholic priests have been subject to house arrest but he notes little evidence of actual persecution and virtually no evidence of persecution of ordinary members of the Roman Catholic Church whether worshippers at the CPA Churches or significantly the other house churches.
45. At paragraph 40 the Judge notes from the report that little is said adversely to the unregistered Catholic Churches in China being subjected to persecution. He also notes that the report confirms that some priests within the CPA registered churches are in communion with Rome. The

Judge does not find the report to be helpful to indicate any persecution of ordinary members of the Catholic Church whether worshippers in a CPA registered church or otherwise.

46. In paragraph 41 the Judge considers what Dr Sheehan had to say about the unregistered Catholic Churches the house churches. The Judge puts the specific incidents referred to in her report within the wider context of life in China and notes in particular a lack of any mention of specific difficulties arising in the appellant's home province of Guangxi.
47. In paragraph 42 the Judge considers that what Dr Sheehan had to say as to persecution was a sweeping statement not borne out by the paragraphs of her report. It was noted that there was some pressure on house churches to register but little evidence of any real persecutory ill-treatment of the lay members of any house churches. The Judge further considers matters of Dr Sheehan's report in paragraphs 43 and 44.
48. Contrary to the submission that is now being made it is clear that the Judge gave very careful consideration to the report and came to findings upon it which were properly sustainable.
49. The Judge at paragraphs 45 to 46 notes the volume of material that has been presented particularly the COIS Report which is relied upon. The Judge notes that according to the US International Religious Freedom Report of 2011 more than 6,000,000 Catholics worship in sites registered by the CPA and that there are 64 official Catholic bishops, 2,700 priests and over 6,300 churches and meeting places. The numbers of Christians in China are exploding. The Judge also goes on to note various reports of the unregistered Catholic clergy and congregations working together and that since 2006 the Vatican and Chinese Government have worked together to select bishops reversing a previous trend of Government appointed bishops without Vatican approval.
50. The Judge notes in paragraph 49 the lack of evidence as to the position of the Roman Catholic Church in the appellant's home city or province. Many are in communion with Rome and notes the flexibility towards religion in that province.
51. Essentially the Judge does not accept the first proposition advanced namely that there is active persecution to a significant extent of Christians in China let alone Catholic Christians and secondly the Judge does not accept that to worship in a Catholic Church whether CPA or other is unduly limiting or restrictive of the expression of faith.
52. The grounds of appeal seek essentially to remount an argument on the interpretation of the material presented. For example in paragraph 18 of the grounds it said that the Judge misrepresents the situation and objective material because paragraph 18 to 35 of the COIS states there are 5,000,000 and 6,000,000 members who worship in the official sanctioned

church and the underground church loyal to Rome has 10,000,000 followers. She was takenthe Judge comments that “it is plain that millions of Catholics are content to follow their beliefs as true Roman Catholics in China by worshipping at CPA registered churches” and that many worship in underground churches or house churches is not by itself eloquent of any persecution by the authorities particularly if there is a lack of direct evidence of that persecution taking place. Other than what is argued that there is an oppressive regime in China towards religion, religion is rather on the increase and flourishing in state controlled churches as well as house churches.

53. I find that the Judge has properly analysed the material both as to the issue of persecution to the extent that active persecution exists. The conclusion by him that there is very little and certainly none in the home province of the appellant is a finding properly open to be made.
54. The Judge doubts the sincerity of the appellant as to the subtle differences in Catholicism in the CPA Church and the house church and in any event finds little in reality to that distinction to be seen from paragraph 48 of the determination. The Judge finds that the appellant as a worshipping and devout Catholic could freely exercise that if in China. raised in **HJ (Iran)** do not arise in the case of the appellant. He is not be forced to be quiet but can conduct his faith. To the extent that he claims that he would be an activist that is to be viewed in the overall context of the genuineness of his understanding and belief and in the other claims which he made which are not now pursued.
55. It is not a straightforward case and that is to be recognised. The Judge finds the appellant as a devoted Catholic can worship safely either in the CPA Church or in a house church in China without fear of persecution. I find the Judge in coming to that conclusion has looked at the matter from a number of perspectives and that the findings are properly open to be made. He has not overlooked any material evidence nor has he misdirected himself as to any approach.

Signed

Date

Upper Tribunal Judge King TD