



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

Appeal Number: AA/05877/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 6th November 2015**

**Decision & Reasons
Promulgated
On 8th December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MRS S C
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Capel (Counsel)
For the Respondent: Mr Kandola (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Cockrill, promulgated on 3rd August 2015, following a hearing at Taylor House on 7th July 2015. In the determination, the judge dismissed the appeal of the Appellant, who subsequently for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a citizen of China. She appeals against the decision of the Respondent Secretary of State dated 28th July 2014, refusing her asylum under paragraph 336 of HC 395. She left China in October 2007, and flew to Moscow, staying there for ten days, before coming to the United Kingdom. She made her asylum application some five years later on 16th November 2012 and she was interviewed in the normal manner. On 28th April 2014, she married in the United Kingdom and has had two sons born on 8th January 2013 and 16th March 2014. By letter dated 22nd December 2012, the Appellant's asylum application had been refused two years earlier.

The Appellant's Claim

3. The Appellant's claim is that she was born in Zhe Jiang Province, and is an only child, and her parents held religious meetings in their home, which were frequented by other individuals, and the Appellant herself read the Bible every day. The particular church to which she belongs is the Shouwang Church in China. The Appellant described how she accompanied her father on Sunday to pick up other people to come and join their religious gathering. Her father was involved in spreading the faith by going door to door and speaking about the Bible with people.
4. In January 2007, however, the police forced their way into the Appellant's father's property, kicking down the door, and informing the people present that they were at an illegal gathering, so that a number were arrested and taken to the police station. The Appellant was locked up for 24 hours. She was warned not to repeat this type of behaviour. She was not mistreated during that first detention. There was no charge which followed. She was released. She still participated with the house gatherings as previously, nevertheless.
5. There was, however, a second occasion when the Appellant was arrested again in May 2007. On this occasion she was beaten and had her hair pulled. She suffered physical injury. She was detained for two days. She was frightened of being sexually assaulted. However, she was released without charge, and her parents decided that it would be safer for her to leave the country, so arrangements were made for her to eventually go to the United Kingdom. She arrived in the UK in October 2007.

The Judge's Findings

6. The judge summarised the Appellant's claim with the observation that,

"The essence of the Appellant's case, ... relates to her religious practice as a Christian. She has participated in Christian gatherings at what could be described as unregistered house churches, most particularly of course in her own family home whilst she was a teenager" (paragraph 13).

The judge went on to recount how whilst the Appellant was in the United Kingdom she “has attended and associated herself with the Jehovah’s Witnesses Church and she has attended various church meetings at different halls in the United Kingdom” (paragraph 14). The Appellant’s claim, as recounted by the judge, was that there are worsening conditions for those who are involved in house church worship and that this has been the position since 2008. There is a connection between the Shouwang Church and the Jehovah’s Witnesses. The expectation is that those who are associated with the Shouwang Church would proselytise their faith and the Jehovah’s Witnesses bear the brunt of the hostility of the Chinese government. The Appellant’s fear was that if she is returned to China she would be mistreated by the government again.

7. Reliance was placed upon an expert report by Dr Sheehan regarding the deteriorating situation in relation to those who were practising their Christian faith in an unofficial way (see paragraph 14).
8. The judge gave close attention to the report of Dr Sheehan (see paragraph 41) and observed that, having studied this report closely, it does “present a more bleak and disturbing picture than the type of material made available to the Tribunal that had to deal with the country guidance case of **QH**” (see paragraph 41). In the case of **QH (Christians - risk) China CG [2014] UKUT 86**, the Tribunal confirmed that the risk of persecution to Christians in China was “extremely low”, the level of risk was not such to enable people to claim to have a well founded fear of persecution. However, despite the judge’s conclusions (at paragraph 41) the decision was reached that,

“The Appellant has not shown sufficient information to enable me to depart from the guidance contained in **QH**. Even accepting that some of the observations of Jackie Sheehan indicate a deterioration in the way in which the Chinese authorities are treating those who are involved in unregistered churches, such as the churches associated with the Appellant’s parents, it seems to me that **QH** did have available to it material which went right up to June 2013. I do not feel that the Appellant’s situation, and the type of evidence adduced by her, is such to enable me to properly depart from the guidance in her case” (see paragraph 44).
9. The judge then went on to have regard to the fact that the Appellant had two children and that she had married, but if the Appellant were to meet with any mistreatment, “that is not of a level whereby it can properly be said to be persecutory, having regard to the jurisprudence in relation to the one child policy” (paragraph 46).
10. It is, of course, the case that China’s one child policy has now been suspended and so the Appellant cannot properly, in any event, raise this as a basis for having a well-founded fear of persecution if she were to be returned to China.
11. The appeal was dismissed.

Grounds of Application

12. The grounds of application state that the judge failed to consider whether the authorities' conduct would force the Appellant to refrain from practising her faith. The judge also failed to make proper findings on the expert report. This was particularly important in that the judge ought to have given reasons for why the expert evidence did not displace the country guidance upon which he eventually relied.
13. On 26th August 2015, permission to appeal was granted.
14. On 29th September 2015, permission was granted on the remaining grounds that had been put forward before the First-tier Tribunal. The third ground was that the Tribunal had failed to give consideration to the judgment in **Y & Z [2012] EUECJ C-71/11** which required consideration of whether the conduct of the Chinese authorities would force the applicant to refrain from practising her faith. Permission was also given on the fourth ground which was whether the Tribunal failed to make a finding on why the evidence of the expert, Dr Jackie Sheehan, did not displace the country guidance in the circumstances of the case.

The Hearing

15. At the hearing before me on 6th November 2015, Ms Capel, appearing as Counsel on behalf of the Appellant, submitted that the decision of the judge below should be set aside for the following reasons. First, there was an expert report that the judge had found to be "more bleak and disturbing" than the country guidance case of **QH (China)**. This expert report clearly stated that the Appellant was at risk because she was a member of the Shouwang Church, which was a proselytising church, not very different from the Jehovah's Witnesses faith. In fact, the Appellant had been associated with the Jehovah's Witnesses faith since her arrival in the UK.
16. Second, the Appellant's past persecution was accepted by the judge on the facts presented to him.
17. Third, the judge had not given proper reasons. When the judge states (at paragraph 44) that, though "the observations of Jackie Sheehan indicate a deterioration in the way in which the Chinese authorities are treating those who are involved in unregistered churches", the conclusion that **QH** still has to be applied, is not a reason for why the judge decided not to follow the expert report, but simply a decision without any visible foundational basis for it.
18. Fourth, the report of Dr Jackie Sheehan had referred to "individual risk factors", and this being so it was unnecessary for her to "displace" the case of **QH (China)**, in that the mere reference to the "individual risk factors" would be enough to show that the Appellant had a well-founded fear of persecution. For example, there was evidence (see the Appellant's bundle at page 12 at paragraphs 5 and 6) where the Shouwang Church had been made an example of by the Chinese authorities. This was

important because the country guidance case of **QH (China)** only dealt with Christian churches in general. The specific consideration of the Shouwang Church, in the way that Dr Jackie Sheehan had undertaken, painted an altogether different picture, and this was accepted by the judge as being “more bleak and disturbing”.

19. Dr Jackie Sheehan had made it clear (at paragraph 132) that the Shouwang Church has seen more detentions than any other. Since 2014 things have been getting worse for members of the Shouwang Church. This is clear from the supplementary bundle at page 15, paragraph 12, and at paragraphs 23 to 24. Finally, had Dr Jackie Sheehan’s report been properly considered it was clear that the Appellant could demonstrate that there was a well-founded fear of persecution to her (see the supplementary bundle at 11/14; 17/14; and 23/27).
20. For his part, Mr Kandola submitted that the expert report was not as good as the country guidance case of **QH (China)**. The latter was decisive. The former was not. The Shouwang Church was a house church. The country guidance case of **QH (China)** did make reference to house churches. Therefore, it is inaccurate to say that the country guidance case was not comprehensive enough to take account of a house church such as the Shouwang Church. The fact was that the judge had (at paragraph 36) perfectly adequately dealt with the factual basis of the claim, and there was nothing in the determination therein to demonstrate that the judge was not fully familiar with the background facts, so as to upset his ultimate findings.
21. In reply, Ms Capel submitted that it was well established that country guidance cases could be departed from. They could be departed from on the basis of the fresh evidence. The President’s Guidance Note (at paragraph 11) makes it clear where this is appropriate. The case of **SI (Ethiopia)** demonstrates that if there is fresh evidence available which makes it possible to take a different view then that different view is perfectly acceptable to take. She asked me to allow the appeal.

Error of Law

22. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. My reasons are as follows. First, whereas it is the case that **SI (reported cases as evidence) Ethiopia [2007] UKAIT 00012** makes it clear that country guidance cases continue to give authoritative guidance on the country guidance issues identified for so long as they remain on the AIT website as CG cases, the AIT Practice Directions make it clear that a country guidance case may be departed from by an Immigration Judge, in the strictly limited circumstances relating to fresh evidence. This was a case where the judge had evidence before him that the expert report painted a picture “more bleak and disturbing” than what was in the country guidance case of **QH**. In these circumstances it behoved the judge to give reasons for why the

expert report was not now being followed, given that this was later evidence, going beyond that taken into account by **QH** up to June 2013.

23. Second, the judge himself made it clear that the “observation of Jackie Sheehan indicated deterioration in the way in which the Chinese authorities are treating those who are involved in unregistered churches” (paragraph 44). Proper reasons had to be given for why, in the light of this conclusion, the expert report was to be distinguished from the country guidance case.
24. Thirdly, there is evidence, which the judge has not adequately confronted, showing that, since her arrival in the UK, the Appellant “has been associating herself with the Jehovah’s Witnesses Church (and she has attended various church meetings at different Halls in the United Kingdom” (see paragraph 14). As with the Shouwang Church, the Jehovah’s Witnesses Church is also a proselytising church, and one which would have given the Chinese authorities some concern, given the evidence that was before the judge. What the extent of that concern was however is a matter that the judge needed to probe.

Remaking the Decision

25. I have remade the decision on the basis of the findings of the original judge, the evidence before him, and the submissions that I have heard today. I am allowing this appeal to the extent that it is remitted back to the First-tier Tribunal, to be heard by a judge other than Judge Cockrill because under Practice Statement 7.2(b) the nature or extent of any judicial fact-finding which is necessary in order for the decision in the appeal to be remade is such that, having regard to the overriding objective in Rule 2, it is appropriate to remit the case to the First-tier Tribunal.

Notice of Decision

26. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal to be heard by a judge other than Judge Cockrill at the earliest opportunity.
27. An anonymity order is made.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge Juss

3rd December 2015