



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/11841/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 9<sup>th</sup> July 2018

Decision & Reasons Promulgated  
On 16<sup>th</sup> July 2018

Before

UPPER TRIBUNAL JUDGE KING TD

Between

YING [H]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms C Ryan, Solicitor, of Duncan Lewis & Co Solicitors

For the Respondent: Mr E Tufan, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a Chinese national who first came to the United Kingdom in 2013 and again in September 2017. On 2<sup>nd</sup> June 2016 she sought to claim asylum or other protection in the United Kingdom. That application was refused by the respondent in a decision of 3<sup>rd</sup> November 2017.
2. The appellant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Drake on 14<sup>th</sup> December 2017. The Judge did not find the appellant to be credible in any respect of her claim and dismissed the appeal in all respects.

3. The appellant sought to appeal to the Upper Tribunal against that decision and permission to do so was granted in the matter.
4. In summary there were three aspects to her claim. The first was her claim to be a Christian and to fear persecution thereby. The second was her contention that she was a lesbian and that also would expose her to danger. A third aspect was that she had made a serious of complaints to officials whilst in China and that would also cause her to be at risk.
5. The decision is an extremely short one and challenge is taken to what is said to be lack of anxious consideration given to all of these matters, and certainly a lack of fair or adequate reasoning as a consequence.
6. The claim as advanced on behalf of the appellant concerning her Christianity is dealt with extremely briefly, the Judge simply citing the country guidance case of **QH I (Christians - risk) China CG [2014] UKUT 00086 (IAC)**. There is no consideration of context in that analysis.
7. Similarly there is but a brief consideration on the aspect of the appellant's homosexuality. A complaint is made that in the appellant's bundle there is a considerable volume of material relevant to the difficulties faced by homosexuals in China, none of which material was cited in any detail or at all. It was held against the appellant that she has produced no corroborative evidence in support of her sexual orientation, which as indicated in the grounds of appeal is incorrect. Photographs were produced, a profile on the dating website and the appellant's relationship with Lydia all cited in the submissions but not referred to at all in the decision.
8. In terms of the appellant's complaints whilst in China there was scarcely a mention of what they were or any consideration given as to the relevance thereof for the claim that is made.
9. Although the Judge in the decision sets out the correct burden and standard of proof in the earlier paragraphs, when the Judge comes to deal with the issues themselves, the standard of proof which is applied is that more likely than not.
10. Overall therefore it is the submissions of Ms Ryan that the decision has not fairly considered the matters raised on behalf of the appellant, nor come to proper conclusions about such matters.
11. Mr Tufan, although not formally conceding the appeal indicated that he did not seek to argue in favour of the decision but was content for me to deal with matters as I saw fit.
12. I have little doubt that the decision is defective for the reasons that have been advanced. There has been no proper or balanced consideration of the issues. Indeed,

the tone of the decision as a whole is suggestive of an adverse view taken against the appellant's credibility at a very early stage in the proceedings.

13. In those circumstances I do find there to be a material error of law, such that the decision of the Judge should be set aside to be remade by way of a full rehearing at the First-tier Tribunal. Although the hearing had initially been heard in Bradford the appellant has now moved to an address in London and in those circumstances such a rehearing would be appropriate to be conducted at Taylor House in London rather than in Bradford. Other than that direction I make no further directions as it will be for the First-tier Tribunal to make such directions as it considers fit.

**Notice of Decision**

14. The First-tier Tribunal decision is set aside to be remade. The matter will be remitted to the First-tier Tribunal for a full rehearing.
15. No anonymity direction is made.

Signed



Date 12 July 2018

Upper Tribunal Judge King TD