



IAC-AH-CJ-V1

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

Appeal Number: AA/05245/2015

THE IMMIGRATION ACTS

**Heard at Centre City Tower, Decision & Reasons Promulgated
Birmingham
On 4th January 2016**

On 11th January 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

XL

(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr G Harrison, Senior Home Office Presenting Officer

For the Respondent: Ms V Easty of Counsel, instructed by Wilson Solicitors LLP

DECISION AND REASONS

Introduction and Background

1. The Secretary of State appeals against the decision of Judge C Mather of the First-tier Tribunal (the FtT) promulgated on 28th July 2015.
2. The Respondent before the Upper Tribunal was the Appellant before the FtT and I will refer to her as the Claimant.

3. The Claimant arrived in the United Kingdom in April 2009 and claimed asylum on 8th April 2014. Her claim was based upon her imputed political opinion, and membership of a particular social group as a victim of trafficking and the mother of a child born out of wedlock. The Appellant has a daughter who was born in this country on 26th May 2014. The Claimant is a Chinese citizen.
4. The application was refused on 10th March 2015. The Secretary of State did not accept the credibility of the Claimant's account, and did not accept that she would be at risk if returned to China. The Secretary of State decided therefore that the Claimant was not entitled to a grant of asylum or humanitarian protection, and that her removal from this country would not breach her human rights.
5. The Claimant appealed and her appeal was heard by the FtT on 14th July 2015. The FtT found the Claimant to be a credible witness, and accepted the submissions made in a skeleton argument submitted on behalf of the Claimant, and also accepted the conclusions set out in two expert reports. The FtT allowed the asylum appeal, and found that the Claimant's removal would breach Article 3 of the 1950 European Convention on Human Rights (the 1950 Convention), and found that it would not be in the best interests of the Claimant's daughter to be returned to China, and found that the Claimant would face significant obstacles in integrating into China, and the appeal was therefore also allowed pursuant to paragraph 276ADE(1)(vi) of the Immigration Rules.
6. The Secretary of State applied for permission to appeal to the Upper Tribunal and the grounds may be summarised as follows.
7. Firstly it was submitted that the FtT had failed to give reasons or any adequate reasons for findings on material matters. It was submitted that the FtT had failed to provide any adequate reasons for the findings of fact made but had in paragraphs 16-26 of the decision, provided a list of accepted facts, without any adequate reasons to support them. The FtT had not made reasoned findings based on the evidence. It was further submitted that the FtT had failed to provide reasons why the FtT had not followed country guidance decisions AX China CG [2012] UKUT 00097, ZC & Others China CG [2009] UKAIT 00028, and HC & RC China CG [2009] UKAIT 00027. It was also submitted that the FtT had failed to provide any adequate reasons for finding that the Claimant and her daughter would face significant obstacles in integrating into China.
8. Secondly the Secretary of State contended that the FtT had made a material misdirection in law on a material matter by failing to apply the findings in several of the relevant country guidance cases and failure to follow a country guidance decision without giving cogent reasons, amounted to a material misdirection in law. The FtT had not referred to any of the country guidance decisions mentioned in the preceding paragraph.

9. Permission to appeal was given by Judge Pedro of the FtT who concluded;
“The grounds disclose arguable errors of law.”
10. Directions were subsequently issued that there should be an oral hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision must be set aside.

The Secretary of State’s Submissions

11. Mr Harrison relied upon the grounds contained within the application for permission to appeal.

The Claimant’s Submissions

12. With reference to the country guidance decisions, Ms Easty pointed out that the Secretary of State had not specified how the decision of the FtT conflicted with any country guidance decision and submitted that the FtT decision disclosed no incompatibility with the country guidance cases.
13. In relation to adequacy of reasoning, Ms Easty submitted that the Secretary of State had not taken direct issue with the Claimant’s case, and that there was little dispute as to the factual matrix. Credibility issues had been addressed in paragraph 5 of the skeleton argument submitted to the FtT.
14. Ms Easty submitted that it was the contents of that skeleton argument and the expert reports that had been adopted by the FtT and had provided the reasons for the decision to allow the appeal.
15. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

16. The FtT materially erred in law in not providing adequate reasons for the findings made in paragraphs 16–26. I set out below the headnote in MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC);
 - “(1) It is axiomatic that a determination discloses clearly the reasons for a Tribunal’s decision.
 - (2) If a Tribunal finds oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it is necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight is unlikely to satisfy the requirement to give reasons.”
17. Further guidance was given in Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC) the headnote of which is set out below;

“It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to

deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost.”

18. I disagree with the submission made on behalf of the Claimant that the Secretary of State had very little dispute with the factual matrix of the Claimant’s case. My understanding of the reasons for refusal letter dated 10th March 2015, is that the Secretary of State accepted the Claimant’s nationality, but rejected other elements of her account, and for ease of reference I set out below the conclusions in paragraph 32 of that letter;
“32. In summary your nationality has been accepted. However, the remainder of your claim has been rejected including your arrest due to a land dispute, any adverse interest from the Chinese authorities, your journey to the UK and your escape from the Snakeheads.”
19. The Secretary of State considered the Claimant’s account in paragraphs 19–32 of the refusal letter, and gave reasons for reaching the conclusion set out in paragraph 32.
20. The FtT has not engaged with the reasons given by the Secretary of State for not accepting the credibility of the Claimant’s account. It is understandable that the Secretary of State complains that she cannot understand why no weight has been attached to the issues raised in the reasons for refusal letter relating to the Appellant’s credibility, and no adequate reasons given as to why the Appellant was found to be a credible witness.
21. I set out below paragraphs 16–18 of the FtT decision;
“16. In reaching my conclusions, I have taken into account all the evidence put before me, including the background information.
17. I accept the Appellant to be a credible witness.
18. I accept the conclusions set out in the reports of Natalia Dawkins and Stephanie Gordon. I accept the arguments set out in Mr Bradshaw’s skeleton argument.”
22. Having read the above paragraphs, the question that is posed is why? One would expect paragraphs 16–18 to be followed by paragraphs containing an analysis of the issues raised by the Secretary of State, and reasons given for the findings made. The FtT decision discloses no such analysis and no adequate reasons.
23. The decision of the FtT contains reference to submissions made on the Claimant’s behalf, but there is no reference to any submissions made on behalf of the Secretary of State.
24. The failure to provide adequate reasons for findings and conclusions, is a material error of law and means that the decision of the FtT is unsafe and is set aside with no findings preserved.

25. It is therefore unnecessary to consider in detail the second ground relied upon by the Secretary of State, in relation to departure from country guidance decisions. I note that only one country guidance decision was referred to by the Secretary of State in the refusal letter, that being HC & RC, and the relevance of the other decisions has not been explained.
26. Both representatives agreed at the hearing, when I reserved my decision to consider submissions on error of law, that if a material error of law was found, as contended by the Secretary of State, then it would be appropriate to remit the appeal back to the FtT to be heard again.
27. I have considered paragraph 7 of the Senior President's Practice Statements dated 25th September 2012, and find that it is appropriate to remit the appeal back to the FtT because of the nature and extent of judicial fact-finding that will be necessary in order for this decision to be remade.
28. The appeal will be heard at the FtT hearing centre in Stoke and the parties will be advised of the time and date in due course. The appeal is to be heard by an FtT Judge other than Judge C Mather.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the First-tier Tribunal with no findings of fact preserved.

Anonymity

The FtT made an anonymity direction and I continue that anonymity order pursuant to rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date 6th January 2016

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

The issue of any fee award will need to be considered by the First-tier Tribunal.

Signed

Date 6th January 2016

Deputy Upper Tribunal Judge M A Hall