



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

Appeal Number: AA/06390/2014

THE IMMIGRATION ACTS

**Heard at Glasgow
on 5 February 2015**

**Determination issued
On 6 February 2015**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

HAI QIONG LIN

(no anonymity direction requested or made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K H Forrest, Advocate, instructed by Katani & Co,
Solicitors

For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals on grounds which, in summary, submit that First-tier Tribunal Judge D'Ambrosio erred as follows (numbering as corrected by Mr Forrest at the hearing):

1. No reasoning or evidence to support the finding that the appellant had the ability and experience to fabricate her claims.

2. (i) Failing to take into account that although the Chinese authorities do not have worldwide control of the internet they monitor sites of groups opposed to the regime; (ii) conjecture that appellant could fabricate her claim [this duplicates ground 1] – alternatively, irrationality in such a finding, the logical conclusion of which would be to refuse all claims; (iii) impermissibly taking evidence from the interpreter that the Chinese characters for “the party” [China New Peoples Party, or China New Democracy Party, which the appellant claimed to support] could be translated both ways.

3. Failing to take into account that it is well known that the Chinese security services monitor opposition websites, and that absence of evidence of how the authorities identify users of such sites explicable as a closely guarded secret not available to the appellant.

4. Finding the possibility of the appellant disclosing her identity accidentally to be remote in the extreme, rather than applying the standard of whether it was reasonably likely.

5. It is judicial knowledge that Chinese nationals demonstrate outside the Embassy which is within two miles of Chinatown; error in finding it implausible that the appellant would distribute anti-government leaflets in Chinatown.

6. Conjecture that appellant’s husband would not have tolerated her subversive activities.

7. Founding on absence of evidence from relatives or a police report from China, when mail would be monitored and there would be a risk of “the individual” being “pressurised to tell the authorities of the appellant’s whereabouts”.

8. Error in finding the appellant has motives to remain in the UK and fabricate a claim, and might reconcile with her husband, which (i) is irrational because its logical conclusion would be to refuse all claims; (ii) fails to take into account that the appellant has relatives in China and is well-educated, and so could continue her education there; and (iii) is speculative.

2. Mr Matthews said that the determination made an unsustainable finding at paragraph 90 (ground 6) and made too much of the appellant’s possible motivation at paragraph 92 (ground 8), and that on the whole the errors he felt bound to concede were significant enough to undermine the determination. That concession was fairly made. As I did not need to hear further from Mr Forrest, I observe only that it does not appear to have been a point against the appellant that certain Chinese characters could be read two ways, and that is the sort of minor matter which an interpreter might usefully clarify in course of a hearing.

3. The determination of the First-tier Tribunal is **set aside**. None of its findings are to stand. Under s.12(2)(b)(i) of the 2007 Act and Practice Statement 7.2 the nature and extent of judicial fact finding necessary for the decision to be remade is such that it is appropriate to **remit the case to the First-tier Tribunal**. The member(s) of the First-tier Tribunal chosen to reconsider the case are not to include Judge D'Ambrosio.

A handwritten signature in black ink, reading "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

5 February 2015
Upper Tribunal Judge Macleman