Upper Tribunal
(Immigration and Asylum Chamber) PA/09839/2018

THE IMMIGRATION ACTS

Heard at Glasgow	Decision & Reasons Promulgated
On 9 January 2020	**On 16 January 2020**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

L H

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by Katani & Co, Solicitors
For the Respondent: Mr M Clark, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals to the UT against a decision by Judge McGrade, promulgated on 12 October 2018, on grounds set out in her application dated 5 December 2018.

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2. (There appears to have been administrative confusion over whether the application was submitted timeously. It has been treated as if so made.)

3. UT Judge Stephen Smith granted permission on 10 October 2019.

4. The grounds firstly, at [2], allege error at [17 – 18] "by failing to be slow to draw adverse inferences from failure of the appellant to mention [her] religion [?] at screening interview". *Kavungu* [2002] UKIAT 00246 and *YL (Rely on SEF) China* [2004] UKIAT 00145 are cited.

5. The passage held adverse to the appellant is at page D7, respondent's FtT bundle, Q/A 5.4:

> Have you ever been detained, either in the UK or any other country, for any reason?
>
> No.

6. Mr Winter drew attention to D5, Q/A 4.1, where the appellant said she supported Taiwanese independence, consistently with her later account, and to D4, 3.2, where she was asked if she was ever fingerprinted in any country *"including your own"* – words not included in the form at 5.4. He said this showed scope for misunderstanding the later question. He referred also to F13, Q/A 54-55, the substantive interview, where the appellant said she had been arrested. He submitted that there was error in that either (a) there was, properly understood, no inconsistency, or (b) the matter was explicable, and an adverse inference had been too readily drawn.

7. The grounds at [3] challenge the decision at [20] over the evaluation of the appellant's evidence about being required to report. Mr Winter had little to add. He said that the essential point was that the appellant's evidence about when she had to report might have raised questions, but it was not inconsistent.

8. The grounds at [4] maintain that the decision at [21] is simply a statement that the evidence is not credible, and is not a reason.

9. The grounds at [5] say that at [22-23] the FtT "recharacterised the evidence based on its own perception of reasonability".

10. The grounds at [6] allege error at [24] in finding the appellant to be of no interest to the authorities because she was not stopped or questioned on various trips in and out of China after her detention, because release from detention does not necessarily equate to absence of interest.

11. The grounds at [7], on family planning policy, were not pursued.

12. Mr Winter sought a remit to the FtT.

13. Mr Clark replied thus:

> On [2], *YL* is authority that discrepancies from screening interview do require explanation – see [16-17]. It was the appellant's case to make, and she did not suggest that she had been confused by the wording of the question. The question was clear. It was not for the judge to conjure up an explanation which she did not advance until this late stage.
>
> On [3], the judge was right to identify an inconsistency.
>
> On [4], the decision, read as a whole, provided a legally adequate explanation, identifying and resolving the issues – see [16, 17, 18-25 and 28].
>
> On [5], the reasons were sound, and not based on any false perspective.
>
> On [6], it was reasonable to infer a lack of interest.
>
> The grounds amounted only to disagreement on the facts, and did not show error on points of law.

14. I reserved my decision.

15. Ground [2] does not show that the judge took an incorrect approach to evidence derived from a screening interview. A clear discrepancy is correctly identified at [17]. The suggestion of misunderstanding the question is rather ingenious, but also rather farfetched. The question is plain. This possible explanation was not part of the case in the FtT, and is advanced too late.

16. The grounds at [3] may strictly be correct in saying that the appellant's evidence about reporting was much the same throughout. However, the underlying point, on looking at the evidence, is that she gave no comprehensible account of when she had to report, and whether this is analysed as an inconsistency or as something else, it was an obvious weakness.

17. The grounds at [4] are selective. Reasons are to be taken not only from [21] - no good reason to support Taiwanese independence, but from [17-19] - discrepancies; [20] - no comprehensible account of the reporting requirement; [22] - unlikelihood of an educated person being unaware that she could not in China freely support Taiwanese independence; the rapidity with which she would have become aware that strangers did not welcome approaches on the topic; [23-24] - travel in and out of China after risk allegedly arose, showing both that she had no fear and that the authorities had no interest; and [25] - no good reason for delaying claim in UK.

18. The grounds at [5] are only a disagreement put in generic terms of a legal error. The appellant's ability and willingness to travel in and out of China were obviously open to the judge's interpretation.

19. As to [6], the decision is based not on a presumption that release from detention is always the end of adverse interest, but on the specific facts of the case.

20. Together, the grounds do not amount to more than disagreement with factual conclusions which were well within the scope of the tribunal and for which a legally adequate explanation has been given. They do not disclose the making of any error on a point of law.

21. The decision of the First-tier Tribunal shall stand.

22. The FtT made an anonymity direction. The matter was not addressed in the UT. Anonymity is preserved.

13 January 2020
UT Judge Macleman