



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006206

First-tier Tribunal No: PA/51678/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

22nd September 2023

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

JW
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Briddock of Counsel, instructed by Milestone Solicitors
For the Respondent: Ms A Nolan, Senior Home Office Presenting Officer

Heard at Field House by remote video means on 4 September 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by video, using Teams. There were no technical difficulties for the hearing itself and the papers were all available electronically.

2. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Cruthers dated 17 November 2022 in which the Appellant's appeal against the decision to refuse his protection and human rights claims dated 25 March 2021 was dismissed.
3. The Appellant is a national of China, born on 13 May 1982, who claims to have left China in July or August 2004 and came to the United Kingdom (either flying directly or via France and Germany on a cruise ship) on an unknown date. The Appellant claimed asylum on 19 March 2019. The basis of the Appellant's claim was that he was at risk on return to China as a Pentecostal Christian with the True Jesus Church, whose church in his home area had been raided by the authorities in 2004.
4. The Respondent refused the application the basis that whilst it was accepted that the Appellant was a Chinese national and a Pentecostal Christian, it was not accepted that he had any preaching role in the Church, nor that it had been raided, nor that he had left China illegally, based on inconsistencies in the claim and the Appellant's credibility being damaged by section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004. As such there would be no risk on return to the Appellant, as Protestantism is accepted by the Chinese authorities and in accordance with the country guidance in QH (Christians – risk) China CG [2014] UKUT 86 (IAC). The Appellant did not meet any of the requirements of the Immigration Rules for a grant of leave to remain on private or family life grounds and there were no exceptional circumstances to warrant a grant of leave to remain outside of the rules.
5. Judge Cruthers dismissed the appeal in a decision dated 17 November 2022 on all grounds. It was accepted that the Appellant had attended the True Jesus Church in Fuzhou, China which had been raided by the authorities in around May or June 2004. In the United Kingdom the Appellant was found to have some attendance at a church in London and Edinburgh, but there was no claim of regular attendance and no corroborative evidence of any involvement in either church. The First-tier Tribunal did not accept that the Appellant had any aspiration to be a preacher, nor that he had embarked on any training for this. The First-tier Tribunal considered the background country evidence available and concluded that the Appellant had not established that the True Jesus Church was outside of the official recognised Christian church in China and whilst there was some departure from the country guidance case based on the Respondent's Country Policy and Information Note on Christians in China, November 2019 (the "CPIN"), overall the Appellant had not established that he would be at risk on return, whether or not the True Jesus Church was state registered. Finally the Appellant's removal would not be a disproportionate interference with his right to respect for private life so there was no breach of Article 8 of the European Convention on Human Rights.

The appeal

6. The Appellant appeals on three grounds as follows. First, that the First-tier Tribunal materially erred in law in going behind the Respondent's concession in the reasons for refusal letter that the True Jesus Church was an unregistered church and failed to give reasons as to why the Appellant would not be at risk in an unregistered church. Secondly, that the First-tier Tribunal materially erred in law in reaching an irrational and unsupported conclusion that the Appellant was not at risk on return to China despite departing from the country guidance in QH. Finally, that the First-tier Tribunal materially erred in law in misapplying the tests

in HJ (Iran) v Secretary of State for the Home Department [2010] UKSC 31 by making a subjective assessment of what the Appellant would do on return to China and taking into account his delay in claiming asylum as relevant to the second objective test of risk on return to China.

7. At the oral hearing, Mr Briddock relied on the written grounds of appeal and made submissions in accordance with them. In relation to the first ground of appeal, it was submitted that paragraph 57 of the reasons for refusal letter is quoted from in the First-tier Tribunal decision, but there is then no reference to paragraph 60 which contains a clear concession that the True Jesus church was not a state registered church in China, albeit that it was not on a list of places branded as a cult. The First-tier Tribunal decision does not make any reference to the concession and in the absence of any representative for the Respondent at the hearing, the issue was not raised orally.
8. The second ground of appeal concerns the finding that the Appellant was not at risk on return despite the departure from the broad brush approach in QH that most were not at risk in an unregistered church. The Appellant had already come to the adverse attention of the authorities in China in an unregistered church and therefore the assessment at paragraph 61 onwards in the decision was irrational. When asked why it was irrational to have undertaken an individual assessment of risk to the Appellant, Mr Briddock suggested that perhaps the grounds of appeal should have focused on the lack of reasons for departure and its consequent application to the facts of this appeal. It was further submitted that even on a correct reading of QH without any departure, the Appellant would be at risk on return because of his attendance at an unregistered church and because he had already come to the attention of the authorities; although it was accepted that it appeared the Appellant's position before the First-tier Tribunal was that he could not succeed under QH.
9. The third ground of appeal focused on paragraph 68 of the First-tier Tribunal decision which stated that the Appellant's late claim suggested that he was not at risk of persecutory treatment and whilst this paragraph is not expressly directed to the specific tests in HJ (Iran), the First-tier Tribunal were considered to assess risk objectively and without reference to the Appellant's conduct. Only then would it be necessary to consider factors such as whether the Appellant was practising his religion. The First-tier Tribunal failed to separate out the different tests and questions to be considered in accordance with HJ (Iran).
10. On behalf of the Respondent, Ms Nolan resisted the appeal and submitted that there was no error of law in the First-tier Tribunal decision. First, it was not accepted that the Respondent had made an explicit concession as to whether the True Jesus Church was unregistered and in circumstances where it was not banned, the Respondent's position was that the Appellant was not at risk on return. Further, even if there was a concession, it was not material given the full consideration of all the issues in the appeal. The First-tier Tribunal undertook a detailed consideration of all of the available background country evidence and reached a clear finding that was open to it on that evidence that the Appellant had not established that the True Jesus Church would be outside of the perimeters of the Christian church in China.
11. Secondly, the Appellant's case before the First-tier Tribunal was clear that he could not succeed under the country guidance in QH and would need a departure from it to show that he is at risk. It was submitted that the First-tier Tribunal's decision had to read paragraphs 59 and 60 together, which showed the departure

was only to the extent that the broad brush positive position was no longer appropriate. It did not find however that there should be a departure to a broad brush established risk, only that an individual assessment was required which is what the Judge then proceeded to do in paragraphs 61 to 69 of the decision. The conclusion that the evidence that there was no risk to the Appellant openly worshipping in a True Jesus Church in his home area was based on the evidence available and the same conclusion reached whether the church was registered or unregistered.

12. Finally in relation to the HJ (Iran) point, Ms Nolan accepted that the First-tier Tribunal decision did not necessarily follow a standard structure for assessing the questions, but did in substance approach all question lawfully. The findings included that the Appellant was not a preacher nor did he intend to do so and objectively had not established that open worship in a True Jesus Church would create any risk for him in his home area. The decision read as a whole deals adequately with all of the required issues.

Findings and reasons

13. The first ground of appeal is whether the First-tier Tribunal erred in law in going behind what is said to be a factual concession made by the Respondent in the reasons for refusal letter. That letter considers the status of certain religions in China in paragraphs 57 onwards, including that the Appellant is a Pentecostal Christian which is a official recognised in China. Thereafter there is consideration of some evidence of isolated incidents involving some churches in China and a conclusion in paragraph 60 as follows:

“60. As stated above in line with the case law there may be some instances of discrimination in China due to religious beliefs, however this is not of the severity to be perceived as persecution. You have stated that you follow the True Jesus Church Pentecostal religion. This is not registered with the state in China, however it is not on the list of the places of worship that are branded as ‘cults’ on the 2014 list. Un-registered churches are on occasions disrupted due to non-authorised worship and buildings are removed due to planning issues. You have stated that prior to this raid you had not encountered any problems at all with the authorities, although you claim that you attended church 3 to 4 times a week. The people that you say have been arrested including the preacher, who was the leader of your church, have been released without any charges. Taking this into consideration it is implausible that you were of interest to the authorities, a young congretation member if your leader had been released without charge. It is also noted that you claim to have left the country with your own passport, which if wanted is implausible”

14. In paragraphs 49 to 56 of the First-tier Tribunal’s decision, there is discussion on the current status of the True Jesus Church in China. The Respondent’s positon is identified correctly from paragraphs 57 onwards of the reasons for refusal letter that the Appellant’s religion is one which is recognised by the authorities, albeit there is no further reference to the statement that the church itself was unregistered. There follows detailed references to the background country evidence before the First-tier Tribunal, some of which expressly stated that the True Jesus Church joined the Three-Self Church (one of the three state registered churches) but is now at risk again and some which expressly stated that it did not belong to the state-approved Three Self Patriotic Movement; and some more equivocal, including that the ‘True Jesus Church continues to operate both within

and outside the official church'. On the basis of this rather mixed and unclear evidence, the First-tier Tribunal concluded in paragraph 56 that the Appellant had not established that if he resumed practising his faith openly in a True Jesus Church in his home area, he would be doing so in a church outside the parameters of the Christian churches officially recognised by the CCP. That conclusion does not of itself specifically deal with the issue of whether the True Jesus Church, either generally or the specific church in his home area, is a registered or unregistered church, simply that the evidence of whether it is within or outwith the official church is not sufficient, even to the lower standard of proof, to show that the True Jesus Church is not officially recognised in the Appellant's home area. Having reviewed that evidence, that conclusion was clearly open to the First-tier Tribunal given the conflicting statements and what appears to be different approaches in different regions in China as to what is permitted in terms of worship, signage and so on for a church that can still be within the official state system. There was no specific information about the True Jesus Church in the Appellant's home area.

15. Even if what is contained in paragraph 60 of the reasons for refusal letter was an express concession that the True Jesus Church is unregistered (and I think given the preceding paragraphs dealing with religious freedom and recognition of the Pentecostal faith, it is more nuanced than an outright concession) that is not necessarily inconsistent with the findings of the First-tier Tribunal. It appears from the background evidence that there are only three state registered Christian churches, which do not specifically include the True Jesus Church by its individual name, but that there was evidence which stated that this formed part of one of the three broader registered churches, such that it had not been established that it was outside the state registered system. Either way, the First-tier Tribunal was entitled to give due consideration to the background material, particularly when this was predominantly submitted by the Appellant himself. The First-tier Tribunal was not bound by the statement in paragraph 60 of the reasons for refusal letter and was entitled to consider all of the evidence in the round to reach a conclusion for this specific appeal. There was no procedural unfairness given that this was a point which was addressed in evidence submitted by the Appellant in any event. I do not find any error of law in the First-tier Tribunal's assessment of the evidence in light of the contents of the Respondent's refusal letter. In any event, this could only be a material error of law if the First-tier Tribunal had also erred in concluding that whether registered or not, the Appellant would not be at risk on return openly worshipping in a True Jesus Church in his home area. For the reasons set out below, there was also no error of law in that conclusion, such that any assessment of a 'concession' or otherwise is irrelevant.
16. The second ground of appeal concerns the First-tier Tribunal's departure from the country guidance in QH (Iran) and whether when doing so, the First-tier Tribunal could rationally conclude that the Appellant was not at risk on return to his home area in China. This ground of appeal follows from what in my view is a misreading and misunderstanding of the First-tier Tribunal's decision in relation to the country guidance with inappropriate selective reliance on paragraphs which do not stand alone. Further to consideration of the background country evidence and the Respondent's CPIN, the conclusions on the point are contained in the following two paragraphs of the First-tier Tribunal decision:

"59. Referring to the principles repeated through, for example, SMO2 and AAR, my assessment here is that the argument for the appellant prevails over that for the respondent - at least insofar as the guidance in QH relates

to churches that are not state-sanctioned/not registered. That is because I accept Mr Hussain's submission that paragraphs in the Respondent's own CPIN are strong enough to mean that it would make no sense to follow QH in respect of an appellant who was determined to worship at an unregistered church on any return to China. ...

60. From the CPIN paragraphs just cited I am not concluding that every appellant who was determined to worship at an unregistered church on any return to China would necessarily face a real risk of persecutory ill treatment. But I do conclude that it would not be appropriate to proceed on the generally very positive picture for unregistered church worshippers that appears from headnote (4) of QH (for example, (4)(i) - "In general, the evidence is that millions of Christians worshipping within unregistered churches are able to meet and express their faith as they wish to do").

17. The grounds of appeal completely fail to appreciate or acknowledge what is a very clear expression of exactly what departure from the country guidance is being made - it is only to the extent that the blanket positive approach is no longer appropriate and expressly not the opposite, that there is sufficient evidence to show a risk in every case. There was clearly insufficient cogent evidence to have taken the latter approach and instead, what the First-tier Tribunal then entirely rationally, lawfully and appropriately did was to undertake an individual assessment of whether this appellant, as an open worshipper in the True Jesus Church in his home area, would face a real risk of persecution there on return. This is contained in paragraphs 61 to 67 of the decision, with a balance sheet approach to evidence in support of the Appellant's claim and evidence against. There was nothing irrational in that approach.
18. The further submissions made by Mr Briddock at the oral hearing about sufficiency of reasons and that the Appellant should have succeeded in any event on the basis of the country guidance as it was in QH without any departure have no merit. As above, the specific basis for departure from the country guidance was clear in paragraphs 59 and 60 of the decision read together, as were the reasons given as to why, on the evidence available to the First-tier Tribunal, the Appellant had not established a risk on return to open worship in a True Jesus Church in his home area. When the nature of the evidence for and against is considered in full, there is no arguable error or lack of reasons in relation to the alternative finding that the same conclusion would be reached if proceeding on the basis that the True Jesus Church was definitely not state-registered (a finding only in the alternative). The background evidence that was in the Appellant's favour was not clearly differentiated between registered and unregistered churches (the former in terms of branches of churches under the umbrella of a registered church) and failed to identify specific risks in relation to the True Jesus Church in the Appellant's home area.
19. The alternative basis that the Appellant should have succeeded under QH in any event fails to recognise that the Appellant's own claim before the First-tier Tribunal was that he could not. On any rational view, that was an appropriate conclusion given that whilst it was accepted that there was a raid on the Appellant's home church in 2004, there was no finding that he had already come to the adverse attention of the authorities (nor did the Appellant claim that he had ever been arrested or the subject of an arrest warrant) as a result and to the contrary, even the preacher had been released without charge and nothing to suggest any further action taken against him.

20. The final ground of appeal concerns the application of HJ (Iran) by the First-tier Tribunal to the facts of this case. Reference is made in paragraph 20 of the First-tier Tribunal decision to the case of HJ (Iran) from which the main questions to be determined in this appeal were said to include (1) whether the Appellant has established that he is a Pentecostal Christian and follower of the True Jesus Church (or would be perceived as such); (2) whether those who follow the True Jesus Church openly are liable to persecution; (3) would this Appellant behave openly as regards to his faith in China; and (4) if the Appellant would behave discreetly on return, why would he do so. Those questions are entirely in accordance with what is set out in HJ (Iran) in the context of a person claiming to fear persecution for religious reasons.
21. The first question was resolved in the Appellant's favour, it being accepted that he attended the True Jesus Church in his home area (with some irregular attendance in the United Kingdom). The second question was answered in paragraphs 61 to 67 of the decision (and in the context of the earlier finding in paragraph 56). I do not consider that paragraph 68 formed any part of the formal assessment of risk to an open worshipper in the True Jesus Church in the Appellant's home area, it is simply that the Appellant's own conduct in failing to claim asylum for over 14 years was consistent with the finding that the background evidence did not establish a risk on return. It did not of itself form part of the objective risk assessment required and as confirmed in the summary of conclusions in paragraphs 70 onwards. As such, although the decision could have been structured slightly differently or with sub-headings as to the four different questions raised in accordance with HJ (Iran), these had been set out correctly and answered in turn, so far as necessary (there being no need to go on to consider the Appellant's likely conduct on return beyond that he would not preach). In substance, HJ (Iran) was properly followed.
22. For all of these reasons, the First-tier Tribunal decision did not contain any material errors of law.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

G Jackson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

21st September 2023

(PA/51678/2021)

Appeal Number: UI-2022-006206