



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

Appeal Number: AA/09748/2013

**THE IMMIGRATION ACTS**

**Heard at Newport**

**On 9 March 2016**

**Decision & Reasons  
Promulgated  
On 13 April 2016**

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**Y L  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr C McWatters instructed by Migrant Legal Project  
For the Respondent: Mr I Richards, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The anonymity order imposed by the Upper Tribunal in its error of law decision of 18 December 2015 remains in force.

**Introduction**

2. The appellant is a citizen of the Republic of China who was born on 27 February 1988. She arrived in the United Kingdom on 16 April 2007 and claimed asylum. The basis of her claim, at that time, was her involvement with the Falun Gong.
3. On 9 October 2013, the Secretary of State refused the appellant's claim for asylum, humanitarian protection and under the European Convention on Human Rights.
4. The appellant appealed to the First-tier Tribunal and, in a determination dated 13 December 2013, Judge Britton dismissed the appellant's appeal. That decision was subsequently set aside by the Upper Tribunal in a decision dated 27 March 2014. The remitted appeal was heard in the First-tier Tribunal by Judge Povey on 28 January 2015. In a decision dated 16 February 2015, Judge Povey also dismissed the appellant's appeal on all grounds. He rejected the appellant's claim based upon her involvement with the Falun Gong. However, before Judge Povey, the appellant also relied upon the fact that since arriving in the UK she had become a Jehovah's Witness and now claimed to be at risk because of her faith on return to China. Judge Povey accepted the appellant's evidence that she was a Jehovah's Witness but dismissed her claim based upon the country guidance case of QH (Christians – risk) China CG [2014] UKUT 86 (IAC) on the basis that she had not established a well-founded fear on return.
5. The appellant appealed to the Upper Tribunal and, in a decision dated 18 December 2015, I concluded that Judge Povey's decision involved the making of an error of law on the basis that he had failed properly to consider the background evidence in relation to the position of Jehovah's Witnesses in China. As a consequence, I set aside Judge Povey's decision and the appeal was re-listed before me on 9 March 2016 in order to remake the decision.

### **The Hearing**

6. At the hearing, I admitted without objection from Mr Richards a consolidated bundle of documents including documents previously not before the First-tier Tribunal pursuant to rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended) (the "bundle"). In addition, the appellant briefly gave oral evidence before me and adopted her statements dated 15 January 2015 (at A1-2 of the bundle) and dated 26 February 2016 (at E1-2 of the bundle).
7. I heard oral submissions from both parties' representatives. Mr McWatters, who represented the appellant, also relied upon a skeleton argument dated 8 March 2016.

### **The Appellant's Evidence**

8. Mr Richards, on behalf of the respondent accepted that the appellant was a witness of truth in respect of her faith and, therefore, I can briefly deal with her written and oral evidence.
9. In her evidence, the appellant told me that she had become a member of a Jehovah's Witness congregation since she has been in the UK. Her involvement is supported by a number of letters of support by members of that congregation in Section E of the bundle. The appellant told me that she has not yet been baptised but that is likely to happen this year. In cross-examination, the appellant said that she had not yet been baptised because she did not think that at the moment her level of knowledge of the religion was enough and that she needed to know more about it before she was baptised.
10. The appellant said that once she is baptised she would be accepted as someone who could preach the Jehovah's Witness faith. She said that she could go out and preach to other people and introduce her religion to others. It was not possible for her to do that until she was baptised. She said that it was accepted that all Jehovah's Witnesses would do their best to preach to others. She said that this could involve knocking on doors and distributing leaflets and explaining and discussing the religion to the occupants or it could involve standing on streets, for example outside post offices or train stations with leaflets on a cart which were handed out to those passing. The appellant said this was what she would do, as a baptised Jehovah's Witness, if she were returned to China. The appellant said that she would do this even if she was not allowed to preach in China because that was her religion.

### **The Law**

11. In this appeal, the appellant relies upon the Refugee Convention. The burden of proof is upon the appellant to establish that she has a well-founded fear of persecution on return to China for a Convention reason, namely her religious belief. The appellant must establish a real risk of persecution, namely serious ill-treatment for that Convention reason.

### **The Issues**

12. The appellant relies upon the Refugee Convention. No reliance is placed upon Art 8.
13. The issue is whether the Appellant has established a real risk of persecution because of her religious beliefs if returned to China.
14. On behalf of the appellant, Mr McWatters submitted that the Appellant has established such a risk based upon her faith in the light of the background evidence and the country guidance decision of QH dealing with the risk to Christians who choose to worship in unregistered churches and to conduct themselves in such a way as to attract attention. He drew my attention to a number of background documents in Section C of the bundle and at E23-

36. He submitted that the appellant belonged to an unregistered church, her faith required her to preach or proselytise and, as a consequence, she would be at risk of persecution or serious ill-treatment.
15. Mr Richards, accepted that the appellant was a Jehovah's Witness and, indeed, as regards her faith he accepted that she was a witness of truth. He did not specifically accept the appellant's evidence as to how she would behave - by preaching, etc. - if returned to China but also he did not make any positive submissions to the effect that I should not accept her evidence.
16. Instead, Mr Richards submitted that the objective evidence on the treatment of Jehovah's Witnesses in China was extremely limited. He accepted that there were Jehovah's Witnesses in China but not a great many. He submitted that the evidence failed to establish that they were persecuted. The material related only to Christians in general in China. He referred me to the Home Office's policy document, "Country Information and Guidance China: Christians" (13 June 2014) at D11-26 of the bundle. This, he submitted, in the "policy summary" (at D16) reflected the CG case of QH. He submitted that the appellant had not established that she fell within a category of Christian who would be at risk on return given the lack of objective evidence that Jehovah's Witnesses were persecuted in China.

## **Discussion**

17. In his submissions, Mr McWatters placed reliance upon the country guidance decision of QH and, in particular, para (iv) of the headnote which reads as follows:
- "There may be a risk of persecution, serious harm, or ill-treatment engaged in international protection for certain individual Christians who choose to worship in unregistered churches and who conduct themselves in such a way as to attract a local authorities' attention to them or their political, social or cultural views."
18. On the basis of the evidence, and indeed the concession by Mr Richards, I accept that the appellant is a Jehovah's Witness who will shortly be baptised into the faith. An integral part of the Jehovah's Witness faith is that they should preach to others. I accept the appellant's evidence that she would do so in China. That this is part of the creed of a Jehovah's Witness is supported by the background evidence (see, Refugee Review Tribunal, Australia research report dated 14 November 2005 at C6 of the bundle referring to Jehovah's Witnesses engaging "in persistent door-to-door proselytising...". I accept the appellant's evidence that it is part and parcel of her faith to preach and proselytise her faith in the way she described in her evidence either by knocking on the doors of individuals' homes and speaking to them or by displays in public seeking to spread their faith.

19. Mr Richards did not seek to argue that there were no Jehovah's Witnesses in China. Their presence, albeit as a small community, is noted in the background documents dating back to 2000 (see Immigration and Refugee Board of Canada, "China: status and treatment of Jehovah's Witnesses, particularly in Fuqing, Fujian (1999 - 2000) at C1 of the bundle"). That report also notes that: "Jehovah's Witnesses are still not permitted to register and have in the past been arrested and detained for participating in prayer study ...".
20. Likewise the Refugee Review Tribunal research document dated 14 November 2005 (at C3 of the bundle) also records the presence of Jehovah's Witnesses in China up to 2005.
21. A "Forum 18 News Service" report published in Oslo (dated 16 September 2013 at C23 of the bundle) states at C24 that a range of faiths including Jehovah's Witnesses "certainly exist among foreign nationals working in China, as well as possibly some local people, but have little visible presence so far." That document continues to state: "Any religious practice they undertake similarly entails risk."
22. Finally, on this matter, I have found particularly helpful the Australian Refugee Review Tribunal, "Country Advice for China in relation to Jehovah's Witnesses" (dated 4 February 2011) (at C11-C16 of the bundle) particularly helpful as it contains the most detailed and up-to-date information relevant to this appeal.
23. At the outset, that document sets out the presence of a small community of Jehovah's Witnesses as follows (at C11):

"While several sources refer to a small population of Jehovah's Witnesses existing in the People's Republic of China (PRC), limited recent information was found on their geographical distribution and treatment. Practicing Jehovah's Witnesses do not follow a state-sanctioned religion and as such their practice is considered outside the 'normal' activity of registered religious organisations. Chinese authorities remain active in controlling unregistered religious activity, including in Shandong Province. Western sources express concern for small and unregistered communities in China, explicitly including Jehovah's Witnesses. Nevertheless, access to Jehovah's Witnesses were found. Nevertheless, access to Jehovah's Witness websites do not appear to be blocked in China and only limited reports of suppression of Jehovah's Witnesses were found.

Sources indicate that there is a small population of Jehovah's Witnesses in China, although exact numbers were not found outside of Hong Kong Special Administrative Region, where the United States Department of State estimated that there were 4600 followers in 2009. The Watchtower statistical report for 2010 does not contain a section for China but reported 5156 followers across 64 congregations in Hong Kong."

24. The report goes on to note that their ability to worship is restricted and their ability to proselytise is prohibited (at C11):

“The small community and scant statistical information are not surprising given that as discussed below, congregations of Jehovah’s Witnesses are not able to register on mainland China, and also given that China does not allow proselytising in public or unregistered places of worship.”

25. The document confirms (at C11) that:

“Jehovah’s Witnesses are not covered on the list of approved religions and are therefore not able to register.”

26. The report (at C12) notes the systematic religious suppression of certain groups in China but notes that:

“The reports do not contain specific examples of suppression relating to Jehovah’s Witnesses.”

27. The report goes on to note that Jehovah’s Witnesses are not on the officially banned “cult” list in China but that they remain unable to register their church and report, albeit from 2000 and 2005, incidents of arrest and detention of Jehovah’s Witnesses in China as a consequence of practising their faith (at C13):

“Jehovah’s Witnesses are not on China’s list of officially banned ‘cults’ and sources did not report any specific mention of Jehovah’s Witnesses by the Chinese representative at the committee meeting. Nevertheless it is noted that under Article 300 of Chinese Criminal Law, use of ‘superstitious sects or secret societies or weird religious organizations’ to undermine the state carries a penalty of three to seven years’ imprisonment.

Sources suggest that practicing Jehovah’s Witnesses may face resistance from the state by virtue of falling outside the list of recognised religions, as noted above. In 2006, Forum 18 proposed that church unity, or religious hegemony within allowed religions, was important for the Chinese state in maintaining social order. Therefore the state was ‘unlikely to look favourably’ on smaller religious communities, including smaller Christian denominations, attempting to formalise their existence:

This political logic also means that the state is unlikely to look favourably toward any attempt to introduce and seek recognition for religions such as Jews, Baha’i, Hare Krishna devotees, and Jehovah’s Witnesses – all of whom exist in China. Without a fundamental relaxation of controls, recognition of other religions would require the commitment of additional state resources – which are already over-extended – to “manage” these religions. At the very least, if the existing approach to control is maintained, recognising “new” religions such as Judaism and the Baha’i Faith would require new patriotic religious organisations, similar to the

TSPM for Protestant Christianity and the Catholic Patriotic Association (CPA) for Catholicism.

An Immigration and Refugee Board of Canada response dated 6 September 2000, quoting advice from the Watch Tower Bible and Tract Society of Canada, did report that Jehovah's Witnesses were not able to register with the government and that incidents or arrest and detention of Chinese Jehovah's Witnesses for participating in prayer study had occurred. In November 2005 the Australian branch of the Jehovah's Witnesses advised the Tribunals that to the best of their knowledge this information was still correct."

28. At C14, the report notes an incident in 2010 when a Jehovah's Witness from Malawi was turned down for a full scholarship in the Shandong Province.

29. Mr McWatters also referred me to the evidence in the "Forum 18 News Service" report (C23-27 of the bundle) that (at C23) :

"Unregistered Protestant and Catholic groups ... always face the prospect of state crackdowns."

30. Mr McWatters referred me to the documents at E23-36 reporting on the presence of Jehovah's Witnesses world-wide and the absence of any being recorded in China. He submitted that this was due both to the small size of the population and the fact that they do not wish to draw attention to themselves as an unregistered church. This is supported by the evidence (at C12) where, a February 2006 report from the Immigration and Refugee Board of Canada is cited. In that report, it is noted that in correspondence with the general counsel of Watchtower Bible Tract Society of Pennsylvania it is reported that he stated that

"it would be imprudent to disclose statistical information about Jehovah's Witnesses in China, including their geographical representation across the country".

31. The appellant must establish that there is a real risk of serious ill-treatment as a result of her following her faith in China. To establish that risk it must be "real, as opposed to merely fanciful" (see R v SSHD ex p Adan, Subaskaran and Aitseuer [1999] Imm AR 521 at 537 *per* Laws LJ). It is well recognised that the standard is lower than that in civil proceedings generally.

32. As I have said, I accept that there is a small community of Jehovah's Witnesses in China. The appellant would form part of that small community if she returned to China. I accept that she would seek to worship and preach (proselytise) on her return. She will shortly be baptised and that is a fundamental tenet of her faith. Her church is unregistered and, in my judgment, her legitimate manifestation of her religion would expose her to adverse interest and consequences from the Chinese authorities. In my judgment, she falls within the category contemplated by the Upper Tribunal in the country guidance decision of

QH at (iv) of the headnote. The attitude of the Chinese authorities to unregistered churches and its members who openly proselytise or practise their faith is identified in QH. It was not suggested by Mr Richards that if the appellant were of interest to the authorities in China that any risk to her would not fall within the category of “persecution” or “serious ill-treatment”. Whilst there are no current reports of ill-treatment to Jehovah’s Witnesses in China, there are past reports and I accept that the absence of such reports is explicable on the basis of the relatively small community that exists in China and the possible need to act “prudently” in reporting their presence.

33. Applying QH, the background evidence though limited is, in my judgment, sufficient in the context of the attitude of the Chinese authorities to those who belong to unregistered churches and preach or proselytise in public (and not just worship privately in homes) to satisfy the real risk test – the risk is more than merely fanciful or speculative – it is actual and discernible from the background material.
34. It was not suggested by Mr Richards that the appellant could safely internally relocate within China.
35. For these reasons, on the basis of the background evidence and the position as set out in QH in respect of Christians belonging to unregistered churches, I am satisfied that there is a real risk that the appellant would be subject to persecution or serious ill-treatment for a Convention reason if she returned to China.
36. For these reasons, the appellant has established that her removal would breach the Refugee Convention.

### **Decision**

37. For the reasons set out in my decision dated 18 December 2015, the decision of the First-tier Tribunal to dismiss the appellant’s appeal was set aside.
38. I remake the decision allowing the appellant’s appeal on asylum grounds.
39. No other grounds are relied upon.

Signed

A Grubb  
Judge of the Upper Tribunal



## Approval for Promulgation

Name of Upper Tribunal Judge issuing approval:	Dr A Grubb
Appellant's Name:	Y L
Case Number:	AA/09748/2013

Oral decision (please indicate)

I approve the attached Decision and Reasons for promulgation

Name:

Date:

Amendments that require further action by Promulgation section:

Change of address:

Rep:

Appellant:


Other Information: