



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

**Appeal Number: UI-2022-003818  
On appeal from PA/01370/2021**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On the 28 November 2022**

**Decision & Reasons Promulgated  
On the 01 December 2022**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

**X Q G (CHINA)  
[ANONYMITY ORDER MADE]**

Appellant

**and**

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

Respondent

Representation:

For the appellant: Mr Edward Nicholson of Counsel, appearing by Direct Access

For the respondent: Mr Esen Tufan, a Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals with permission from the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision on 7 December 2020 to refuse him refugee status, humanitarian protection, or leave to remain in the UK on human rights grounds. The appellant is a citizen of the People's Republic of China.

2. **Anonymity order.** Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. **Failure to comply with this order could amount to a contempt of court.**
3. **Mode of hearing.** The hearing today took place face to face.

## **Background**

4. The appellant entered the UK on 5 October 2004 and claimed asylum the same day, based on his breach of the one-child policy in China. He was 35 then and is 53 years old now.
5. His elderly mother remained in China until she died in 2020. The appellant says he has no family in China now. The appellant's wife and three children remained in China until 2008, when he learned that they had left China. The appellant says he does not know where they are now.
6. The appellant's asylum claim was refused on 12 October 2004. He did not exercise the in-country right of appeal which he had in relation to that decision.
7. Following the refusal of his asylum claim in 2004, the appellant did not embark for China, remaining in the UK without leave. On 17 February 2009, he made an unsuccessful application for an EEA residence card. He did not challenge that refusal.
8. The appellant made further submissions on 6 July 2010, again unsuccessfully, but on 25 January 2013 he asked for that refusal to be reconsidered. On 12 October 2014, following a review by the Older Live Cases Unit, the respondent maintained her refusal.
9. On 4 March 2019 the appellant was encountered and made further submissions, this time based on his Christian religion, which was not mentioned in the 2004 claim. The Secretary of State did not accept that he was a Christian convert at that time, and his further submissions were rejected. On 8 March 2020, following a Pre-Action Protocol letter, the respondent agreed to reconsider her decision. On 7 December 2020, the respondent again refused the appellant's claim, with an in-country right of appeal which he has exercised.
10. The appellant claims to be at risk on return, partly for non-payment of an excess child fine, and partly because he is an evangelical Christian: he has been a member of the Chinese Church in London since 2011, and was baptised into that Church on 21 December 2013.
11. The respondent now accepts that the appellant is indeed a Christian and a member of the Chinese Church, which has an evangelical approach. Evidence of the appellant's evangelising is very slight.

12. The appellant was interviewed at the Home Office by a Chinese policeman. The GCID confirms that this occurred. His case is that he told the policeman that he was a person with unauthorised children and a Christian convert.

### **First-tier Tribunal decision**

13. On 11 July 2022, First-tier Judge Kudhail dismissed the appellant's appeal. She was not satisfied that the appellant was at risk, either for having excess children, or by reason of his membership of an evangelical Christian church.
14. The appellant appealed to the Upper Tribunal.

### **Permission to appeal**

15. Permission to appeal was granted principally on the basis that the First-tier Judge erred in her application of the Supreme Court guidance in *HJ (Iran) v Secretary of State for the Home Department* [2010] UKSC 31 (07 July 2010).
16. In addition, the appellant argued that the finding that he had not suffered past persecution on religious grounds was unsustainable; that the judge had not properly considered whether she should depart from the existing country guidance on Christians in China; that his Christian faith was capable of amounting to a significant obstacle to integration on return; that the judge failed properly to consider the risk arising out of the appellant having been interviewed by a Chinese official in the UK prior to submitting a fresh claim; and that the judge failed to consider whether his having left China illegally was a risk factor.

### **Rule 24 Reply**

17. There was no Rule 24 Reply from the respondent.
18. That is the basis on which this appeal came before the Upper Tribunal.

### **Upper Tribunal hearing**

19. I heard oral submissions from Mr Nicholson for the appellant and Mr Tufan for the respondent. I concur with the assertion in the grounds of appeal that the First-tier Judge failed properly to engage with the *HJ (Iran)* guidance. There is no clear finding as to the reasons why this appellant would practise his Christianity discreetly on return, or whether his decision to do so would be because he feared persecution.
20. The decision also does not clearly engage with the DFAT evidence which post-dates the country guidance decision of the Upper Tribunal in *QH (Christians - risk)(China) CG* [2014] UKUT 86 (IAC) (14 March 2014) and the 'sinicization' of China in recent years. This is supported by evidence from the 2020 *US State Department Report on International Religious*

*Freedom: China* and the respondent's own country report for November 2019 *China - country information and guidance - Christians* which sets out reasons for not departing from the country guidance in *QH*, despite the continuing deterioration in the treatment of Christians in China. The UKBA report relies in part on a DFAT report in October 2019 as to the treatment of 'house' or 'family' churches and their members.

21. Although the country evidence is quoted at length in the decision, there is no rational engagement with it and no finding as to whether the appellant is a credible historian, in particular in relation to his claimed previous ill-treatment in China, and what he said to the Chinese policeman when he was interviewed at the Home Office, and whether that would have created a risk for him on return.
22. Unfortunately, therefore, despite its length, the First-tier Judge's decision is inadequately reasoned and cannot be sustained. The First-tier Judge has fallen into the error of simply quoting source materials without engaging with them properly.
23. The decision of the First-tier Tribunal will be set aside for remaking afresh in the First-tier Tribunal.

## **DECISION**

24. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. The decision in this appeal will be remade in the First-tier Tribunal on a date to be fixed.

Signed [Judith AJC Gleeson](#)  
November 2022  
Upper Tribunal Judge Gleeson

Date: 28