



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

Appeal Number: AA/00214/2014

THE IMMIGRATION ACTS

Heard at Sheldon Court, Birmingham

**Determination
Promulgated**

On 10 July 2014

On 28 July 2014

Before

The President, The Hon. Mr Justice McCloskey

Between

XIUHUA LIN

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant: Elizabeth Norman (of Counsel), instructed by Howe and Company.

Respondent: Mr Smart, Senior Home Office Presenting Officer.

DECISION, REMITTAL AND DIRECTIONS

1. By a decision made on behalf of the Secretary of State for the Home Department (the "*Secretary of State*"), dated 16 December 2013, the application of the Appellant, a Chinese national aged 24 years, for asylum

was refused. The ensuing appeal to the First-tier Tribunal (the “FtT”) was dismissed.

2. The Appellant’s claim for asylum rested on her assertion of a well founded fear of persecution, on account of her Roman Catholic faith, in the event of having to return to China. In a nutshell, her claim was rejected as it was considered inconsistent, implausible and unworthy of belief. Consistent with the grant of permission to appeal, the two grounds on which the appeal was argued centred on the adequacy of the FtT’s reasons for certain findings and the fairness of the FtT’s decision making process.
3. In the key passages of a detailed determination, the Judge, having correctly directed herself on the burden and standard of proof, begins with the following omnibus conclusion:

“... I find the core of the Appellant’s account to be a fabrication designed to assist her to make a claim to remain in the United Kingdom. I find for the reasons below that she is an economic migrant and not at risk or entitled to protection as she claims.”

In the ensuing paragraphs, the Judge elaborates on this conclusion. She finds specifically that the Appellant’s delay in claiming asylum damaged her credibility. This is followed by a finding that the Appellant is not an adherent of the Roman Catholic faith. Next, the Judge acknowledges that while the Appellant’s claim has been internally consistent, this does not strengthen it. This discrete assessment is unreasoned. In the ensuing two paragraphs, there are three specific findings, namely that the Appellant was not a member of an unauthorised church, her father did not organise unauthorised meetings and the Appellant did not do so. The importance of these findings is beyond plausible dispute. However, they are unexplained and unreasoned. Next, the Judge states:

“The evidence of the Appellant was not, I find, consistent with membership of an unauthorised church or meetings.”

This statement is unaccompanied by any elaboration.

4. In the next paragraph, the Judge rehearses the Appellant’s account in her asylum interview of her practice of the Roman Catholic faith since her childhood. This included details of attending religious ceremonies and the number of churches in her area. There is no expression of the Judge’s findings in respect of these important factual issues. In the same passage, the Judge adverts to a submission by the Appellant’s Counsel which sought to contrast attendance at church (on the one hand) and unauthorised meetings (on the other). There is no indication of the Judge’s assessment of this submission. In later passages, the Judge finds specifically that the credibility of the Appellant’s account is damaged by her claim that she has had no contact with her family since leaving China and her failure to seek some form of religious support in the United Kingdom at an earlier stage.

5. The duty on Courts and Tribunals to provide reasoned decisions was considered *in extenso* by the Upper Tribunal in MK Pakistan [2014] UKUT 641 (IAC), where it was said at [6]:

“There is a related duty to explain the Tribunal’s assessment of the more important pieces of evidence and to provide reasons for choosing to give (as the case may be) no, little, moderate or substantial weight thereto.”

The judgment continues, at [11]:

“The depth and extent of the duty to give reasons will inevitably vary from one case to another. The duty is contextually sensitive.”

[my emphasis]

I conclude that the decision of the FtT fails to measure up to these standards. It contains critical findings of fact which are unreasoned. I acknowledge, of course, the omnibus finding in the decision that the Appellant’s case was not credible and I have noted above the two specific reasons which the FtT articulated in support thereof. However, it is clear that certain aspects of the Appellant’s account were of particular importance. While the FtT, commendably, made specific findings relating thereto, these are couched in bare, unreasoned terms. Reasons can, of course, be inferred in certain contexts and the importance of reading a decision or judgment as a whole cannot be over - emphasised. However, in this particular case, I do not find it possible to infer the Judge’s reasons for the key findings addressed above. Furthermore, as noted, the Judge made no findings at all in respect of certain discrete issues. Thus the first ground of appeal succeeds.

6. The focus of the second ground of appeal was the following passage in the FtT’s decision:

*“The Appellant gave no evidence of the background, the fact rich circumstances, which I find would have been present in a genuine account. **By way of example** I note that there was no evidence about the number of those meetings, the nature of the meetings, the frequency, the method of arranging the same, the numbers of those attending and the venue. The absence of such details was striking.”*

[Emphasis added.]

This discrete finding would probably be unassailable if it were related to the structure, sequence and content of the questions and answers constituting the asylum interview and/or the Appellant’s evidence to the FtT. However, there is no analysis or elaboration of this kind. More

fundamentally, perhaps, this passage rehearses a series of factors considered adverse to the Appellant's case which had not been ventilated either in cross examination or in questioning by the Judge at the hearing. As a result, the Appellant was not put on notice that these factors could be adverse to her case and had no opportunity to address them. I consider that the hearing at first instance was rendered unfair in consequence. The governing principles in this respect were rehearsed recently by the Upper Tribunal in its decision in MM Sudan [2014] UKUT 105.

DECISION AND DIRECTIONS

7. Thus the appeal succeeds on both grounds. I set aside the decision of the FtT. Since one of the grounds concerns the fairness of the hearing at first instance, I remit the case to a differently constituted FtT for the purpose of remaking the decision.
8. The following directions apply:
 - (a) Any further evidence on behalf of the Appellant will be served on the Secretary of State and lodged with the FtT by 25 August 2014.
 - (b) Any response by the Secretary of State will be made by 15 September 2014.
 - (c) An interpreter with expertise in Mandarin will be required.

Signed:

Bernard McCloskey

THE HON. MR
JUSTICEMCCLOSKEY
PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 12 July 2014