



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

Appeal Number: PA/06253/2016

THE IMMIGRATION ACTS

**Heard at Glasgow
On 24 August 2017**

**Decision & Reasons Promulgated
On 25 August 2017**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

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Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr K Katani, of Katani & Co, Solicitors
For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. First-tier Tribunal Judge Mays heard the appellant's appeal against refusal of asylum on 29 September 2016 and dismissed it by a decision promulgated on 17 October 2016.
2. The appellant sought permission to appeal to the UT, stating 12 grounds.
3. Ground 1, based on article 8, arises from the position at the date of the hearing, when the appellant's partner and father of her child had an outstanding asylum claim, and was not removable.
4. Grounds 2 - 12 challenge the resolution of the facts of the asylum claim.

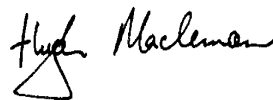
5. FtT Judge Baker refused permission on 17 November 2016.
6. The application was renewed to the UT on the same grounds.
7. UT Judge Canavan granted permission on 17 January 2017, on the view that the Judge might have erred by not taking into account that article 8 issues (ground 1) were “only likely to be engaged for a finite period of time”, the question being “whether removal pending the outcome of the father’s asylum claim, by definition a temporary period, would be disproportionate”. Although the grant of permission was not restricted, it observes that grounds 2 – 12 amount to a list of disagreements and submissions, without particularising how these might have made any difference to the outcome.
8. At the beginning of the hearing in the UT Mr Katani withdrew ground 1. He confirmed that was because the appellant’s husband’s claim has been resolved. His overall submission was that each of grounds 2 – 12 disclosed error and that taking those errors together, the decision could not stand.
9. The Presenting Officer drew attention to the tenor of the grant of permission and submitted that but for ground 1 it would not have been made. However, as argued by Mr Katani, that is neither here nor there. The grounds are before the UT and the question is whether they are established to the extent of requiring the decision to be set aside. They must be considered both point-by-point, and by looking at the decision as a whole.
10. Ground 2 is directed against the finding that it “somewhat undermined” the appellant’s case that although she said her father transferred ownership of land to her, the documents showed only transfer of rights of contractual management. Mr Katani said that the essence was that the appellant had the benefit of the land, the distinction was insignificant, and the judge irrationally founded on a technicality of an alien legal system.
11. That submission made the best of the point for the appellant, but as argued for respondent, there had to be some significance in what the documents actually said; the distinction was there, and it was for the judge to examine and evaluate it.
12. I consider that the judge was correct to identify the discrepancy, and that she took it as no more than a minor point against the appellant, which was well within her scope.
13. Ground 3 criticises the judge for finding credibility was undermined by non-production of a power of attorney the appellant said her father held on her behalf, an error of “requiring corroboration”. Mr Katani said that the judge effectively raised the bar, tacitly imposing a requirement for corroboration, and that the search for documents could become never-ending.
14. I see no error on this point either. The judge did not impose an unjustified legal requirement. She was entitled to note that although a considerable volume of documentation was produced, an item quite central to the claim was missing.
15. Ground 4 criticises the judge for finding it incredible that the appellant’s father would transfer the land on her reaching majority, when she was about to study abroad and would not be in a position to manage the land. The ground says that the judge could not expect the appellant to explain her father’s motives. Mr

Katani added that it was natural for parents to gift property to children, and the point was neutral.

16. I tend to agree with this ground. It might be said that the issue ties in with the absence of the power of attorney, but is difficult to see what is inherently suspicious about the timing of the claimed transfer.
17. Ground 5 says that the judge's reasons for finding the appellant's explanations unsatisfactory were negated by evidence she accepted earlier in the decision; but on reference, those are narrations of evidence, not findings, and there was no self-contradiction. As Mrs O'Brien pointed out, the passage criticised fits into the flow of the judge's reasoning and findings.
18. Ground 6 deals with the judge's analysis at page 51 of the numbering and identification of the land in one of the documents. The judge accepted that there was a possibility that the document did include the land in which the appellant claimed an interest. It is said this should have been taken as a factor in her favour, or at best as neutral.
19. I find the judge's analysis careful and cautious. She was correct to say that it was not explained how the appellant's land was to be identified as the subject of compulsory purchase in this document. She took the matter no further than that.
20. At paragraph 54 of her decision the judge said that it appeared pointless to include in the documents provision for raising objections to demolition, when the documents said that the demolition would go ahead in any event, and that undermined their reliability. Ground 7 says this is speculation and conjecture, there being "no material on Chinese contract law or practice to rely on".
21. I accept the submission for the respondent that it was perfectly rational to identify this feature, on the face of the documents, as odd.
22. The appellant might have advanced by evidence and submissions that in China land development is sometimes pursued without observing legal formalities, a matter of which the tribunal is aware from other cases; but no such line is said to have been put to the FtT. In its absence, this ground is a weak criticism.
23. Ground 8 is directed against the finding at paragraph 55 that it was difficult to see why the appellant's father and mother would be arrested, when this was contradicted by the explanation at paragraph 16. Ground 9 is on the same theme, arguing that the judge wrongly founded on the arrest warrants for the appellant's mother and father having different dates, when the explanation was at paragraphs 14 and 16.
24. These grounds aimed at showing that the Judge muddled up arrests in 2011 and in 2013, but that fell away on full reading of the foregoing paragraphs. The judge said there was no explanation why two arrest warrants in September 2011 had different dates, when they related to the same matter. The point is another small one, but the judge did not get it wrong.
25. Ground 10 is aimed against the finding at paragraph 57 that credibility is undermined by non-production of the arrest warrant allegedly issued for the appellant, when her aunt could get whatever she wanted from the police bureau where her son worked. The ground says there was no evidence of her aunt's

ability to do so. Mr Katani said that the judge speculated, and did not engage with the evidence

26. However, there was evidence of the aunt's ability to get whatever she wanted - that is exactly what the appellant said.
27. Mr Katani in his reply sought to develop an argument that what the appellant said could not be taken literally, and it was impossible to know exactly what her aunt could and could not get from police records. Those remarks are correct, but they only go so far. The debate might be extended endlessly, but the judge is not shown to have made any more than she was entitled to do of the issue.
28. At paragraph 60 the judge observed that the appellant said in a witness statement that her father was injured when attacked by officials and gangsters in August 2011, but had not mentioned such matters at asylum interview, when she might have been expected to do. The argument based on ground 11 was that an appellant can answer only such questions as she is asked, and it is unreasonable to expect further information to be volunteered.
29. All such issues depend on the facts and on the evolution of the case. The appellant has not shown that the judge was wrong in this instance to think that the case was being added to, not simply developed in further natural detail.
30. Ground 12 says that the judge was wrong to treat it as adverse that the appellant's documents were produced only on the day of the FtT hearing. However, the appellant had a long time to get her case together, and did not try to explain why her documents came as a surprise at the last moment. The point was one the judge was plainly entitled to take.
31. The grounds and submissions doggedly maintain the case on the facts, and probe for error, selectively and minutely, but they do not attempt to analyse the overall reasoning of the decision, or to show that it falls down on critical points without which the rest cannot stand.
32. In the absence of any such overall analysis, the grounds fall short of showing that the decision, read fairly and as a whole, is wrong as a matter of law.
33. In any event, on a point-by-point basis there is little in the grounds: some force in ground 4 rather less in 7, but nothing in the rest. That is no more than the level of ongoing dissent which might be extracted from almost any decision on the facts.
34. The decision of the First-tier Tribunal shall stand.
35. No anonymity direction has been requested or made.



24 August 2017
Upper Tribunal Judge Macleman

