



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/01698/2015

THE IMMIGRATION ACTS

Heard at Field House
On 2nd March 2016 and 21st April 2016

Decision and Reasons Promulgated
On 26th April 2016

Before

UPPER TRIBUNAL JUDGE COKER

Between

Q Z

(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Kannangara, instructed by Anglo Chinese Law Firm Ltd

For the Respondent: Mr S Kandola (on 2nd March 2016) and

Mr L Tarlow, Senior Home Office Presenting Officer (on 21st April 2016)

DETERMINATION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant/parties in this determination identified as QZ. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

1. For the reasons given in the attached decision I set aside the decision of the FtT to be remade by me.
2. The preserved findings, as confirmed by Mr Kannangara and Mr Tarlow, are as follows:
 - (i) The appellant is an impressive witness;
 - (ii) The appellant has sufficient faith to substantiate her claimed Christianity;
 - (iii) The priest of the church she had attended had denigrated the registered churches as a method of spreading propaganda and it was for this reason that she had not attended any of the approved churches.
 - (iv) The appellant's description of how she escaped and the layout of the venue where the meeting was held, and that she kept running, is consistent with her being able to escape in the manner she described.
 - (v) The priest of the house church she attended was subsequently imprisoned for 10 years;
 - (vi) The appellant was distributing leaflets and may not have realised the risk she was running. Her name was put up on the wall
 - (vii) She attended a house church and continued to do so after she had been detained for three months. She fled from a raid that occurred on Xmas day. She was able to give names of the people with whom she was involved.
 - (viii) Continuing to worship in the house church as she previously did will not entail her being at serious risk of being persecuted;
 - (ix) She has no siblings and returning as a mother with two children and a husband, albeit resulting in some difficulties, those difficulties do not reach the threshold such as to amount to persecution or Article 3 breach;
 - (x) The two children are too young to have established private life of their own
 - (xi) Removal of the appellant (with her two children) will not result in a disproportionate interference with her private and/or family life.
3. I had given leave to both parties to adduce such evidence as they wished to rely upon in relation to the nature and consequences of QZ's name being put up on a wall in her home are and that she had leave to file and serve a witness statement.
4. At the resumed hearing on 20th April 2016, QZ adopted the witness statement she had filed and served in accordance with directions. She was not cross examined. The respondent did not file and serve any additional material; the appellant filed and served a small bundle comprising a document from Baidu Wikipedia, a document in Chinese, Country Information and Guidance China: Christians version 2.0 March 2016 and an undated article from the Telegraph. .
5. Mr Kannangara very helpfully identified that he would be relying on submissions that the appellant falls within the risk categories identified in

the country guidance case of *QH (Christians – risk) China CG [2014] UKUT 86 (IAC)*. Mr Tarlow in contrast relied upon the Rule 24 response and confirmed that his submissions were that she was not at risk of being persecuted should she choose to worship at an unregistered church – as per the headnote of *QH* - and that the arrest warrant was a local warrant with no purchase other than locally.

6. Although in setting aside the decision of the FtT, after discussion with Mr Kandola, I had referred to the two identified errors of law in the decision of the FtT namely a failure to consider and make findings on how the appellant would behave on return to China in terms of religious observance as well as the effect of the wall arrest warrant, the appellant did not address the first of these in her witness statement. The appellant did not assert that she would leaflet or otherwise proselytise her faith. Mr Kannagara did not in submissions assert that she would. His submissions were that this appellant was not a person who would merely attend a house church. He submitted the context of her attendance had to be considered and this included:
- (i) that she had been arrested and detained for three months;
 - (ii) that she had continued to attend the house church after her release from detention
 - (iii) that the priest of her house church had been imprisoned for 10 years;
 - (iv) that she had previously given out leaflets although she may not have realised the risk she was running;
 - (v) she had fled from a raid that occurred on Xmas day
 - (vi) she was the subject of an arrest warrant which had been put up on a wall in her home area.
 - (vii) neither of her two children were registered. Although the recent liberalisation of the *hukou* system of registration could have permitted her to live elsewhere, to enable her two children to gain access to education, medical facilities and so on they would have to be registered wherever she went to live. That very process of registration would require her to notify the new authorities of her origins and this would bring her to the attention of the new authorities and thus place her at serious risk of the warrant being executed.
7. The headnote of *QH* reads as follows:

(1) In general, the risk of persecution for Christians expressing and living their faith in China is very low, indeed statistically virtually negligible. The Chinese constitution specifically protects religious freedom and the Religious Affairs Regulations 2005 (RRA) set out the conditions under which Christian churches and leaders may operate within China.

(2) There has been a rapid growth in numbers of Christians in China, both in the three state-registered churches and the unregistered or 'house' churches. Individuals move freely between State-registered churches and the unregistered churches, according to their preferences as to worship.

(3) Christians in State-registered churches

(i) Worship in State-registered churches is supervised by the Chinese government's State Administration for Religious Affairs (SARA) under the RRA.

(ii) The measures of control set out in the RRA, and their implementation, whether by the Chinese state or by non-state actors, are not, in general, sufficiently severe as to amount to persecution, serious harm, or ill-treatment engaging international protection.

(iii) Exceptionally, certain dissident bishops or prominent individuals who challenge, or are perceived to challenge, public order and the operation of the RRA may be at risk of persecution, serious harm, or ill-treatment engaging international protection, on a fact-specific basis.

(4) Christians in unregistered or 'house' churches

(i) In general, the evidence is that the many millions of Christians worshipping within unregistered churches are able to meet and express their faith as they wish to do.

(ii) The evidence does not support a finding that there is a consistent pattern of persecution, serious harm, or other breach of fundamental human rights for unregistered churches or their worshippers.

(iii) The evidence is that, in general, any adverse treatment of Christian communities by the Chinese authorities is confined to closing down church buildings where planning permission has not been obtained for use as a church, and/or preventing or interrupting unauthorised public worship or demonstrations.

(iv) There may be a risk of persecution, serious harm, or ill-treatment engaging international protection 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 or their political, social or cultural views.

(v) However, unless such individual is the subject of an arrest warrant, his name is on a black list, or he has a pending sentence, such risk will be limited to the local area in which the individual lives and has their hukou.

(vi) The hukou system of individual registration in rural and city areas, historically a rigid family-based structure from which derives entitlement to most social and other benefits, has been significantly relaxed and many Chinese internal migrants live and work in cities where they do not have an urban hukou, either without registration or on a temporary residence permit (see AX (family planning scheme) China CG [2012] UKUT 00097 (IAC) and HC & RC (Trafficked women) China CG [2009] UKAIT 00027).

(vii) In the light of the wide variation in local officials' response to unregistered churches, individual Christians at risk in their local areas will normally be able to relocate safely elsewhere in China. Given the scale of internal migration, and the vast geographical and population size of China, the lack of an appropriate hukou alone will not render internal relocation unreasonable or unduly harsh.

8. In her evidence to the FtT, which was not further questioned before me, she is recorded as saying

35.The friend she had stayed with after her escape was not a member of the church but she is a very good friend and the friend's parents felt sorry for her so allowed her to stay. They knew about the warrant for her arrest but told her not to leave the house....The appellant said she had not brought their arrest warrant with her when she left the country. She said that she could try and ask her parents to see if they could find a copy although she said she was rarely in contact with them....

.....

49. The appellant was asked if she had managed to obtain a copy of the warrant for arrest and she said that she had not obtained it and that the police took the arrest warrant to show her mother and told her that if she, the appellant, didn't go to the police station then they would make an arrest warrant and make it public. Later she heard from her mother that the arrest warrant was not in made public (sic) or across the country and it is only a local announcement on a wall.....

50. The appellant was asked if she could move elsewhere in China with her children and she said yes she could do so. If she returned to China she could move to another place and it would not be a risk but there would still be a lot of difficulties because of registration and healthcare. She said the only reason she could not go back to China is because of the difficulties with healthcare, children and education as well as dentistry. She said she was concerned when she

returns to China she needs to sort out *hokou* registration and sort out healthcare, childcare etc and sort these things out. She probably would need to contact the government and she is worried that when she does that they will bring out her previous record.

9. Unless a person is the subject of an arrest warrant, has his name on a black list or has a pending sentence, risk will be limited to the local area in which the individual lives and has their *hukou*. The *Hukou* system has been relaxed so people will be able to relocate safely.
10. In so far as the document entitled Baidu Wikipedia is relied upon by the appellant I do not know if that is a translation of the Chinese language document that was produced or where it has come from. I do not place any weight upon that document. Neither the COI report nor the Telegraph report deal with arrest warrants or warrants on walls in local areas. But the COI report does refer to increased harassment of those who attend unregistered churches ([2.2.4]) and that there may be a risk of persecution for certain individuals who conduct themselves in such a way as to bring themselves to the adverse attention of the authorities ([2.2.7]). In [2.4.1] the COI refers to the scale of internal migration and the vast geographical and population size of China and that the lack of an appropriate *Hukou* alone would not render internal relocation unreasonable or unduly harsh. [3.1.3] states that the security forces are likely to keep a record of people who are detained at underground church meetings.
11. Mr Tarlow submitted that the existence of a local arrest warrant would not put the appellant at risk. He submitted that there was no evidence that she would, on return to China, conduct herself in a manner such as would bring her to the adverse attention of the authorities but that in any event she could relocate with her children and continuing practicing her religion in either a registered or unregistered church. He did not address the submission by Mr Kannangara as regards the registration of the children. Nor did he refer to the COI reference to the security forces keeping a record of those who were or had been detained.
12. The evidence of increased harassment of those who attend underground churches was not relied upon by Mr Kannangara to distinguish *QH*. That was wise of him given the paucity of that evidence. Nor did Mr Kannangara submit that the appellant would leaflet or behave in any way that would bring her to the adverse attention of the authorities – again a wise decision given the lack of evidence to that effect from her. The thrust of his submissions was the requirement to register the children to enable access to medical treatment and education would bring her to the attention of the authorities which would result in her previous detention becoming known which would, together with the outstanding warrant, albeit placed locally but nevertheless recorded, result in her being at risk of being persecuted.
13. *QH*, considering arrest warrants, does not make a distinction between wall warrants and those personally implemented. The COI refers to the security forces having a record of those detained – as was this appellant. This appellant escaped from a raid and the security forces – albeit possibly only

locally – have a record of that. Bearing in mind the standard of proof required, it is more than reasonable to conclude that any enquiry made of her home area would result in the disclosure that she had escaped capture and was wanted and that she had previously been detained and attended church after her release. It is also reasonable to conclude that any such enquiry would be made when she sought to register the children. There was no submission to the contrary from Mr Tarlow. It is also reasonable to conclude that any such enquiry would lead to the information that the priest of the church that had been raided had been imprisoned for 10 years.

14. Accordingly I am satisfied that if returned to China, the appellant will be a real and serious risk of being persecuted in her home area and that her whereabouts would become known and thus, in line with *QH*, internal relocation is not an option open to her.
15. Accordingly I allow her appeal on asylum and human rights grounds.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision

I re-make the decision in the appeal and allow the appeal on refugee and human rights grounds.

Date 22nd April 2016



Upper Tribunal Judge Coker



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(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Appellant in person

For the Respondent: Mr S Kandola, Senior Home Office Presenting Officer

ERROR OF LAW DECISION AND DIRECTIONS

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1. QZ's legal representative contacted the Tribunal on the morning of the hearing and apologised but said that she would be unable to attend and would like an adjournment. QZ was present but there was no interpreter.
2. Although in normal circumstance I would have granted an adjournment on the information provided by the representative, on this occasion because of the grounds submitted I decided to discuss the matter with Mr Kandola and establish whether it would be possible to conclude that there was an error of law such that the decision be set aside to be remade. If that had not been possible I would have adjourned.
3. In the event Mr Kandola very sensibly acknowledged the shortcomings in the decision of the FtT. In particular the failure of the judge to consider and reach a decision on whether QZ would behave in a manner that could bring her to the adverse attention of the authorities, given her previous conduct and the lack of consideration as to the effect of the placing of her name on a wall as wanted person.
4. Accordingly I am satisfied that there is an error of law such that the decision of the FtT judge is set aside to be re-made.

Directions

1. The credibility findings and the factual findings of the FtT judge on her claim have not been challenged and thus stand.
2. The parties have leave to adduce such evidence as they wish to rely upon in relation to the nature and consequences of QZ's name being put on a wall in her home area, such evidence to be filed and served by 4pm on 6th April 2016.
3. QZ has leave to file and serve a witness statement to stand as evidence in chief, such statement to be filed and served by 4pm on 6th April 2016.
4. The resumed hearing to be listed for half day before Upper Tribunal Judge Coker on 21st April 2016.
5. An interpreter in the Mandarin language to be booked by the Upper Tribunal.
6. Liberty to apply.

Date 2nd March 2016



Upper Tribunal Judge Coker