



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

Appeal Number: AA/07672/2012

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
on 7 January 2014**

**Determination  
promulgated**

.....  
**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**LIUY WEI**

**and**

Appellant

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

Respondent

For the Appellant: Mr J Bryce, Advocate, instructed by Latta & Co, Solicitors  
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

(No anonymity order requested or made.)

**DETERMINATION AND REASONS**

- 1) The appellant appeals against a determination by First-tier Tribunal Judge Clough, promulgated on 1 October 2012, dismissing her appeal against refusal of recognition as a refugee.
- 2) On 11 December 2012 Upper Tribunal Judge Allen granted permission to appeal, observing:

Given that it is accepted that the appellant is a Mormon, that Mormons are not legally allowed to worship in China, and that it is said that the Mormon congregation President makes it clear that proselytising is forbidden, it was arguably incumbent on the judge to consider if the situation was such as to give rise to risk on the basis of what was said by the Supreme Court in *HJ and HT* [2010] UKSC 31.

- 3) In a written note of argument Mr Bryce advanced the case also under reference to *RT* [2013] 1AC 152.
- 4) Mr Matthews accepted that the judge erred in her legal approach. He submitted that the respondent's concession that the appellant is a Mormon (which had not been withdrawn, although the judge expressed some doubt) was not the end of the case. It was significant that there had been no evidence in the First-tier Tribunal from the Mormon Church. It did not follow from being a Mormon that there was a requirement to proselytise in China, indeed the evidence was to the contrary. The judge rejected the appellant's account that she did return to China and proselytise. There was a spectrum of affiliation to any religion. Findings were needed on what the appellant might or might not do in China, and what the consequences might be.
- 5) Representatives agreed that the determination should be set aside and that a further decision should be reached in the First-tier Tribunal following a hearing which was likely to include further evidence from and cross-examination of the appellant.
- 6) The decision of the First-tier Tribunal is **set aside**. Under section 12(2)(b)(i) of the 2007 Act and Practice Statement 7.2, the nature and extent of judicial fact finding necessary for the decision to be remade is such that it is appropriate to **remit the case to the First-tier Tribunal**. The member(s) of the First-tier Tribunal chosen to reconsider the case are not to include Judge Clough.



9 January 2013  
Judge of the Upper Tribunal