



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

Appeal Number: AA/06538/2013
AA/07668/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 6 April 2016**

**Decision & Reasons Promulgated
On 11 May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**YX
DH
HL
GH**

(ANONYMITY DIRECTION MADE)

Respondents

Representation

For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer

For the Respondents: Ms A Radford, Counsel instructed by Wilson Solicitors

Anonymity

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 respondents. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

DECISION AND REASONS

Introduction

1. By my decision promulgated on 13 October 2015 (appended to this decision), I set aside the decision of the First-tier Tribunal (“FtT”). I hereby remake the decision of the FtT.
2. The first respondent (hereinafter “the claimant”) is a citizen of China born on [] 1992. The other respondents are her children, born on [] 2010, [] and [] 2015. The claimant is married to a Chinese national, born on [] 1982, who has been in the UK since February 2003 and is the father of all three of the claimant’s children. He made an unsuccessful asylum claim over ten years ago and has remained in the UK ever since notwithstanding the absence of a lawful basis to do so. He claims to have an outstanding legacy application with the appellant (hereinafter “the Secretary of the State”). The claimant’s husband is not a party to these proceedings.
3. The claimant entered the UK in May 2009 and applied for asylum shortly thereafter. Her appeal was refused and the present appeal arises from the Secretary of State’s refusal letter dated 21 June 2013 which was supplemented by a further letter dated 11 July 2014.
4. The claimant claims that:
 - a. she has a well founded fear of persecution in China because
 - i. she is a Roman Catholic member of an unregistered church who was arrested and ill treated before leaving China; and
 - ii. she has three children and therefore is in breach of China’s family planning scheme; and
 - b. she and her three children have a family and private life in the UK such that their removal to China would be in breach of Article 8 ECHR.
5. At the error of law hearing I found that the FtT made an error of law because, in respect of the claimant’s asylum claim it (a) failed to follow the apparently applicable country guidance cases of *QH (Christians-risk) (China) CG* [2014] UKUT 86 (IAC) and *AX (family planning scheme) China CG* [2012] UKUT 00097 (IAC); (b) failed to give any reasons why it departed from those country guidance cases; and (c) failed to explain why those country guidance cases did not apply to the factual matrix in issue.
6. In respect of the FtT’s factual findings, I found that those relating to the claimant’s asylum claim, including her religious affiliation, her arrest in and departure from China, and her journey to the UK, should be preserved. The FtT did not assess the claimant’s Article 8 claim and to the extent it made any factual findings relevant to an assessment of the claimant’s (and her children’s) family and private life in the UK they were not preserved.

7. In remaking this appeal I have kept in mind, and applied, the lower standard of proof applicable in protection claims.

Preserved findings of fact relevant to the claimant's asylum claim

8. The claimant was born and grew up in Nanjing City in Jiangsu Province. She is an only child who, along with her parents, was a member of an unregistered Christian church group that consisted of around 50 people and would gather at her house every week. The group was led by a friend of her father. She would follow adult members of the church in publicising her religion by spreading information in public every two or three weeks.
9. In May 2009 a church meeting at her home was interrupted by the police and she, along with other members, including her parents, was arrested. She was taken to the police station where she was separated from her parents and taken to a Junior Rehabilitation Centre. She was locked in a tiny room and ill treated. The ill treatment, as described at paragraph 15 of the claimant's witness statement dated 9 January 2014, included being slapped, having her hair pulled and being kicked and a sharp needle being put through the gap between her nail and skin.
10. The claimant was detained for three days. Her release was facilitated by her uncle but she does not know how. The circumstances of the release were that a person wearing plain clothes approached her and said her uncle was waiting outside and she should leave as soon as possible. She was taken to a side door and told to run. She then got into her uncle's car and was driven to a remote area where she stayed for a week on her own. Her uncle arranged for her to leave China with an agent, who took her to the UK via Turkey, leaving her in China Town, London.

Evidence relevant to the Article 8 claim

11. The claimant filed a consolidated bundle of evidence dated 25 January 2016 along with a supplemental bundle dated 30 March 2016. The bundles include witness statements from four individuals who gave oral evidence before me: the claimant, her husband, a youth work team manager Peggy Jhugroo who has known the claimant since 2009 or 2010, and Xue Wen Pan, a pastoral worker at the Chinese Church in London who first met the claimant in October 2009. Apart from Ms Jhugroo, the witnesses gave evidence through an interpreter.
12. In addition, the bundles include witness statements from Nicky Stoupe, who is an advisor specialising in work with unaccompanied asylum seeking children; Sarah Bloom, who is a manager at an agency in Wandsworth that works with young mothers; Saskia Dodds-Smith, who is a Youth Worker for Wandsworth Council; Mary Walsh, a child minder who knows the claimant's family very well; and David Yi Dai, who was a pastoral worker at the Chinese Church until September 2012 who has known the claimant since 2009.

13. I confirm that in making findings of fact in respect of the claimant's Article 8 claim, I have taken into account the evidence provided from the aforementioned nine witnesses as well as the other evidence submitted in support of the claimant's claim including, inter alia, educational certificates relevant to the claimant and her two elder children, letters from the Chinese Church and the claimant's eldest daughter's school.
14. The evidence of the nine witnesses is broadly consistent and is to the effect that:
 - a. The claimant and her children are well-integrated into, and enjoy being a part of, society in the UK. The claimant has made great strides to build her life in the UK. She is responsible and well respected member of society who provides good care for her children.
 - b. The claimant and her children attend an English language church as well as a Chinese Church and Christianity is a fundamentally important part of their lives. The claimant volunteers at a "Young Mum's group".
 - c. The claimant's two elder children are in year 1 and nursery, where they are both happy and well integrated, with English being their first language (they understand, but are reluctant to speak, Mandarin). The child in nursery is hearing impaired and wears a hearing aid. He is seen in school once a month by a speech therapist. The two elder children have friends and socialise outside the Chinese community. Ms Jhugroo commented that their favourite foods are "fish and chips" and "McDonalds".
 - d. The claimant has made efforts to learn English and ensure her children speak English (despite Chinese being the language used between her and her husband). She does not limit herself to the Chinese community.
 - e. The claimant made some efforts, through the Red Cross and letter writing, to contact her family in China but has not managed to make contact with them.
 - f. The claimant finds the notion of having to return to China and raise her children there devastating and is fearful as to what will happen to them. She has also found the appeal extremely worrying. She has seen her GP about depression and was referred in December 2015 to see a psychologist, with whom (at the time of the hearing) she had had three sessions. Peggy Jhugroo describes seeing a significant deterioration in the claimant's mental health since around December 2015 and thinks she needs help and support.
 - g. The claimant lives with her husband. He states that his life with his wife and children makes him happy and feel like he has come into his own. In his statement dated 9 January 2014 he states that "watching my children grow and attend school in this country has made me very proud and happy".

- h. The claimant's husband states that he will not go to China with his wife and three children. In cross examination, the claimant responded to questions about why her husband would not travel with her to China by stating that it was his decision. In cross examination, he said he could not go back to China because of the risk he faced and that he was gathering more evidence, at the suggestion of his solicitors, to make a new asylum application. He said that his solicitors had not told him what evidence to obtain - only that he needed some; and that he was trying to obtain records from police in China.
15. The claimant submitted a report dated 18 March 2016 by clinical psychologists Dr Chisholm and Dr Whittaker-Howe. The report was based on a single assessment which took place on 16 March 2016, with an interpreter, lasting approximately three hours. The report describes the claimant as having had a significant deterioration in mood after her asylum application was rejected and persistent anxiety about being returned to China. The report concludes that based on the claimant's self report she meets the diagnostic criteria for Major Depressive Disorder and that it is highly unlikely she was malingering, feigning or exaggerating. The diagnosis is said to result from her current circumstances and be exacerbated by the lack of controls she has over her current situation. The report also states that the claimant's mental health is impacting on her ability to care for her children. The report states that the children are well cared for and securely attached to their father and that "they will be harmed from the separation of their father". It concludes that her mental health "will likely worsen if she is returned [to China], further harming her ability to parent and placing her and her children at risk."
16. I have also considered a report by Judith Jones, an independent social worker, dated 22 April 2014 and based on a day spent with the family on 12 March 2014. An interpreter was required. Inter alia, she described the claimant and her husband as having a good and affectionate relationship and the children being attached to them. She commented that the claimant's husband is the main care giver with the children being as attached to their father as to their mother. She described the emotional impact of the family being separated as devastating. She said she took very seriously the claimant's husband's words about what he and his wife mean to each other and that
- "... they fulfil in each other the sense of family which they have both lost. Were they to lose this I would predict that both would be devastated and this would impact on the parenting of their children"
17. Ms Jones is pessimistic about how the claimant would cope with (at that time, just two) children in China and it was her "firm" opinion that it would cause significant harm if the children were not able to stay in the UK with both parents. She explained that
- "... the children are at a pivotal stage in their attachment to both parents. Currently all is going well. The consequence of this process being disrupted or broken are very serious indeed."

Findings of fact

18. The following findings of fact are additional to the findings of fact that have been preserved from the First-tier Tribunal, as described above.
19. Having considered all of the evidence before me (both oral and written), I find the claimant to be a credible witness who has given an accurate description of her family circumstances in the UK. The evidence she has given has been internally consistent, and is consistent with that of the professionals and friends who have given evidence in support of her case.
20. I did not, however, find her husband to be a credible witness. He was evasive and ambiguous when questioned about his immigration status. In his witness statement he refers to having an outstanding legacy application. The reality of his position, however, is that he made an unsuccessful asylum application in 2003 and has since remained in the UK without having a lawful basis to do so. He claims to be planning to make a fresh application or appeal but acknowledged, under cross examination, that his solicitors told him he did not have enough evidence and would need to obtain such evidence (but did not indicate to him what in fact he would need).
21. The claimant's husband has said he will not accompany his wife and children to China.
22. The evidence of the independent witnesses (including that of Judith Jones, who is a very experienced social worker who had the opportunity to spend time with the family) is that the claimant and her husband have a close and loving relationship with each other and with their children. When asked why her husband would not travel with her and their children to China, the claimant responded that it was "his decision". In answering the same question, the claimant's husband gave an unclear and difficult to follow answer that talked about difficulties he had in China because of debts his father had accrued in his name running a book shop selling restricted books. My understanding is that he claims to fear both creditors (because of the debts) and the government (because of the books sold in the book shop).
23. The claimant's husband is in the UK unlawfully and has no right to work. His evidence is that he does not work and spends his time looking after his children. Moreover, the expert evidence (which I accept) is that he is a caring and involved parent who is strongly attached to his three children.
24. Taking together all of the evidence relevant to the claimant's husband, I do not accept he would remain in the UK whilst his family are removed to China given that the consequence of this decision would be that he would be separated from his wife and she would be left having to manage three children on her own despite having mental health problems. Knowing that the expert view, as expressed clearly in Ms Jones' report, is that the

impact on his children of being separated from him could be devastating, I do not accept he would stay in the UK (where in any event he has no legal right to remain) without them.

25. Accordingly, my findings of fact, which supplement the findings preserved from the FtT decision, are that:
- a. The claimant and her husband have three young children, the eldest of whom was born on 7 August 2010. They are a close and supportive family unit.
 - b. If the claimant is removed to China she will travel there, as a family unit, with her husband and three children.
 - c. The claimant and her children are well integrated into life in the UK. The two elder children attend school and nursery, have friendships with British children and prefer to speak English (although understand Mandarin). The claimant volunteers and has built strong and close relationships in the UK outside of the Chinese community (as well as within it).
 - d. The claimant is extremely worried about returning to China and the outcome of this appeal and this has resulted in depression and a recent diagnosis of a Major Depressive Disorder.
 - e. The claimant is no longer in contact with her family in China, not having been able to establish contact with them.

Country Guidance Cases relevant to this appeal

26. QH (Christians-risk) (China) CG [2014] UKUT 86 (IAC). This is a recent decision based on a wide range of evidence, as set out in the appendices, including reports from Dr Hancock and Professor Aguilar. The headnote to QH states that the risk of persecution for Christians expressing and living their faith in China is “*very low, indeed statistically negligible*”. The risk to Christians who practice their faith in unregistered house churches is given specific consideration and it is found that there may be a risk of persecution for certain individuals who conduct themselves in such a way as to attract local authorities’ attention to them or their political, social or cultural views. Consideration is also given to internal relocation as a response to persecution and it was found that the lack of an appropriate hukou alone will not render internal relocation unreasonable or unduly harsh. Notwithstanding the finding that the number of Christians persecuted is very low, at paragraph [117] QH states that “*a fact-specific assessment is necessary in each case where a church or individual is said to be experiencing difficulties*”.
27. AX (family planning scheme) China CG [2012] UKUT 00097 (IAC). In this case, where expert evidence by Professor Aguilar, Dr Sheehan and Professor Hualing was considered, it was found that although in general there is no real risk of forcible sterilisation or forcible termination in China for a mother of more than one child such risk can arise if there is a crackdown in a returnees “hukou” area. It was also found that it may be

possible to avoid the risk by moving to a city. Paragraph [14] of the headnote states that, unless there is credible evidence of individual pursuit:

“The country evidence does not indicate a real risk of effective pursuit of internal migrant women leading to forcible family planning actions...Therefore, internal relocation will, in almost all cases, avert the risk in the hukou area”

28. AX recognised that persecution can arise from some of the consequences of breaching family planning rules. At paragraph [176] it states:

“The requirement to pay for education, contraception and medical care does not, without more, amount to persecution, but if there are factors individual to the family (such as, for example, the inability of the parents to support themselves because of injury or ill health), we accept that it is capable of doing so.”

Reports of Dr Sheehan

29. The claimant relies on the expert evidence of Dr Sheehan. I did not hear oral evidence from Dr Sheehan but I have considered her detailed report dated 16 January 2014 along with her supplemental reports. Her reports address both the risk arising from the claimant’s practice of Christianity as well as her contravention of family planning rules.
30. Dr Sheehan has produced an extensive and detailed analysis. She concludes that the government is intensifying efforts to collect information on house churches such that anyone connected to such churches could be targeted and is at an increased risk of detention. She expressed disagreement with the Upper Tribunal in *QH*, who she considered had failed to take account of a whole category of house church classified as “evil cults”. At paragraph [6] of her supplemental report dated 20 October 2014 she questioned the credibility of the *QH* for describing the risk to Christians as “virtually negligible”. She states that shortly after *QH* was promulgated the Chinese authorities started an extensive campaign against churches in a region that in *QH* had been presented as an example of a thriving Christian community.
31. In respect of the claimant’s breach of family planning law, Dr Sheehan’s view was that the claimant would be at risk of forced sterilisation. She also considered that the claimant would be required to pay a very substantial fine and that internal relocation would not be an option because of the difficulties that this would entail in respect of her children. She considered that the claimant and her family could become destitute.

Reports of Stephanie Gordon

32. The claimant has submitted a report from Ms Stephanie Gordon dated 16 March 2015 along with two supplemental reports (27 January 2016 and 16 March 2016). Ms Gordon states in her reports that notwithstanding the recent change in China to a two (rather than one) child policy the claimant

would still be at risk because of her third child, which places her in breach of the family planning rules, and would likely face the risk of forced sterilisation as well as the requirement to pay a significant “social compensation fee”. Being “forced” could take the form of the bureaucratic system effectively forcing sterilisation by making access to a hukou for her child conditional on it. In addition, failure to pay the “fee” would give rise to a risk of hukou registration for her third child being withheld, repeated detentions and freezing of her bank accounts until it was paid. Her child, denied a hukou, would not be able to access education or obtain ID documents. Moreover, internal relocation would not avoid the requirement to pay the fee.

Other materials

33. The claimant submitted various articles and reports with up to date information on China and I confirm I have read and considered these alongside the reports of Ms Gordon and Dr Sheehan.

Discussion

34. I address firstly the claimant’s claim that she faces a risk of persecution arising from her Christianity.
35. My starting point is to assess her claim in light of *QH (Christians-risk) (China) CG* [2014] UKUT 86 (IAC). I have considered the criticisms of *QH* made by Dr Sheehan but do not accept them. *QH* is a well reasoned and thoughtfully drafted decision where it is apparent the Upper Tribunal has engaged in detail with a wide range of evidence pertaining to the situation for Christians in China. I am not persuaded by Ms Radford’s submissions, based on the arguments made by Dr Sheehan in her report, that I should depart from *QH*, either because it misinterpreted the information before it and thereby underestimated the risk to Christians or because since the decision was made the condition for Christians has substantially, and in a way that is material to the claimant’s claim, deteriorated.
36. *QH* makes it clear that the vast majority of Chinese Christians, including members of unregistered churches, do not face a real risk of persecution as a consequence of their religious faith or practice and are able to worship in communities as they wish to. Indeed, the general conclusion in *QH* is that Christianity is “flourishing” with individuals moving freely between State and unregistered churches. The headnote to *QH* describes the risk to Christians as being “*statistically virtually negligible*”.
37. However, *QH* recognises that some Christians may face a risk of persecution. Paragraphs 4(iv) and (v) of the headnote state:

(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.

38. For the reasons I will now explain, I am satisfied that there is a reasonable degree of likelihood that the claimant will be at risk of persecution on return to China. The risk does not arise from the way she would wish to practice Christianity and manifest her faith in China - the claimant practices her religion in a private and family orientated way that would not attract the attention of authorities and which *QH* makes clear would not lead to persecution. Rather, the risk arises from the circumstances surrounding her detention in 2009 and the implications this has for the likely interest the authorities will have in her. Applying paragraphs 4(iv) and (v) of the headnote to *QH* to the specific and particular circumstances of the claimant, I find as follows:

- a. The claimant worshiped in an unregistered church which met in her house with her father having a senior position in that church. One of the practices in which she engaged was going into public to spread her beliefs once every two or three weeks along with the adult members of her church, whose lead she would follow. These factors, by themselves, fall significantly short of placing her at risk and do not explain why the authorities would be interested in her.
- b. In 2009 the claimant was arrested along with her family at her home whilst a church service was ongoing. She was then separated from her family and interrogated and subjected to ill treatment. The claimant does not know why her church (and her family) were singled out in this way, which is understandable given her age at the time. What is clear is that detention she experienced is not commonplace. The evidence from *QH* does not support it being other than very rare indeed for someone with no leadership role or particular significance in a church (other than being a child of one of the leaders) to find herself subjected to detention. The fact of this detention having taken place (which is a preserved finding from the FtT) indicates that the claimant attracted, in a most serious way, the attention of the authorities, although the actual reasons for this remain unclear.
- c. The circumstances of the claimant's release from detention were highly irregular. She fled from detention (her uncle having facilitated her release by means the claimant was unable to explain) and then remained in hiding, in a remote area, until leaving China. As the claimant left detention without authorisation to do so, it follows that she may be of continuing interest to the authorities as someone who

absconded or is thought to possess information that remains of interest to the authorities.

39. QH recognises that a person who is subject of an arrest warrant or is on a black list may be at risk of persecution and unable to avoid that risk by locating internally. Given the circumstances in which the claimant left detention, I find there to be a reasonable degree of likelihood that she is subject to an arrest warrant or is otherwise of continuing interest to the authorities.
40. As stated at paragraph [117] of QH:

“... a fact-specific assessment is necessary in each case where a church or individual is said to be experiencing difficulties”.
41. QH, who was never subject to detention and ill treatment. Given the circumstances of the claimant’s detention and escape from detention (which are preserved findings of fact from the FtT) there is, in my view, a real and substantial danger that she is of continuing interest to the authorities and that on return she will be (a) at risk of persecution in her local area; and (b) unable to avoid persecution by moving to another part of China.
42. Accordingly, the claimant’s asylum appeal is allowed.
43. Having allowed the claimant’s appeal on the grounds described above, it is not necessary for me to consider the other aspects of her claim. However for completeness I note that I would not have allowed her asylum appeal had it been brought solely on the basis of risk arising from having three children and thereby being in breach of family planning laws. It is clear from AX (family planning scheme) China CG [2012] UKUT 00097 (IAC) that if the claimant were to face problems in her local area she could relocate internally. Whilst this would entail difficulties, there are no particular factors in her case (where she would have the benefit of travelling with and receiving support from her husband) that would elevate these to the level of persecution.
44. I also would not have allowed the appeal under Article 8 had the claimant not succeeded in her asylum claim. In brief: in respect of her Article 8 claim, the issue to be determined under the Immigration Rules is whether, pursuant to paragraph 276ADE(i)(vi), there would be “very significant obstacles” to her integration into China. She would certainly face some obstacles. These include that: she will be travelling and will need to start a new life with three young children; she suffers from serious depression that affects her ability to parent her children and this may be exacerbated given her strong wish to remain in the UK; she may need to relocate internally having breached the family planning laws; and she may be denied a hukou for one or more of her children and face significant financial penalties. On the other hand, she is a Chinese national who has lived most of her life in China, speaks Chinese, practices her faith in a Chinese Church and is married to a Chinese national who would be

accompanying her to China. Weighing these factors, whilst I accept the claimant will face difficulties and obstacles, given in particular that she would be travelling as a family unit with her husband (who has consistently provided a caring and supportive role to her and her children) I am not satisfied that the “very significant obstacles” threshold is met.

45. In respect of the claimant’s Article 8 appeal outside the Rules, she (and her children) clearly have a private life in the UK such that Article 8 is engaged and therefore it is the proportionality of their removal that is at issue. The best interests of the claimant’s children are of particular significance in assessing proportionality. Whilst I accept that their best interests may be to remain in the UK with their parents, there are countervailing factors which suggest their interests lie equally in moving to China, so long as it is with both parents. They understand Mandarin, are Chinese citizens and both their parents are Chinese. They are still at an age where their primary focus is their parents and above all else their best interests are to remain with both parents. Having regard to the best interest of the children, as well as the mandatory considerations in s117 of the Nationality Asylum and Immigration Act 2002 (none of which assist the claimant), I am satisfied that, were it not for the claimant’s successful asylum claim, there would not be compelling reasons to allow the appeal under Article 8 outwith the Rules.

Decision

46. The decision of the FtT promulgated on 28 May 2015 was set aside. I substitute a decision whereby I allow the appeal on asylum grounds.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 5 May 2016