



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

Appeal Number: PA/08360/2017

THE IMMIGRATION ACTS

**Heard at Glasgow
On 26th October 2018**

**Decision and Reasons
Promulgated
On 28th November 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE DEANS

Between

**MS LING XUE
(No anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by Maguire,
Solicitors

For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision by Designated Judge of the First-tier Tribunal Murray dismissing an appeal on protection and human rights grounds.
2. The appellant is a national of China. She claimed to be at risk of persecution as a worshipper at the Almighty God Church, otherwise

known as “Eastern Lightning”. The Designated Judge did not believe the appellant’s evidence and, in particular, that she was involved with this church in China or had come to the adverse attention of the authorities because of this.

3. The Designated Judge looked at the appellant’s activities since her arrival in the UK, which included leafleting and posting material of a religious nature online. The judge found that the appellant had carried out these activities in bad faith in order to bolster her claim.
4. Permission to appeal was granted on the ground, in particular, that the Designated Judge had not considered the risk to the appellant from these posts.
5. In his submission before me Mr Winter adopt the grounds for seeking permission to appeal. The first of these was that the Designated Judge had erred in her assessment of risk even though the appellant was found to have been acting in bad faith when carrying out her religious activities in the UK. The second was that the judge did not make proper findings on what activities the appellant had actually been carrying out.
6. On the second of these grounds Mr Winter submitted that it was unclear whether the judge had accepted that the appellant had been leafleting on behalf of the church. If it was accepted that she had been, then there had to be an assessment of the risk arising from this, whether the appellant was acting in bad faith or not.
7. Mr Winter referred to the opinion of Lord Brodie in the Inner House decision in MMY [2018] CSIH 16. This showed that Eastern Lightning was not in the same position as other unregistered churches in China. It had been classified by the authorities as an “evil cult”. Because of this the country guideline case of QH (Christians – risk) China CG [2014] UKUT 00086 should be distinguished. This distinction affected the assessment of risk even if the appellant was acting in bad faith. Not only was Eastern Lightning designated an evil cult but the members had a duty to proselytize, unlike the members of Falun Gong, which was also so designated.
8. For the respondent Mr Govan relied on a rule 24 response. The conclusions of the Designated Judge were clear. The appellant had a lack of knowledge of the Church of Almighty God. She was found to lack genuine faith and to have acted in bad faith. Mr Govan asked what evidence there was before the judge to show that the Chinese authorities would be aware of her Facebook posts. There was no evidence that these were on a publicly accessible account. Even if the posts were discovered, there was no personal information to identify the appellant apart from her name, and there was no photograph of her. There was no evidence the Chinese

authorities were monitoring social media outside China. The appellant was not a church member and there was no expectation that she would behave in such a way as to bring her to the attention of the authorities. Photographs of her leafleting in the UK had been produced but these were unclear and there was no evidence they had been published. It was difficult to identify the appellant in the photographs, as the judge observed.

Discussion

9. I will address first the second of the appellant's grounds. This concerns whether the Designated Judge accepted the appellant's involvement in activities in the UK to promote the Church of Almighty God. The judge's findings are at paragraph 54 of the decision. The judge observed that the appellant's name is not on the leaflets produced in evidence. The photographs of the appellant leafleting are said to be unclear. Nevertheless, notwithstanding these concerns it is apparent that having regard to the low standard of proof the judge accepts that the appellant was leafleting in the UK. The judge then observes that the Facebook posts and the leafleting were done to bolster the appellant's claim. This implies that the judge also accepted that the appellant made Facebook posts from the UK. In the previous paragraph the judge had rejected the appellant's evidence that she had also made social media posts about the church in China before her departure.
10. For the foregoing reasons I find there is no issue of substance in the contention that the judge did not make adequate findings on whether the appellant had been carrying out activities for the church in the UK.
11. The other ground I must consider is whether the judge properly assessed risk on return having regard to the Danian point (as Mr Winter referred to it) that even activities carried out in bad faith may give rise to a real risk. The issue of bad faith is nevertheless significant to the assessment of risk in the circumstances of this appeal. The appellant is not a genuine believer and this distinguishes her from the appellant in MMY, whose faith was found to be genuine. There is no reason to suppose that the appellant would consider herself under any duty to adhere to the church or to proselytize on its behalf were she to return to China.
12. The only activities accepted by the judge which might conceivably give rise to a risk to the appellant on return was her leafleting in the UK and her social media posts. The only evidence of the leafleting, apart from the appellant's own evidence, is some unclear and unpublished photographs. The judge was entitled to find these would not give rise to a real risk to the appellant. As far

as the social media posts are concerned, as Mr Govan pointed out, it was difficult to identify the appellant from these posts and anyway there was a lack of evidence before the judge to show that the Chinese authorities were monitoring posts of this nature outside China. The judge was entitled to find that the appellant did not face a real risk of persecution or serious harm on the basis of her *sur place* activities in the UK.

Conclusions

13. There is no error of law in the decision of the First-tier Tribunal and accordingly the decision stands.
14. The making of the decision of the First-tier tribunal did not involve the making of an error on a point of law.
15. The decision is not set aside.

Anonymity

The First-tier Tribunal did not make a direction for anonymity and I see no reason of substance for making such a direction.

M E Deans
31st October 2018
Deputy Upper Tribunal Judge