



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

Appeal Number: AA/09663/2014

THE IMMIGRATION ACTS

**Heard at: Field House
On: 11th May 2015**

**Determination Promulgated
On 29th May 2015**

Before

**DEPUTY UPPER TRIBUNAL JUDGE BRUCE
DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN**

Between

**Min Min Yu
(no anonymity direction made)**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms Knorr, Counsel instructed by Southwark Law Centre

For the Respondent: Ms Isherwood, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of the Peoples' Republic of China date of birth 12th October 1989. She appeals with permission¹ the decision of First-tier Tribunal (Judge Watt) to dismiss her appeal against the decision to remove her from the United Kingdom pursuant to s10 of the Immigration and Asylum Act 1999².

Background and Basis of Claim

¹ Permission was granted by First-tier Tribunal Judge RA Cox on the 13th March 2015

² Dated 31st October 2014

2. The basis of the Appellant's asylum claim was that she had a well-founded fear of persecution in China for reasons of her political opinion, religious belief and membership of a particular social group. She claimed to be from a village in China where she and others had protested about the proposed destruction of the Buddhist temple. This had brought her into conflict with the local authorities and she had been arrested and detained. She managed to escape from detention upon payment of a bribe and left China. She now fears return for that reason. Since her arrival in the UK the Appellant has had a baby; this gives rise to an additional limb of her claim in that she asserts that she would face persecution as an unmarried mother.
3. The Respondent accepted that single parents face stigma and societal discrimination but not that this amounted to persecution. In respect of the rest of the claim the refusal letter reads as follows:

"When considering your internally consistent account of events alongside the background information, and in the absence of evidence to the contrary, your claim that you were involved in delivering a petition to the local government and that you became involved in a demonstration outside a government building, has therefore been accepted"

Having made that concession of fact the Respondent goes on to reject the rest of the Appellant's account. In particular the Respondent did not accept that there was sufficient evidence to demonstrate that the Appellant had been arrested and detained as claimed following this demonstration [paragraph 68], or that she had been questioned at school by the police [68]. The claim was therefore rejected.

4. When the matter came before Judge Watt, he had regard to the refusal letter. He summarises its contents at paragraphs 2-9. The Judge records the Appellant's oral evidence. From paragraphs 37 to 38 the Judge sets out the reasons why he does not accept the Appellant's evidence to be credible. These appear at 12 numbered sub-paragraphs.

Matters in Issue

5. The grounds of appeal are dated 1st March 2015. There are two principal challenges to the approach taken by the First-tier Tribunal. The first is that there was a complete failure to recognise that the Respondent had accepted material parts of the claim, that being that the Appellant had taken part in a protest against the destruction of a temple. The second was that the determination fails to have regard to relevant country background material which supported the contention that persons involved in such protests are reasonably likely to be

arrested and detained: this material included the Respondent's own Operational Guidance Note, Country of Origin Information Report as well as an expert report.

6. Ms Isherwood underlined that the concession in the refusal letter is in limited terms: it was not accepted that the Appellant had been detained. She submitted that the reasons given for rejecting the Appellant's credibility were, when considered in total, sound. She highlighted, for instance, that the finding in respect of whether there was an arrest warrant against the Appellant, was open to the Judge on the evidence before her. She submitted that the Judge was entitled to examine the evidence for contradictions. The fact that he had not considered the country background material was not in this case relevant, since the findings would have been the same even if that material had been addressed more explicitly.

Error of Law: Our Findings

7. The determination contains twelve "reasons" why the First-tier Tribunal was not satisfied that the Appellant's account was true. We heard submissions from both parties about the merits of some of those individual reasons, however we do not consider it necessary to deal with these matters in detail. That is because we are satisfied that the First-tier Tribunal's approach was flawed for the two principal reasons set out in the grounds.
8. There was a clear concession of fact in this case. The Respondent had accepted a material part of the Appellant's evidence. It would appear from paragraphs 2-9 of the determination that the First-tier Tribunal did not appreciate this. These paragraphs contain a summary of the refusal letter that nowhere mentions the concession. As paragraphs 37-38 the Judge proceeded to assess the credibility of the account overall, with no regard to the specific agreed facts. Had the Judge had regard to the factual concession, he may well not have reached the decision he did in respect of the remaining parts of the claim.
9. We are further satisfied that there is a failure to take account of the expert and country background evidence. This was highly relevant in this case, since it went to the plausibility of the Appellant's claim that she was arrested and detained. Ms Isherwood was correct to say that it would not have inexorably led to the appeal being allowed, but it was evidence that merited attention. The only reference to the expert report was at paragraph 38(6) where the evidence of Dr Consiglio is cited in respect of the importance in China of identity cards. There is no other reference, and no indication that the material was considered in the round when assessing credibility.

10. For those reasons, the decision must be set aside.

Decisions

11. The determination contains an error of law and it is set aside.
12. We make no direction for anonymity: neither party requested one and on the facts we see no reason to make one.
13. The parties were in agreement that due to the nature and extent of the judicial fact finding required it would be appropriate to remit the matter to the First-tier Tribunal. Having had regard to paragraph 7 (b) of the Practice Statements for the Immigration and Asylum Chamber of the Upper Tribunal we agree.

Deputy Upper Tribunal Judge Bruce
11th May 2015