



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

**Appeal number: AA/08148/2014**

**THE IMMIGRATION ACTS**

**Heard at Field House, London**

**Decision and Reasons  
Promulgated**

**On 26 March 2015**

**On 21 April 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE GRIMES**

**Between**

**XIAO NIAN WANG**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms E Lagunju, instructed by Howe & Co Solicitors

For the Respondent: Mr S Kandola, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant, a national of China, appealed to the First-tier Tribunal against the decision of the Secretary of State of 26 September 2014 to refuse her application for asylum. First-tier Tribunal Judge Sanderson dismissed the appellant's appeal and she now appeals with permission to this Tribunal.
2. The First-tier Tribunal Judge considered the discrepancies in the appellant's account and the appellant's delay in claiming asylum and

went on to accept that the appellant's account of events in China is broadly credible. These findings are not challenged. In summary the Judge therefore accepted that in 2009 the appellant challenged a decision made by the Chinese authorities to compulsorily purchase her land by lodging an appeal with the Gui Lin City Government who subsequently decided to maintain the decision made by the County Government. He accepted that the appellant then attempted to sue the Government and that officials came to demolish two sheds she had built on her land and that a fight broke out in which she defended herself. In January 2010 she was arrested by police and detained during which time she was beaten unconscious. She was taken to hospital and escaped from there. She returned to her home area and remained in hiding whilst her relatives arranged for her departure from China using snakeheads. She entered the UK and worked until she paid off the snakeheads who did not allow her to claim asylum. She claimed asylum when she had cleared her debt.

3. Having made these findings the Judge found that he did not accept that the appellant's actions amounted to a 'political act' or that they would be seen to be a political act by the Chinese authorities sufficient to engage the Refugee Convention [38]. The Judge concluded that the dispute was 'basically a local land dispute' and that the appellant had adduced no evidence to show that she would be subject to criminal or administrative detention in rehabilitation through labour camps or 'black jails' where there would be a risk of torture, abuse or mistreatment. The Judge considered paragraph 339K of the Immigration Rules in relation to the appellant's previous persecution but concluded that it is not likely that such behaviour will be repeated given that the appellant left China three and a half years ago and no evidence has been adduced that she would be at real risk of ill treatment on return [38].
4. The grounds of appeal to the Upper Tribunal contend that the First-tier Tribunal Judge erred in finding that the appellant's past experiences in China did not amount to a political act in light of her evidence that during the interrogation the police wanted her to admit that she organised villagers against the government, that the Americans supported them and that they were against the Chinese communist party. It is further contended that in finding that the appellant had adduced no evidence that she would be subject to criminal or administrative detention in rehabilitation through labour camps or 'black jails' where there would be a risk of torture, abuse or mistreatment the First-tier Tribunal Judge had failed to have regard to the appellant's evidence that she is wanted by the authorities in China following her escape from hospital and that there had been continuing interest in her whereabouts after her escape as the police had come to her aunt's house asking about her whereabouts. It is further contended that the Judge had failed to give 'good reasons' as required by paragraph 339C of the Immigration Rules for concluding

that the appellant would not be at risk on return in light of her previous persecution.

5. Ms Lagunju submitted that the Judge's findings as to risk on return were inconsistent with the background evidence he set out at paragraphs 23-28 of the determination. She submitted that the Judge's conclusions cannot be correct in light of his findings that the appellant's account is objectively and internally consistent. She submitted that the appellant is both a petitioner and as set out in paragraph 24 and a person who had initiated a legal challenge as set out in paragraph 27 of the Judge's determination.
6. Mr Kandola submitted that it was up to the Judge to find that the appellant's claim was based on a local land dispute notwithstanding his finding that the appellant had challenged the decision in relation to her land. He submitted that the Judge's finding amounts to an application of HJ (Iran) v SSHD [2010] UKSC 31 in relation to the issue of what the appellant would do upon her return. He submitted that the Judge's finding that the appellant would not be harassed on return to her home area must be based on the assumption that the appellant is not going to continue in her behaviour upon her return. In the alternative he submitted that there is a viable internal relocation option open to the appellant.
7. Ms Lagunju responded by submitting that all land disputes are local and that the appellant's involvement in a local land dispute brings her within the background evidence. She submitted that there is no distinction in the background evidence between a land dispute which is local and one which is not. It is the treatment of those who petition or challenge land decisions which is relevant. She submitted that there was no evidence before the First-tier Tribunal Judge as to how the appellant is likely to behave if returned. In any event she submitted that this is not the question here, the issue is that the appellant has a profile as a petitioner who escaped from police detention and is therefore likely to encounter difficulties on return. She submitted that the background evidence cited by the First-tier Tribunal Judge at paragraph 28 states that internal relocation is unlikely to be an option in a case like this.

#### Error of law

8. The First-tier Tribunal Judge made very clear findings of fact which have not been challenged. He helpfully set out the relevant background evidence from the China Operational Guidance Note of 12 October 2013 at paragraphs 23 - 28 of his determination.
9. In my view the difficulty with the decision is that the Judge's conclusions at paragraph 38 are not consistent with the evidence before him or the background evidence he sets out. He accepted all of the appellant's case. This included the appellant's claim in her asylum

statement that she and others from her village went to the Gui Lin City government to submit an application for a review of the decision to take their land, that she and others from the village went to Li Pu County Court to sue the government, that the court ruled in their favour but the county government ignored the court decision following which the appellant was arrested, detained and beaten up and that she escaped from hospital where she was under police guard. The appellant also said in her asylum statement that whilst she was in hiding police shot a protestor during a fight in her village and that she is still wanted by the authorities in China because she escaped from custody and that police had come to her aunt's house to ask about the appellant's whereabouts.

10. In considering risk on return the Judge erred in concluding that the appellant's actions would not be seen as a political act in light of the evidence before him that citizens risk punishment for demonstrating, that there is growing public anger against unlawful activity by officials especially land confiscation and that those petitioning the government faced restrictions on their rights to assemble and raise grievances [23-24]. The evidence is that despite a ban by regulations, retaliation against petitioners continues and that petitioners are routinely harassed, detained and tortured [24] and that those who peacefully resist forced eviction or sought to protect their rights through legal channels risked detention, imprisonment and re-education through labour [27]. In my view this evidence supports a conclusion that actions such as petitioning, protesting or taking legal action in relation to land disputes are capable of amounting to the demonstration of an imputed or real political opinion and thus of engaging the Refugee Convention.
11. I also conclude that the Judge erred in failing to give adequate reasons for finding that there is no risk that the persecution suffered by the appellant in the past will be repeated. Ms Lagunju rightly submitted that there was no evidence before the First-tier Tribunal Judge to support a finding that the appellant would not engage in further petitions or challenges upon her return. In any event the Judge failed to take account of the fact that the appellant had escaped from custody and may well risk arrest on the basis of her past actions and escape.
12. In light of these errors I set aside the decision of the First-tier Tribunal and remake it. As there is no challenge to the findings of fact they are all preserved.

#### Remaking the decision

13. The appellant took part in petitions to the Gui Lin City government and a challenge to the Li Pu County Court as a result of which she came to the attention of the police. She was arrested, detained and beaten by the police and escaped from custody when being treated in

hospital. This account is consistent with the information contained in the China Operational Guidance Note set out in the First-tier Tribunal Judge's determination. According to the appellant the authorities came to her aunt's house to look for her after her escape. On the basis of the appellant's account of events in China I am satisfied that the appellant is at risk of persecution on return to her home area. The Operational Guidance Note states that where an appellant fears the Chinese government internal relocation is unlikely to be an option. The appellant in this case fears the government and I am satisfied that internal relocation is not an option for her.

14. In light of all my findings above I am satisfied that the appellant faces a real risk of persecution or breach of her protected human rights in China.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of a material error on a point of law.

I set aside the decision of the First-tier Tribunal.

I remake the decision by allowing the appeal on asylum grounds. As a result the appellant does not require Humanitarian Protection and that ground of appeal is dismissed. The appellant's appeal on Human Rights grounds under Articles 2 and 3 ECHR is also allowed.

Signed

Date: 20 April 2015

A Grimes

**Deputy Judge of the Upper Tribunal**