EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

[2020] CSIH 53
P205/19

Lord Malcolm
Lord Woolman
Lord Pentland

OPINION OF THE COURT

delivered by LORD WOOLMAN

in the Appeal by

HUAN YU

Petitioner and Appellant

against

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Petitioner and Appellant: Winter; Drummond Miller LLP (for Katani and Co, Solicitors, Glasgow)
Respondent: Maciver; Office of the Advocate General

21 August 2020

[1] The petitioner is a Chinese national. She was born in 1989, arrived in the United Kingdom in 2009 and currently lives in Glasgow with her partner and their child. She seeks asylum in the United Kingdom. She claims to be a member of the Church of Almighty God, also known as Eastern Lightning ("the church"). It is a Christian religion which is banned in China.

[2] The Home Secretary did not accept that the petitioner was a member of the church. He refused to grant asylum.

[3] The petitioner appealed to the First-tier Tribunal, where she gave the following account. She joined the church in 2009, having been a practising Christian in her teenage years. She downloaded church materials from the internet in 2010 and posted them to a church preacher in China. Three years later she learned from her father that the Chinese police had arrested the preacher and discovered the materials that she had sent to him. The police then issued a warrant for her arrest and a summons to attend a police station. If she set foot on Chinese soil she faced arrest and torture. The petitioner also testified that she would face persecution because she had breached China's family planning policy. She no longer insists on that argument.

[4] To assess the petitioner's credibility and reliability, the FtT judge cross-checked her oral testimony against various documents that she had lodged. They included a church membership card ("the card"), together with a summons and arrest warrant issued by the Chinese authorities in her name. He also considered the answers she had given at her original asylum interview.

[5] The FtT judge held that the petitioner was a "wholly unreliable" witness and continued:

> "[she] therefore fails to discharge the burden of proving that she has had any involvement at all with the Church of Almighty God or that the Chinese authorities have any interest in [her]."

[6] He based his conclusion on a combination of findings, among which were:

a. her "striking" lack of knowledge of the basic tenets of Christianity;

b. her failure to explain why the preacher would have retained evidence that incriminated her;

c. the inconsistencies in her evidence, for example she mentioned both £8 and £80 as being the postage cost of the materials that she sent to China; and

d. the fact that the warrant and summons related to a different offence, not her involvement with the church.

[7] The petitioner sought leave to appeal. She advanced several grounds of challenge. In essence they all related to the card. She argued that the FtT judge had either (a) not properly assessed its status; or (b) not adequately explained why it did not vouch her membership of the church.

[8] Both the FtT and the Upper Tribunal refused leave to appeal. This court is concerned with the decision of the UT judge. The operative part of his decision reads:

> "…[T]he judge took into account the membership card in finding that [she] was not a member of the church of Almighty God. She had little knowledge of the Christian faith and there were numerous inconsistencies in her account. … The judge also gave adequate reasons for why he attached little weight to the arrest warrant and summons."

[9] The petitioner now brings this petition for judicial review. She contends that the UT failed to give adequate reasons. The Lord Ordinary disagreed. He refused to grant permission to proceed. He held that the UT had not erred in law, so the petition had no real prospect of success.

[10] The petitioner renews her argument before this court. She argues that the card demonstrates that she is a member of the church. As it is central to her claim, the FtT judge should have made express findings about it. His other adverse findings do not inevitably undermine her claim of membership. Against that background it is not enough for the UT to say that the card had been taken into account. That left the informed reader in real and substantial doubt as to its reasoning.

[11] This court carries out its own assessment of the petition: *PA* v *Secretary of State for the Home Department* [2020] CSIH 34. We can only grant permission to proceed if we are

satisfied that the petition meets the conditions of section 27B(3) of the Court of Session Act 1988:

- that the petitioner has a sufficient interest in the subject matter of the application
- that it has a real prospect of success
- that either (i) it would raise an important point of principle or practice, or (ii) that there is some other compelling reason for allowing it to proceed.

[12] The parties have helpfully narrowed matters. The Home Secretary accepts that the petitioner has a sufficient interest. The petitioner concedes that the application does not raise an important point of principle or practice. We are thus only concerned with "real prospect of success" and "other compelling reason".

[13] These tests segue into one another. In order to establish a "compelling reason", the petitioner has to show that the case has very high prospects of success: *PR (Sri Lanka)* v *Secretary of State for the Home Department* [2012] 1 WLR 73 at para 8(1). If she does so, she will inevitably pass the lower threshold. But we prefer to approach the two tests in the order stipulated by the 1988 Act.

Does the application have a real prospect of success?

[14] The answer to this question is "No". As Lord President (Carloway) stated in *Wightman* v *Advocate General* 2018 SC 388 at para [9], the petitioner does not have to establish probable success. But the prospect of the petition succeeding "must be real; it must have substance". That is not the case here. The FtT judge scrutinised the whole evidence before reaching his adverse reliability finding, which must include the card, to which he expressly referred. That is the only fair reading of the FtT decision, when taken as a whole. It follows

that the UT was entitled to state that he had taken the card into account. The UT decision is succinct, but crisply conveys the reasons for its refusal to the informed reader. There is no material error going to the root of the decision.

Is there a compelling reason to allow the application to proceed?

[15] Our answer to the first question is enough to determine this appeal. But for the avoidance of doubt, we also answer the second question "No". We cannot discern any error in law on the part of the UT, far less one that is plainly wrong or perverse. There is therefore no compelling reason for this petition to proceed.

[16] We adhere to the Lord Ordinary's interlocutor of 4 June 2019 and refuse the appeal.