



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

Appeal Number: AA/00179/2013

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
on 30 July 2013**

**Determination  
promulgated  
on 1 August 2013**  
.....

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**MEI MEI LIN**

**and**

Appellant

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

Respondent

For the Appellant: Mr Forrest, Advocate, instructed by Neil Barnes, Solicitor  
For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

- 1) The appellant is a citizen of China, born on 2 July 1988. The respondent refused her asylum claim for reasons explained in a letter dated 19 December 2012.

- 2) First-tier Tribunal Judge Kempton dismissed the appellant's appeal for reasons explained in her determination dated 7 February 2013.
- 3) On 6 March 2013 a Designated Judge of the First-tier Tribunal refused permission to appeal.
- 4) An application was then made to the Upper Tribunal for permission to appeal, on the following grounds:

... the First-tier Tribunal (hereinafter referred to as "the Tribunal") erred ... :

by failing to exercise anxious scrutiny. The Tribunal failed to consider the impact of questioning on return at the airport the appellant will face in terms of Country Guidance cases and also the impact of *HJ (Iran)* and *HT (Cameroon) v Secretary of State for the Home Department [2011] IAC 596*. The failure to have regard to a Country Guidance case whether put before the Tribunal or not will constitute an error of law (see *R (Iran) and others v Secretary of State for the Home Department [2005] Imm AR 535* at paras 28-34 per Lord Justice Brooke). The appellant will be questioned on return as she left illegally. She will be questioned about her time abroad and her asylum claim (see *WC (Illegal Departure - Failed Asylum Seeker) China CG [2002] UKIAT 03295* at paragraphs 6-9; *XH (Illegal Departure - Risk - Return) China CG [2002] UKIA 01478* at paragraph 16; *ZC and others (Risk - Illegal Exit - loan sharks) China CG [2009] UKAIT 00028*). The appellant is not expected to lie (see *HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department [2011] IAC 596* at paragraphs 35 and 82; *RT (Zimbabwe) v Secretary of State for the Home Department [2012] 3 WLR 345* at paragraphs 26, 51, 58; *R (on the application of Yameen) v Secretary of State for the Home Department [2011] EWHC 2250 (Admin)* at paragraph 83. At that point the appellant will be at real risk having regard to the authorities' attitude to those opposed to the regime, whether or not the appellant has been disbelieved by the Tribunal. Even if the appellant has been found to be subject to adverse credibility findings, the Tribunal has not considered the imputation of political belief to the appellant by the Chinese authorities. Where the reasons for the persecution is or may be the imputation by the persecutors of a particular belief or opinion one is concerned not with the correctness of the matter imputed or attributed but with the belief of the persecutor: the real reason for the persecution of a victim may be the persecutor's belief that she adheres to a particular faith even if in truth the victim does not hold those opinions it has to be borne in mind that the reason is that in the mind of the persecutor for inflicting the persecutory treatment (see *Sepel and Bulbul v Secretary of State for the Home Department [2003] 1 WLR 856* at paragraph 22). The Chinese authorities will be aware that the appellant has expressed an interest in opposing the regime. In light of the country information that is sufficient for the appellant to be at real risk that the Chinese authorities will impute that she is against the regime. The Tribunal has not assessed, notwithstanding the adverse credibility findings, whether the appellant would be at real risk on return. Had the Tribunal exercised anxious scrutiny in this regard it would not have reached the decision it did. Further even if the appellant gets through the airport, the question still has to be answered whether the appellant would be at real risk by virtue of not being able to live openly and expressing her political opinion (see *HJ (Iran)*, *supra* and *RT*, *supra*).

- 5) The grounds do not take issue with the adverse credibility finding, and do not insist on any case based on Chinese family planning policy or under Article 8 of the ECHR.
- 6) On 10 April 2013 I granted permission to appeal, giving the following reasons:

The application is now in full form, which was not before the FtT judge who refused permission. It relies upon a number of propositions which appear rather tenuous, such as that the FtT by exercising anxious scrutiny should have perceived a case not argued to the FtT, where the appellant had the same solicitors; that country guidance establishes that she is likely to be questioned by the authorities; that the authorities may impute any opinion to her; and that she is entitled to protection against inability to express any opinions she may have. However, the present question is not how the grounds may ultimately be resolved, but whether they are sufficient for debate and answer. That threshold is crossed.

- 7) Mr Forrest (who is not the author of the grounds) pointed out immediately that they contain a factual inaccuracy. They are drawn on the basis that the appellant left China illegally, whereas it has always been clear that the appellant came to the UK legitimately as a student.
- 8) Mr Forrest sought to develop the grounds on the basis of failure to exercise anxious scrutiny (1) by failing to evaluate the actual risk on return (2) by misunderstanding the nature of the appellant's actual political opinion and (3) by failing to take account of political opinion which might be imputed to the appellant by the Chinese authorities.
- 9) On the first point Mr Forrest referred to XH at paragraph 16, which states:

In any event [the alleged risk] has to be seen in the context of the objective evidence as a whole. A telephone interview with [a country expert] said that migrants who return to China are normally taken to the border patrol education camp in Fujian Province where they are interrogated by Chinese authorities to find out how they were smuggled out of the country and then given a fine between the equivalent of \$1,800 to \$3,600 (Canadian). Those who pay the fine are released immediately and those who cannot pay are sent to "re-education through labour" custody for up to a year.
- 10) Mr Forrest submitted that the situation of the appellant as a returned failed asylum seeker could be equated to the above, and there was no reason to think that the risk of being sent to a camp and interrogated would not apply to her. The First-tier Tribunal failed to take that into account.
- 11) On point two, Mr Forrest suggested that the judge doubted that the appellant's activities on the internet came to light as she claimed, but did not doubt that she held a political opinion as she claimed. The determination failed to make a positive finding on whether the appellant was active on the internet, a matter which the judge had been under an obligation to decide.
- 12) On his third point, Mr Forrest said that although the judge had not explicitly been invited to decide the issue there was background evidence which suggested that the Chinese authorities might attribute a political opinion to a returnee. On the authority of Sepet and Bulbul it was irrelevant whether the appellant actually held any opinion at all.
- 13) These 3 points together, it was said, amounted to failure to exercise anxious scrutiny. The decision should be set aside and the case sent for rehearing in the First-tier Tribunal.

- 14) Mrs O'Brien said that the grounds of appeal to the Upper Tribunal and the arguments now put forward were not reflected in the grounds of appeal, the skeleton argument or the submissions in the First-tier Tribunal. The appellant's representatives approached the case in the First-tier Tribunal as turning crucially on credibility. The appellant had not shown that novel grounds should now be taken into account, and the points raised were not "Robinson obvious". The grounds did not raise any real issue of not following country guidance, because that part of grounds was now conceded to be based on a factual inaccuracy. The somewhat historic country guidance cases arose from instances of illegal departure and people smuggling, not from return of failed asylum seekers. The appellant had not sought to produce any background evidence, even at this stage, to demonstrate such a risk as she claimed. The judge (on a full and fair reading of her determination) had not disbelieved only that the appellant was identified as an opposition cyber activist, but that she engaged in such activity. At paragraph 22 the judge found that the appellant knew nothing about the party with which she claimed to have been involved. The judge did not have to consider any case of risk arising from imputed political opinion, which was not put to her, and which did not obviously arise. Even if the judge had looked at such a case, it was not made out by any authority or background evidence. The determination should stand.
- 15) I reserved my determination.
- 16) The appellant was not smuggled out of China. She left in the regular way on her own passport. She can return the same way. Even if she did not remove of her own initiative (as she is obliged to do, if and when her appeals are exhausted), ZC and others held that individuals returning to China after unsuccessful asylum claims were not reasonably likely to be imprisoned or subjected to administrative detention for having left China unlawfully.
- 17) The proposition that the appellant might be forced into disclosing that she made a false claim of political activity against the authorities is as far-fetched as it appears at first sight. The country guidance cases cited in the grounds do not vouch the proposition that the appellant will be questioned about her time abroad or her asylum claim. Nor is there background evidence that the Chinese authorities will be interested in exploring the nature of her asylum claim.
- 18) The credibility finding in the determination, read fairly and as a whole, is not only against the appellant having been identified as an opposition cyber activist, but against her having engaged in such activity at all.

- 19) The final proposition in the grounds that the appellant might be at risk by virtue of not being able to live openly and to express her political opinion cannot sit with the adverse credibility findings.
  
- 20) The grounds somewhat ingeniously attempt to construct a line of argument by which anyone from China might simply by the fact of seeking asylum become entitled to protection. They are not well grounded in the individual facts of the case, in country guidance, or in background evidence.
  
- 21) The determination of the First-tier Tribunal shall stand.
  
- 22) No anonymity order has been requested or made.

A handwritten signature in black ink that reads "Hugh Maclemon". The signature is written in a cursive style with a large, stylized initial 'H'.

30 July 2013  
Judge of the Upper Tribunal