



IAC-FH-LW-V1

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

Appeal Number: PA/02142/2017

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 21 June 2017**

**Decision given orally at the hearing**

**Decision & Reasons  
Promulgated  
On 03 July 2017**

**Before**

**UPPER TRIBUNAL JUDGE MCGEACHY**

**Between**

**[R W]  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Moriarty of Counsel instructed by Luqmani Thompson &

Partners Solicitors

For the Respondent: Mr P Deller, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of China born on [ ] 1979 who appeals with permission against a decision of Judge of the First-tier Tribunal Courts

promulgated on 21 April 2017 in which the judge dismissed her claim for asylum and for leave to remain on human rights grounds. The judge accepted that the appellant is gay and is in an openly gay relationship with another Chinese national. It appears that her partner does not have leave to remain in Britain, and so the issue would be whether or not they would be able to return to China together. The judge accepted that the appellant had had a violent husband who has returned to China and is living in the appellant's home area and has set her family against her. The judge in paragraphs 38 and 39 of the determination focuses on the issue of internal relocation and briefly states that the appellant would be able to return to another part of China, and therefore that internal relocation would be open to her.

2. There was before the judge, and it was clearly relied on as it is mentioned in the skeleton argument that was before the judge, a very detailed report by a Miss Jackie Sheehan which deals at some considerable length with the position of LGBT people in China and in particular to the appellant's own circumstances as a lesbian. That report deals also at some considerable length with the issue of internal relocation and in particular the Hukou system. It indicates that although the appellant might be able to live elsewhere for a while in China, she would at some stage have to return to her home area. It is not entirely clear how long she would have to do that, nor indeed is it necessarily clear what is meant by the home area, but be that as it may it is a lengthy and detailed report. The effect of the report might possibly influence an interpretation of the country guidance to which the judge refers to in the determination. The reality however is that the judge did not engage in any way with the report. There might be an oblique reference to him being aware of its existence, but certainly he has not engaged with the facts or assertions made therein. It is accepted by Mr Deller that that is a clear error of law and therefore that the determination should be set aside.
3. I do set aside the determination on the basis that there is a clear error in law therein. Having set it aside however, I consider that the facts which I set out at the beginning of this oral decision are preserved, that is that the appellant is in a relationship with another Chinese national and that she fears a violent and abusive husband who has returned to China and lives in her home area.

### **Notice of Decision**

The determination of the Judge in the First-tier is set aside and the appeal is remitted to the First-tier for a decision afresh save for the facts to which I refer in paragraph 3 are preserved.

### **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 her or any member of her 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

A handwritten signature in black ink, appearing to read 'A. McGeachy', written in a cursive style.

Date 3 July 2017

Upper Tribunal Judge McGeachy