



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

Appeal Number: AA/07489/2014

THE IMMIGRATION ACTS

Heard at: Manchester

**Determination
Promulgated**

On: 5th March 2015

On 29th April 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

Secretary of State for the Home Department

Appellant

and

JC

(anonymity direction made)

Respondent

For the Appellant: Mr McVeety, Senior Home Office Presenting Officer
For the Respondent: Mr Brown, Counsel instructed by Bolton CAB

DETERMINATION AND REASONS

1. The Respondent is a national of the Peoples' Republic of China date of birth 17th December 1989. On the 19th November 2014 the First-tier Tribunal (Judge Cruthers) allowed on asylum grounds her appeal against a decision to remove her from the United Kingdom pursuant to s10 of the Immigration and Asylum Act 1999¹. The Secretary of State now has permission² to appeal against that decision.

¹ Decision to remove dated 17th September 2014

² Permission granted by First-tier Tribunal Judge Saffer on the 4th December 2014

2. The basis of the Respondent's asylum claim had been that she faced a well-founded fear of persecution in China for reasons of her membership of a particular social group and her imputed political opinion. She claimed to have been detained as an eight-year old child by the authorities because her father was a member of the Falun Gong and held for nine years during which time she was ill-treated. She escaped and is now wanted. She further feared return to China because since her arrival in the UK in 2007 she has had two children, one of whom falls outwith the state 'one-child' policy.
3. The Secretary of State noted that the Respondent had been in the UK for five years when she finally claimed asylum. That, and other matters, weighed against her in the assessment of her credibility and the Secretary of State was not satisfied that the burden of proof had been discharged. Her account was rejected as untrue.
4. When the matter came before the First-tier Tribunal the Respondent gave oral evidence and was cross-examined by Counsel. The determination sets out the refusal letter in full, and revisits the Secretary of State's case on credibility at paragraphs 35 on. Paragraph 37 reads: "I have carefully considered all the attacks on the appellant's account that are made in the RFL, as expanded on by Mr Cliff at the hearing. But in my judgement those 'credibility points' are not sufficient, even taken cumulatively, and with the operation of section 8, to reject the appellant's core account when judging by the standard appropriate here". Since the only matter in issue was credibility, the appeal is allowed.
5. The grounds of appeal are lengthy but in essence are that the decision of the First-tier Tribunal was perverse. The grounds draw particular attention to the following findings:
 - i) The account of being detained for nine years and then escaping is inherently unlikely [paragraph 36]
 - ii) It is difficult to believe that the Appellant would remember an address given to her when she was eight, prior to a nine year detention [41]
 - iii) There was a contradiction in the description given of 'the escape incident' in that during her asylum interview the appellant had said that a guard had tried to rape her pulling at her clothes, whereas she had told Dr Lord that he had stripped her naked [43].
6. The Secretary of State submits that in light of these findings the only rational outcome would have been a dismissal.

My Findings

7. This is a reasoned determination by an experienced judge. The findings are found at paragraphs 35 to 47. The case for the Secretary of State is

that an “inherently incredible” account should be dismissed. Judge Cruthers was correct to view that submission with caution. That is because the Chinese regime is oppressive, and oppressive regimes cannot be expected to act rationally. It is because what we in the UK might regard as being inherently unlikely, such as the arbitrary detention of an eight year old, might not be so unlikely in the context of China. It is because China is a large country, and the country background material indicated that there was not a consistent approach taken to the Falun Gong during the period in question, that leaving open the possibility that the Respondent was the victim of a particularly brutal - and irrational - security chief.

8. Counsel for the Secretary of State did identify a number of contradictions in the evidence, but it is abundantly clear from the determination that the Tribunal gave careful consideration to each of the points made by the Secretary of State but having weighed them with the evidence was satisfied that the Respondent had discharged the burden of proof.
9. In the conclusions at 44-46 it would appear that the Tribunal was reluctant to allow the appeal, but was driven to by proper application of the lower standard of proof. Credit is given for the consistency at the core of the account and the fact that the Respondent has not sought to exaggerate or embellish her account. Overall I find that the determination cannot be described as irrational. The Tribunal has clearly engaged with the criticisms of the evidence, and has properly applied the standard of proof. It is not the decision that every Tribunal would have made, but that is not an error of law.

Decisions

10. The determination does not contain an error of law and it is upheld.
11. In view of the subject matter in this appeal I make a direction for anonymity having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders.

“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”.

Deputy Upper Tribunal Judge Bruce
17th April 2015