Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/07792/2014

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision and Reasons Promulgated**
on 16 June 2015	**On 23 June 2015**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

YUN QUIN HE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr K Katani, of Katani & Co, Solicitors
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant identifies herself as a citizen of China, born on 25 July 1958. The respondent refused her asylum claim for reasons explained in a letter dated 22 September 2014. First-tier Tribunal Judge Mozolowski dismissed her appeal for reasons explained in her determination promulgated on 2 December 2014.

2. The appellant sought permission to appeal to the Upper Tribunal, on four grounds. A First-tier Tribunal Judge found none of the grounds to be arguable. The application was renewed to the Upper Tribunal, on the same grounds. In a decision dated 15 April 2015 an Upper Tribunal Judge

said that grounds 1 and 2 were arguable, but refused permission on grounds 3 and 4.

3. Mr Katani submitted that the grounds should be upheld and the determination should be set aside.

4. Mr Matthews firstly queried whether any appeal was properly before the Upper Tribunal. The First-tier Tribunal's refusal of permission was issued on 8 January 2015. As specified on the form of application, the appellant had 14 days after the date on which notice of the First-tier Tribunal's refusal was sent to her within which to apply to the Upper Tribunal. That gave her until 22 January 2015. Her application to the Upper Tribunal was signed by Mr Katani on 23 January 2015 but faxed to the Upper Tribunal only on 27 January, which was recorded as the date of receipt. The application said that it was being sent late "due to an administrative error … no fault of the appellant's". Mr Matthews said that was an inadequate explanation. The (purported) grant of permission overlooked the point. The first matter to consider now was whether to extend time. He said that the application should not be admitted.

5. I invited Mr Matthews to address me in the alternative on the merits of the grounds. He pointed out firstly that the respondent's decision rejected the claim not only for credibility reasons but in the alternative on internal relocation, and that the judge made a similar finding at paragraphs 42 to 44. That finding was not challenged and was a complete answer to the case. The grounds on which permission was granted overlooked paragraphs 23 to 27 of the determination where the judge gave good reasons for holding that the appellant was not giving credible evidence but simply reciting a script she had learned. As it had been found that her account was wholly invented, there was no need to go into the particular explanations contained in her witness statement which was said to have been ignored. Ground 1 complains about the finding at paragraph 28 that the judge would have expected the hospital authorities to contact the city police about the alleged fatal stabbing of the appellant's son. The appellant said that this was speculative, but it was reasonable. The second part of this ground complains about the finding at paragraph 36 that the murder of the appellant's son would have generated serious interest from senior officials who would not have been affected by a local official or Triad gang. The same point applied. Ground 2 complains about paragraph 33, where the judge said that the appellant had not explained why it took her two weeks to complain to the police. The appellant says that this was explained at paragraph 18 of her witness statement. All the appellant says there is that she could not accept reality and went to the police station two weeks later when she could think clearly. Mr Matthews said that was no explanation at all. A judge was not bound to deal with every detailed aspect of the evidence before her. If the application for permission to appeal was admitted, the appeal should be dismissed.

6. Mr Katani in response said that the application made to the First-tier Tribunal had been in time, and the one made to the Upper Tribunal was less than a week late. Such administrative mishaps unfortunately happen.

The interests of justice were more significant. The Home Office filed a Rule 24 response to the grant of permission in which they did not raise the point. The objection should have been raised then and not only on the day of the hearing.

7. In response on the merits, Mr Katani said that it is well known that Triads operate nationally and are well resourced, so internal relocation was not an option. The judge noted that the appellant claimed also to fear the Chinese authorities, so there was no need for internal relocation to be considered. The two points made in ground 1 showed that the judge relied on guesswork. She should not have speculated on what was likely to happen in China without objective evidence. Ground 2 identified that the judge was wrong to say that the appellant had "not explained" the delay. The judge's conclusions had been shown to be unsafe and a fresh hearing should be ordered.

8. I reserved my determination.

9. An administrative oversight by solicitors is not generally a good ground for extending time. A delay having been noticed on Friday 23 January 2015, only one day late in terms of the specified period on the form, there is no explanation of why there was a further delay of a weekend plus two working days until the form was submitted. However, the delay is relatively short. The point was not taken by the respondent at the first opportunity but rather late. There has been no particular prejudice to the respondent. The issue is finely balanced but in all the circumstances I think it is in the interests of justice to admit the application.

10. I do not find the grounds to be of merit.

11. The finding on internal relocation is itself conclusive, and the grounds do not challenge it.

12. The grounds conveniently overlook the finding that the appellant was rehearsing an invented script. That conclusion was open to the judge who had the advantage of hearing the oral evidence, is clearly reasoned, and is not affected by any error.

13. In context, grounds 1 and 2 amount to no more than selective disagreement on particular points. At highest, the judge may have overlooked the appellant's explanation (such as it was) for delay in reporting to the police. If the judge had said that there was "no *adequate* explanation" there could have been no complaint. The matter is minor. It bears nowhere near the significance which might require to the determination to be overturned.

14. The determination of the First-tier Tribunal shall stand.

15. No anonymity order has been requested or made.

18 June 2015
Upper Tribunal Judge Macleman