



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

Appeal Numbers: AA/09748/2013

**THE IMMIGRATION ACTS**

**Heard at Newport, Cardiff  
On 25 March 2014**

**Determination  
Promulgated  
On 7<sup>th</sup> April 2014**

**Before**

**The President, The Hon. Mr Justice McCloskey and  
Vice-President Arfon-Jones**

**Between**

**YQL  
(ANONIMITY DIRECTION EXTENDED)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

Appellant: Mr N Taeharne (of Counsel), instructed by Migrant Legal Project  
Respondent: Mr Richards, Senior Home Office Presenting Officer

**DECISION AND REMITTAL**

1. By a decision made on behalf of the Secretary of State dated 9 October 2013 the Appellant's application for asylum was refused. The Appellant's ensuing appeal to the First-tier Tribunal (the "FtT") was dismissed. The Appellant appeal's with permission to this Tribunal.

2. The issue lying at the heart of this appeal relates to the FtT's treatment of the expert evidence adduced on behalf of the Appellant. Part of the Appellant's asylum claim entailed assertions that in the course of earning her livelihood as bookseller she sold so-called "Falun Gong" literature, attracting adverse attention from the Chinese authorities in consequence. She claimed to have been arrested by the police on two occasions and that, on the first, this involved an arrest warrant. She further claimed that the police had visited and questioned her on multiple occasions, threatening her with arrest if she failed to identify the supplier of the offending literature. Her decision to leave China and her subsequent claim for asylum were based on these repeated incidents of unwelcome and intimidating police conduct.
3. The report of the expert witness, Dr Sheehan, is to be considered in the context outlined immediately above. It's title is noteworthy: "Authentication of Detention Warrant for Ms [YQL]". In her report Dr Sheehan stated

*"The layout font and wording of the Detention Warrant are all as I would expect and there is nothing about it which leads me to doubt its authenticity. I have seen genuine versions of these documents in the Police Museum in Beijing .....*

*The Chinese police (the Public Security Bureau) do not use any special or watermarked paper for these documents, so the paper itself gives no indication of authenticity or otherwise .....*

*The document bears the stamp of the Fuqing City Public Security Bureau .... This official stamp gives the document its validity .....*  
*The stamp is in the correct font and is in the red ink used for the police and other government departments in China, with a red star in the centre. The document also bears a unique identifying number".*

Dr Sheehan further stated that the terms of the warrant confirmed that it has been approved by the Court. Furthermore, it identified the two PSB Officers who were to execute it and the Appellant's home address. It also contained the Appellant's signature, certifying that the warrant had been served on her on the date of issue by the Court. Dr Sheehan continues:

*"Since these police issued [documents] are not produced on special paper, it is in theory possible for someone with influence with the Fuqing police to issue a fake detention warrant. However, I think it is relatively unlikely ..... **and overall I see nothing in this document to indicate that it is not genuine**".*

4. In her report Dr Sheehan conducted an impressively detailed examination and assessment of the document under scrutiny. Her opinions were expressed firmly and without qualification. Moreover, at

the hearing at first instance, there was no challenge on behalf of the Secretary of State to her report.

5. In a detailed Determination, the findings of the Judge begin at paragraph [62]. They commence with the uncompromising statement:

*“I find the Appellant is not a credible witness”.*

The Judge then elaborated on this overarching finding. In doing so, she stated further:

*“I do not accept that she was arrested or being [sic] charged”.*

This was the preface to the immediately following passage:

*“Considering the inconsistencies in the Appellant’s case and also the surrounding circumstances, I place little weight on the arrest warrant. Dr Sheehan states the police issue warrant is not on special or watermarked paper. Taking into consideration the whole of the evidence, especially the Appellant not mentioning in her screening and asylum interviews that she was detained for one month, I find little credence can be placed on any of the Appellant’s evidence”.*

Considered in its full context, we readily construe this passage as a clear rejection of Dr Sheehan’s expert opinion. However, the Judge failed to deal with Dr Sheehan’s evidence that no special or watermark paper is used by the Chinese police for arrest warrants. Based on this evidence, the fact that the warrant produced by the Appellant was not on paper of this nature did not undermine her case. The Judge appears to have disregarded this. Furthermore, the Judge gave no explicit consideration to any of the other material passages in Dr Sheehan’s report, the most salient whereof we have rehearsed above. We consider that, fundamentally, the Judge failed to engage with Dr Sheehan’s expert opinion. This was an indelible duty which was not discharged.

6. The finding that the Judge committed an error of law by failing to give any or proper consideration to a crucial piece of evidence follows readily. We consider the materiality of this error indisputable, since it undoubtedly contributed to the Judge’s adverse credibility assessment of the Appellant. The Determination of the FtT must be set aside accordingly.
7. The effect of our analysis and conclusion is that there was a significant shortcoming in the consideration and determination of the Appellant’s case at first instance. Both parties’ representatives submitted that the appropriate course would be to remit the case for the purpose of remaking. We accede to this joint submission.

8. Accordingly, we set aside the decision of the FtT and remit the case to a differently constituted FtT for the purpose of remaking the decision.

**Signed:**

*Seamus McCloskey*

THE HON. MR JUSTICE MCCLOSKEY  
PRESIDENT OF THE

UPPER TRIBUNAL

IMMIGRATION AND ASYLUM CHAMBER  
Date: 27 March 2014