



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

Appeal Number: PA/04626/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18 December 2018**

**Decision & Reasons  
Promulgated  
On 24 January 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HANBURY**

**Between**

**(SC)  
(ANONYMITY DIRECTION MADE)**

**and**

Appellant

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Francesca Clarke of Counsel

For the Respondent: Mr Stefan Kotas, a Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. In this decision I will refer to the parties by their designations before the First-tier Tribunal (FtT) notwithstanding that those roles are reversed in the Upper Tribunal (UT).
2. The appellant appeals to the UT with permission from Upper Tribunal Judge Kebede given on 27 March 2018.

3. The appeal originally came before me on 17 May 2018 when I decided that the decision of First-tier Tribunal Judge Flynn (the judge) in the FtT contained a material error of law and I set aside that decision. I determined that the UT would remake the decision having heard any updating evidence at an adjourned hearing but I reserved the possibility of revisiting the favourable credibility findings made by the Immigration Judge once that hearing had taken place.
4. It is unfortunate that the appeal had to be adjourned on two occasions – the first occasion because of the lack of an interpreter and the second occasion because an expert’s report was imminent.
5. The hearing was re-convened on 18 December 2018.

### **The Hearing**

6. At the hearing I heard submissions by both representatives and brief oral evidence from the appellant.
7. The appellant referred to her two witness statements – the first dated 31 July 2017 is found in a bundle submitted on 31 August 2018 at Tab 2, the second (supplementary) statement is in the latest bundle submitted 31 August 2018 also at Tab 1 (page 12). I was also referred to some testimonials by the Reverend Kong Ching Hii one dated 14 May 2018 at page 14 of the bundle submitted 31 August 2018 (Tab 1) and an earlier one in the bundle before the FtT. Ms Clarke explained that Mr Hii could not attend but he had attended on previous occasions. The appellant having confirmed her two witness statements were true and that her address had not changed. She therefore adopted both her witness statements.
8. She was cross-examined by Mr Kotas. The appellant said that initially she had attended a “registered church” but she stopped going in 2014, when she was about 20 years old. She was asked how often she went to church. She said approximately every two months. She did not recall the name of the church or where it was situated other than to say that it was in Nanchang City which is situated in Jiang Xi Province. The appellant said she did not know about different denominations of Christianity such as Protestantism or Catholicism. She did, however, know that there were differences.
9. There was no re-examination. As it was the respondent’s appeal I heard submissions from Mr Kotas first. He said that in the case of **SG (Iraq) [2012] EWCA Civ 940** pointed out the importance of following country guidance case law. There had to be “very strong grounds supported by cogent evidence” to justify departing from that case. He said that the judge here did not have very strong grounds supported by cogent evidence. Therefore, even if the credibility findings stood, which was doubtful in the light of the appellant’s apparent lack of interest or

knowledge of Christianity, the decision could not stand. In any event, I was invited to reach the opposite conclusion than the FtT had reached in this case.

10. I was referred to the leading country guidance case of **QH**. In that case the Upper Tribunal, sitting at Field House on 6<sup>th</sup> June 2013, gave the relevant country guidance in relation to Christian worshipers in China. It was indicated in that case, following an assessment of the evidence, that those Christians in China, who number several million, do not face persecution on the whole. They were able to worship either in State-registered churches or in unregistered “house” churches. It was noteworthy that the case of **QH** was less than five years old and had been only three years old at the date of the decision of the FtT in this case. In **QH** the Upper Tribunal considered a body of documentary and oral evidence, including expert evidence. They preferred the evidence of Dr Christopher Hancock, a leading academic and chaplain at St Peter’s College, Oxford. The China Aid Organisation, to which the judge attached a great deal of significance, was criticised as it had not applied the correct threshold for an asylum claim but rather had equated harassment or discrimination with persecution. I was referred to a number of passages in the case of **QH**, including:
  - Paragraph 69 - where the UT pointed out that material background reports emanating from China Aid routinely referred to persecution but those reports do not deal with the definition of “persecution” within the Refugee Convention.
  - Paragraphs 105-106 - where the UT pointed to the China Aid “headline” figure of a 42% growth in the amount of persecution of Christians represented a very small figure given the very substantial increase in the number of Christian worshippers in China. Mr Kotas submitted that the increase in apparent persecution of Christians within China was statistically insignificant given the numbers. He said that nothing had really changed since **QH**.
11. He then referred me to the evidence in this case. First, Mr Kotas referred me to the statistics at page 55 (Tab 2) in the most recent bundle (August 2018), which was an extract from one of the China Aid reports. This showed a 20% increase in the number of persons alleging persecution on grounds of their Christian religion in 2016. He said this was still a small out of percentage of several million Christian-worshippers in China that that it was of no statistical significance.
12. He said there were problems in some areas including the demolition of religious structures and the relocation of some churches constructed in breach of city planning laws. This was by no means relevant to the issue of persecution since such laws existed in many other countries.
13. Mr Kotas then referred me to the “World Watch Monitor” at page 10 of Tab 3 which suggested that there was no systematic persecution of Christians but that the church, and those who worshipped within the Christian

church, were regarded as “misfits” in a strict communist system since their allegiance was not to the communist party. This presented an obvious conflict of interest.

14. I was then referred to pages 32-33 (at Tab 2 in the same bundle). That indicates that the fact that Jiang Xi, the province of East China from which the appellant comes, is said to have more than 500 total persecution cases in the previous year (the China Aid Report in question having been prepared in late 2017) . That was a very small number, although it represented an increase.
15. Dr Elena Consiglio’s report, which has been prepared since the last hearing, was criticised. It was said that Dr Consiglio was an Italian citizen from a legal background. She has not done a great deal of work relevant to the **QH** decision or indeed human rights in China generally. She was “quite focused” on legal matters. Pages 4 and 5 of her report were criticised as being statistically light and paragraph 10 of page 7 was referred to because it indicated that the evidence of a “crackdown” was evidence that had been considered in the **QH** decision. Some of Dr Consiglio’s evidence was criticised as being “sloppy”, for example, her reference to the impression she gained of Catholic and Protestant registered churches paying “lip service” to the government. Paragraph 14 of Page 9 was criticised for being unspecific.
16. Page 10 paragraph 20 which criticised as was page 16 where Dr Consiglio referred to a number of statistically non-important facts.
17. Mr Kotas submitted on behalf of the respondent that the appellant would not be at risk on return, having been released without charge by the authorities in the past. Her claim did not establish that she had suffered past persecution and this meant it would be unlikely she would be at risk on return. The Chinese Constitution guaranteed freedom of religion and although a few arrests occurred this did not necessarily result in imprisonment. This was supported and dealt with at paragraphs 17 and 49 in **QH**.
18. Mr Kotas then dealt with a number of additional paragraphs in **QH**, including:
  - 52 - where Dr Hancock’s evidence was accepted.
  - 55 - where it was pointed out that the government of China accepted the existence of unregistered churches.
  - 76 - where it was clear that it was important to consider not only what Chinese law permitted and prohibited as to religious observance but how it was implemented in practice. It was clear the two often differed significantly.
  - 77 - where it is recorded that Chinese law expressly provided for religious freedom including Christianity.

- 85 - where the Upper Tribunal commented on the high quality of Dr Hancock's evidence.
  - Paragraph 86 - where the Upper Tribunal commented on the US Congressional-Executive Committee on China ("CECC") and its 2013 report on China.
  - Paragraph 87 - where the authors of that report pointed to Falun Gong practitioners and Muslim Chinese being exceptions to the government's general lack of concern over religious practice.
  - Paragraph 88 - which points to a continuing growth in Christianity.
  - Paragraph 91 - where Professor Aguilar's evidence was rejected.
  - Paragraph 98 - which dealt with registered churches but pointed to there being few material restrictions on Christians attending registered churches or on their ability to practice their religious faith.
  - Paragraph 106 - which referred to the growth in the number of incidents reported by China Aid as being statistically insignificant.
  - Paragraph 113 - which pointed to the constitutional protection of freedom of religion in China but stated that there were issues for Chinese society flowing from the conflict between a rigid communist system and freedom of religion. The majority of worship took place in churches but there were also "house churches".
  - Paragraph 118 - which recorded that the demolition of churches was rare in practice and suggested that the finding at that time was that there had been no general crackdown on Christians as had been claimed.
  - Paragraph 121 - which suggested that the predominant, allegedly malignant, motive on the part of the authorities in China towards Christians was not made out on the evidence, including the statistics presented before the Tribunal.
  - Paragraph 123 - which accepted Dr Hancock's evidence and said that there was a "localised problem" in some parts of China.
  - Paragraph 128 - where the risk factors were summarised including worshipping in unauthorised church buildings. Even when this was established, however, many of the examples given by China Aid were remarkable for the absence of any suggestion of physical violence towards unregistered congregations although on occasions the authorities may be angered by resistance against the demolition of a church or something similar.
19. In reply, Ms Clarke said that the adverse credibility points made by respondent had to be seen in their proper context. Her client had been criticised for responding to the question over the "significance of Easter" at question 85 in the substantive interview by saying "it (Easter) remember Jesus" and in response to a question "what about Jesus does it celebrate?" responding "eggs and rabbits". Clearly, her client had been

confused by the question and correctly answered question 88 she argued by stating: “What is Easter a celebration about?” by stating “to celebrate his (Jesus’s) resurrection”. Her client had correctly answered these questions. She said that the judge had been entitled to find that there was “cogent evidence” which justified the judge’s departure from the leading country guidance case of **QH**. Furthermore, there was additional evidence in the shape of Dr Consiglio’s report which was commended to me as being a comprehensive document by a highly qualified individual. She said that Dr Consiglio had extensive experience including experience of the government of China, legal practice and social fabric of the Chinese society. She had worked with various people throughout China and her evidence was commended to the Tribunal. It was submitted that the report established a pattern of religious persecution including lethal violence meted out to those who practised Christianity. The 1982 Constitution did not adequately protect Christian groups and unauthorised (house churches) was not always tolerated by the authorities. There was more interference today than there was in the past. Ms Clarke invited me to look at the evidence beyond the China Aid reports which, she said, supported her client’s case. Furthermore, the expert who prepared a report for the appellant had interviewed people who worshipped or who have first-hand experience of people who worshipped.

20. Ms Clarke also referred me to a number of key passages in her client’s expert’s report and made the following submissions:

- At Paragraph 22 of the appellant’s expert report the expert had opined that there was a risk of the appellant being:
 

“listed by the authorities, reported by neighbours, investigated, questioned, arrested, and even detained for one’s religious beliefs, attending a private or public religious gathering, using religious materials including bibles, participating in overseas religious gatherings and participating in online proselytising and blogging”.
- She said that the main difference between the circumstances which prevailed at the time of **QH** and those at the time of the hearing was that a new set of Regulations have been introduced (referred to at page 12 of the expert’s report). Those Regulations, whilst recognising a citizen’s freedom of religious worship, nevertheless prohibited any organisation or individual from compelling citizens to believe (or not believe) or express belief in any particular religion and the revised Regulations can be used to affirm the State’s perception of what it regards as “normal” activities.
- Paragraph 37 of the report which indicates increased control by the one-party state on religious organisations.
- Paragraph 38 of the expert’s report, where it is suggested that since 2017 religion has been regarded with suspicion and there was widespread violation of the constitutional position.

21. Ms Clarke said that religious practices were frequently violated in practice. She especially highlighted other features which emerged from her client's expert's report including the risk of being reported by neighbours. She also referred to passages from **QH** including paragraph 49 which showed different patterns of behaviour in different parts of China by the authorities.
22. In conclusion, Ms Clarke reiterated that the departure from the **QH** decision was justified even if one ignored the China Aid reports.
23. Mr Kotas on the other hand briefly replied by indicating that the appellant could not be expected to practise her religion in exactly the way that she wished. It may be that she is required to go to mainstream churches rather than "house churches" or similar. It may even be that she needs to relocate, if that is what is required of her. Again, he reiterated that nothing has really changed since the case of **QH** and I was invited to uphold this leading country guidance case by allowing the respondent's appeal and setting aside the decision to allow the appeal against the refusal of asylum/humanitarian protection/human rights protection within the UK.
24. I now turn to consider the merits of this appeal.

### **My Findings and Reasons**

25. The UT only reluctantly interferes with credibility findings which have been made following a hearing at which the witnesses have given their evidence. Only the judge hearing those witnesses can fully appraise the contents of the evidence given. As I indicated (in paragraph 16 of the decision I gave following the hearing on 17 May 2018) I nevertheless reserved the possibility of revisiting those credibility findings having made a full appraisal after the re-convened hearing which subsequently took place on 18 December 2018.
26. The judge clearly took a generous view of credibility, since the appellant apparently did not know which church she worshipped at in China, was unable to answer a number of basic questions about the Christian faith and professed ignorance over the different denominations of the Christian faith. It is difficult not to share some of the scepticism that the respondent had when she came to consider the appellant's asylum claim as set out in the detailed reasons for refusal letter dated 4 May 2017. Those concerns included:
  - (1) A significant delay between the appellant's arrival in the UK and her claim for asylum.
  - (2) Her lack of association with any denomination of the Christian faith.
  - (3) Her failure to recall the church at which she worshipped.
  - (4) Her tardy response to the question as to the meaning of Easter – central to the Christian faith.

27. However, whatever concerns I have over her credibility would not themselves justify reaching a different conclusion than the judge reached and I would not interfere with his decision solely on that basis.
28. More fundamentally, the judge departed from a country guidance case which had been promulgated only three years prior to the hearing. As I indicated in my earlier decision, this required me to set aside the decision of the FtT. It is now necessary to remake that decision. The appellant claims to be a persecuted individual by reason of a clampdown by the authorities in China on religious freedom and particularly Christian religious freedom). However, I have concluded that the case of **QH** is still essentially correct. The reliance on material from China Aid was not justified and I have concluded that Christians, whether they practise their religion in State-registered churches or unregistered or “house churches”, who are essentially not at risk of persecution or serious harm/ill-treatment but there are isolated cases where an individual Christian may be at risk in certain areas.
29. I have concluded that there was insufficient evidence to justify a departure from the country guidance case law in this case. I have no reason to be directly critical of Dr Consiglia’s report but it cannot be said to be the work of as much care or thoroughness as that of Dr Hancock, whose report was subject to close scrutiny by the U T in **QH**. Fairly, Ms Clarke agreed for the purposes of her client’s case before the U T to set on one side the China Aid evidence. However, China constitutionally guarantees religious freedom and has its large population of Christian worshippers (believed to be up to 40,000,000 in registered churches and 70-80,000,000 in unregistered churches – see paragraph 78 of **QH**). The extent of interference with religious freedom is statistically insignificant as a proportion of those worshippers. I therefore agree with Mr Kotas’s submission that the percentage increase in the number of persecuted Christians and still represents such a small proportion of the whole as not to justify a departure from the earlier country guidance case law. The risk factors that there are (summarised at paragraph 113 of the decision in **QH**) do not amount to persecution of Christians as a group. Christianity is tolerated by the authorities provided those carrying out their worship so in a way which respects the other laws which exist in China - a rigid party State controlled by the communist party.
30. Furthermore, the appellant’s individual circumstances do not demonstrate that she was in fact persecuted prior to her departure from China. It appears that she was released without charge when she was previously detained by the authorities and there is no reason why any future contact with the authorities would be any more sinister than this. This is an important point as past persecution is known to be an indicator of possible future risk (see paragraph 339K of the Immigration Rules).
31. There appears to be nothing particularly significant about the town or province from which the appellant comes, which has a large number of



Christians who are not persecuted. Ms Clarke submitted that she was arrested in the past and would want to continue to worship in a “house” like she did before but that seems unlikely and even if it were likely that she could resume her previous religious worship without any alteration, given that this had occurred in the past. In any event, in reality the appellant is likely to change her religious practise to reflect the need to comply with local laws where applicable not to expose herself to unnecessary risk.

32. Alternatively, the appellant has the option of moving to a different area.

### **Conclusion**

33. The judge considered himself satisfied, in the light of the evidence before the FtT, that that the situation for Christians in China had changed “markedly” since **QH** so as to entitle him to reach a different conclusion than the conclusion reached by the Upper Tribunal in **QH**. Even if the appellant’s account was wholly credible, I am not satisfied that the real risk of being persecuted on her return to China. Christians are not *per se* a persecuted group in China for the reasons given in **QH** and the change since that decision has not been significant. Therefore, the judge ought to have concluded that the appellant had failed to demonstrate to the low standard of proof that applied that she would be at any risk of persecution on return.

34. For these reasons I have concluded that the appellant did not satisfy the test for being a refugee within the Refugee Convention nor were her human rights protected under Articles 2 or 3 of the ECHR unlawfully interfered with in that there would be no real risk of torture or inhuman and degrading treatment. She did not qualify for international humanitarian protection in the UK within the meaning of paragraph 339C of the Immigration Rules because there were no substantial grounds for believing that there would be a real risk of serious harm to her on return to China.

### **Notice of Decision**

Having set aside the decision of the First-tier Tribunal I remake that decision.

I have decided to dismiss the appellant’s appeal against the decision of the respondent to refuse asylum/humanitarian protection/human rights protection in the UK. The respondent’s appeal to the Upper Tribunal is therefore allowed. I substitute the above decision for that of the Immigration Judge.

The FTT made an anonymity direction and I continue that anonymity direction.

Signed

Date 8 January 2019

Deputy Upper Tribunal Judge Hanbury

**TO THE RESPONDENT**  
**FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 8<sup>th</sup> January 2019

Deputy Upper Tribunal Judge Hanbury