Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/02905/2015

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision and Reasons Promulgated**
on 24th August 2015	**On 28th August 2015**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

CAIYUN XUE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Winter, Advocate, instructed by Maguire, Solicitors
For the Respondent: Ms S Aitken, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against a determination by First-tier Tribunal Judge Clough, promulgated on 2nd June 2015, dismissing her asylum appeal.

2. Her first ground is that the judge erred in reaching an adverse credibility finding at paragraph 12 “by not relying on any fact or evidence to support the finding” and “by falling into speculation”.

3. The judge granting permission thought it arguable that the judge’s reasoning “contained in less than four lines of paragraph 12” was inadequate.

4. Mr Winter submitted that the case raised a short point, and that the grant of permission hit the nail on the head. The judge did not provide reasons for her conclusion. The case fell into the category of a bare and therefore insufficient statement of disbelief, as described in *MK* (duty to give reasons) [2013] UKUT 00641.

5. Mr Winter acknowledged that it might be construed that the judge found the claim to fail even "taken at highest" at paragraph 13, based on *QH* (Christians – risk) China [2014] UKUT 86. However, he said that if the appellant had been accepted as entirely credible it would follow that all her close relatives had been arrested for reasons of their religion, and in those circumstances *QH* might not provide the complete answer. The appellant might be at risk in the light of the fate of her family, being perceived as engaging in assertive religious activity which did attract a risk. In her witness statement, the appellant had said that her relatives did proselytise.

6. Although there were three other grounds, Mr Winter did not press them. He submitted that a fresh hearing was required.

7. In a Rule 24 response the respondent says that the finding that the appellant is not credible is supported by the explanation that she was evasive when questioned. The judge considered the relevant case law regarding risk on religious grounds. The appellant's evidence was that her parents were "rumoured" to have been taken by the authorities. She produced no evidence of risk on return. It was implausible that any further consideration would lead to a different conclusion.

8. Ms Aitken added that the judge was entitled to form the view that she did, based on having heard the oral evidence of the appellant, including cross-examination. She also submitted that even at highest a reported rumour that the appellant's parents had been taken by the authorities, which she had made no real attempt to investigate, did not support a risk to her for any religious activities, and that the determination should stand.

9. I pointed out that the determination at paragraph 22 endorsed the "very detailed reasons" in the respondent's refusal letter, and asked representatives whether that carried any significance. Ms Aitken said that the reference further supported the judge's conclusion. Mr Winter said that paragraph 22 lacked substance. It came after the consideration of the family planning and Article 8 aspects (no longer pursued) and possibly did not relate to the credibility finding. If there were any ambiguity, the point could not add to the judge's reasoning. There was danger in the adoption wholesale of the reasons of one party, especially after further evidence had been led.

10. I reserved my determination.

11. Paragraph 12 of the determination reads:

> "I did not find the appellant credible as to the persecution of her family in China because they were Christians nor did I find it credible that she has lost contact with them. She was evasive when questioned about her evidence. I do not accept the appellant was unaware of the possibility of claiming asylum either."

12. The concise and focused presentation of the case by Mr Winter went to the determination's apparent weak point. However, I find that the reasoning although brief is nevertheless adequate, once analysed and put in context.

13. The appellant allegedly lost contact with her parents at the beginning of 2011. Her attempt to find out about them has been limited to a telephone call to an old school friend in the village. That is feeble. It was for the judge to assess whether the appellant was a direct and truthful or an evasive and unreliable witness, as to which she had the advantage of hearing directly from her. The judge relates at paragraph 11 that the appellant's oral evidence included (a) for the first time the revelation of the existence of a great family friend living in London who had given her financial support but who also did not know what had happened to her parents, and (b) that her Christian group were called "shouters" but she did not know the name until she consulted her lawyer. Paragraph 7 notes the appellant's explanations for her late claim. All of these are self-evidently weak points in the evidence of someone claiming to be in need of international protection due to real risk to her person, and paragraph 12 connects to them.

14. Paragraph 13 notes the country guidance and the risk which may exist "for certain individual Christians who choose to worship in unregistered churches and who conduct themselves in such a way as to attract the local authorities' attention to them", and goes on that there was "no evidence or suggestion from the appellant's evidence that she would fall into this category". I think that is plainly, and irrespective of the adverse credibility finding, a finding that this case failed even if the appellant's evidence were to be taken at face value. Mr Winter said there might have been a finding that the rumour that the appellant's family had been taken by the authorities supported a real risk that the appellant might be at risk of persecution for reasons based on perceptions of her religion. Rather than a reasonable inference, it appears to me that would have been quite a considerable leap.

15. The refusal letter annexes detailed reasons. The aspect of Christianity is dealt with at paragraphs 15 to 26, ending as follows:

> "… Your answers regarding the arrest of your father and brother and summons for interview of your sister have been vague. You were born in 1988. That would make you at least 15 years old when the arrest and detention of your brother and your sister's investigations took place. Bearing in mind the significance of these events and your age … it is expected that you would be able to provide additional information regarding events which you now claim leave you in fear for your safety. It is not accepted that your family were arrested, interviewed and questioned as you have claimed."

16. There is danger in endorsing wholesale the case for one party, but subject to that *caveat*, judges are entitled to agree with the position of a party who has provided good reasons. The analysis in the refusal letter on this particular point and in general has not been shown to be less than sound. I see nothing wrong with the judge endorsing it, particularly as it comes after her own consideration. It does add to her reasoning.

17. Mr Winter was correct not to press grounds 2, 3 and 4. Ground 2, complaining that the judge did not take into account background evidence regarding risk to worshippers in unregistered churches, added nothing to the country guidance which the judge did cite. Ground 3, based on the appellant's membership of the "shouters", is feeble given her evidence at the hearing. Ground 4, based on the extent of the appellant's knowledge of English, leads nowhere.

18. The dicta of courts on the extent of reasoning required in a determination range from those which can be used to suggest that every detail must be inspected and considered, to those which suggest that provided the judge says what she believes or disbelieves, a brief but clear explanation will suffice. The extent of explanation required depends on the circumstances of the case.

19. While determinations should not be prolix, this one might have benefited from a few further sentences. Although the appellant's oral evidence did not need to be repeated word for word, one or two specific examples of evading the question might have been given. However, I find that the determination is a legally adequate explanation to the appellant and her advisers of why she was not found credible and why her appeal failed. The judge made it clear that she did not find the witness a reliable witness in the essential aspects of her evidence. Her determination should not be made good by finding additional reasons which are not in it, but read fairly and as a whole it contains the reasons for that adverse credibility conclusion and for the overall rejection of the case, which was manifestly weak.

20. The determination of the First-tier Tribunal **shall stand**.

21. No anonymity direction has been requested or made.

Upper Tribunal Judge Macleman

27 August 2015