



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

Appeal Number: AA/13437/2015

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice, Belfast **Decision & Reasons
Promulgated**
On 27 July 2017 **On 30 November 2017**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**W L
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr McQuitty, instructed by Worthingtons Solicitors
For the Respondent: Mr McVeety, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge S Gillespie promulgated on 19 January 2017.
2. The appellant is a citizen of China who entered the United Kingdom in Northern Ireland on 20 November 2014. His case is that he is at risk on return to China because he was involved with the Christian Church in Shaoxing City in Zhejiang Province. In May or June 2014 the Minister of the Church, Father Guang and a Sister Yu were arrested and later sentenced to death. He became afraid as a result of his previous activities with the church.

3. Since he has been in the United Kingdom the appellant has been attending a Roman Catholic Church on a regular basis, attending weekday masses as well as attending mass on Sundays. His fear is that he is at risk on return to China and would not be able to practice his religion as a result of what had happened in the past and as a result of a recent crackdown against Christianity both in its registered and unregistered forms in China.
4. The respondent did not accept the appellant's claim to be Christian or his claim to be undertaking military activity in China. She considered that in any event there would be no risk to him on carrying out Christian beliefs in China on the basis of **HJ (Iran) v SSHD [2010] UKSE 31** and **QH (Christians - risk) China CG [2014] UKUT 0086**.
5. The judge heard evidence from the appellant as well as from his foster carer. He also had before him a letter from Father Donnelly of St Michael's Parish Church, Enniskillen and a letter from his former social worker which relates to his attendance at church.
6. The judge rejected the core of the appellant's claim and inconsistencies in [30] to [33]. The judge also found [37] that the appellant may have some level of commitment to the Christian faith; that whilst there was some substance to his representatives, and that there had been a deterioration in the position of Christians since **QH** had been promulgated [45] he was not persuaded that the appellant would be at risk "essentially because his account is not to be believed for the reasons given".
7. The appellant sought permission to appeal on the grounds that the judge had failed:-
 - (i) properly to reach findings about whether the applicant was a Christian and whether he would continue his practise on return;
 - (ii) to give proper weight to the evidence of the witnesses who gave testimony to the applicant's commitment to Christian faith; and,
 - (iii) to consider whether the practise of his religion in the United Kingdom would have an impact when he returned to China.
8. On 14 February 2017 First-tier Tribunal Judge Kinnell granted permission observing that it was not possible to reconcile the judge's observation at [37] that he may have some level of commitment with the Christian faith with the finding that his account was not to be believed [45]. He noted "The parties cannot tell from the decision whether the appellant is likely to practise the Christian faith in China, and, if so, what the risk to him might be."
9. Having heard submissions from both parties I am satisfied that there is an inconsistency in the judge's findings. He has failed to take into account properly the evidence of the social worker, the foster parent and Father Donnelly and say properly why he rejected the applicant's claim to be a practising Christian. There is no proper reasoning as to why he was

prepared to accept that the applicant might have some commitment to the faith yet to reject the entirety of the rest of the claim.

10. Further, the judge has failed to consider whether the applicant would continue his commitment to the Christian faith on return, if so and in what manner, and whether this would be likely to come to the adverse attention of the authorities. Whilst there appears to have been some consideration of apparent changes since **QH** was decided, no findings are made at [45]; all that the judge does is to say that the applicant cannot be believed. In the light of the observation that the findings with respect to his Christianity are flawed, this cannot stand.
11. For these reasons, I am satisfied that the decision of the First-tier Tribunal did involve the making of an error of law and I set it aside.
12. Given that, as both parties agreed, the error relates to credibility findings and as to a significant area of the applicant's case, that is his Christian faith, I am satisfied in all the circumstances of this case it would be appropriate to remit the case to the First-tier Tribunal for a fresh hearing on all issues and that none of the findings of fact reached by the First-tier Tribunal should be preserved.

Summary of Conclusions

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. I remit the appeal to the First-tier Tribunal for a fresh determination on all issues. For the avoidance of doubt, none of the findings of fact made by First-tier Tribunal Judge S Gillespie are preserved.
3. The appeal is to be heard by a fresh constitution of the First-tier Tribunal, and not before First-tier Tribunal Judge S Gillespie.

Signed

Date 18 August 2017



Upper Tribunal Judge Rintoul