



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

Appeal Number: AA/09904/2012

THE IMMIGRATION ACTS

**Heard at Glasgow
On 8th August 2013**

**Determination Promulgated
On 13th November 2013**

Before

**UPPER TRIBUNAL JUDGE CLIVE LANE
DEPUTY UPPER TRIBUNAL JUDGE FARRELLY**

Between

GUAN JING LIN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Katani of Katani and Co, Solicitors
For the Respondent: Mr Mullen, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The appellant is a citizen of the Peoples Republic of China, born on the 3rd June 1991. He entered the United Kingdom on 28 February 2009 using his own passport and a valid student Visa. His visa was valid until 28 February 2010. A subsequent application for an extension was refused. In February 2012, he was found working and arrested for suspected deception on entry. He subsequently claimed asylum.
2. The appellant claimed that he feared persecution from the Chinese authorities because of his involvement in Falun Gong. At the start of September 2008, a schoolfriend, Feng Zhou, had invited him to join four others who were practising Falun Gong. Towards the end of September of the same year, Feng Zhou telephoned the appellant to say that those attending the meeting had been arrested. He advised the appellant to go abroad. The appellant stayed with various friends over the next few months. He was unable to contact his friend and believed he had been arrested. On 27 February 2009, he flew from China to the United Kingdom. Since coming to the United Kingdom, he has been practising Falun Gong and attends gatherings relating to it.
3. His claim was refused on the 19th October 2012. The respondent did not find the appellant credible. The delay in claiming asylum was highlighted. He had not mentioned any fear of the Chinese authorities when encountered by immigration officers and he did not claim asylum until after removal directions had been set. Although detained on 28 February 2012, he did not mention any fear relating to his practice of Falun Gong until his asylum claim was considered on 2 October 2012. When tested, his knowledge of Falun Gong was limited. His responses had not indicated to the respondent that he was a practitioner and did not accept he was of any interest to the Chinese authorities. It was noted that he had been able to leave China on his own passport. The respondent also relied upon section 8 of the Asylum and Immigration (Treatment of Claimants) Act 2004.

The First tier Tribunal

4. The appeal was heard by First-tier Tribunal Judge Wallace. Her determination was promulgated on 14th December 2012. She did not find the appellant credible. She found his account vague and contradictory. She found he had never practised Falun Gong and whilst she acknowledged that the appellant had answered some questions correctly, he did not have knowledge of Falun Gong consistent with his claim. The judge also noted that the appellant had not been questioned by the authorities in China and was able to leave on his own passport.

Permission to appeal

5. Under the heading 'Assessment of Evidence, Decision and Reasons' Judge Wallace states:

50. The Appellant has never practised Falun Gong in China. He has never been apprehended by the Chinese authorities and he has never been questioned on any matter by the Chinese authorities. The appellant alleges that he attended a meeting before he left China. He maintained that members who attended with him have been arrested. The evidence is merely hearsay and it is from a friend whom the Appellant acknowledges he has been unable to contact.

51. The Appellant claims that he went to his friend's house, but then in oral evidence said that the meeting was held in a basketball arena, or a school. Neither of the latter meets a description of a house contradicting his earlier evidence.

54. The Appellant was questioned regarding Falun Gong. Although he correctly responded to certain questions, he was not conversant with Falun Gong with a level commensurate to his claim. The appellant did not practice Falun Gong, although he maintained he became interested in it after attending the meeting in 2008 until allegedly his application for an extension to his student visa had been refused.

Upper Tribunal hearing and discussion

6. At hearing, Mr Katani relied on the grounds upon which the application for permission to appeal was made. In relation to paragraph 50 he made the point that hearsay evidence is still evidence which is admissible and to which weight may be attached. He said that the judge had been wrong in dismissing this evidence simply because it was hearsay. In response, Mr Mullen submitted that the judge had not excluded this evidence but was indicating that, as hearsay, she did not consider it appropriate to attach much weight to it. In our view, the judge took the correct approach to the evidence and there is no error of law in her determination. Her reference to hearsay is an indication of the weight she intended to attach to the evidence and not to its admissibility.
7. The second challenge to the determination relates to paragraph 51. The appellant submits that the judge, having found a discrepancy in relation to the venue of the meeting, did not clearly state her opinion of the explanation offered by the appellant. We find that paragraph 51 has to be put in the context of the preceding passages of the determination and the immigration judge's opening statement:

47. I do not accept this Appellant as a credible witness. I cannot accept his account as being factually accurate.

48. The Appellant's account is vague, contains a number of inconsistencies, and is contradictory.

Thereafter, she sets out various reasons. The judge is referring to the evidence in relation to the venue of the meeting as an example of the appellant's evidence being contradictory. It is true to say that she did not deal specifically with the appellant's explanation and it would have been helpful if she had engaged with it. Nevertheless, we find that the determination read as a whole (i) indicates that the judge has considered all the evidence before her and that she has not ignored evidence of

relevance and (ii) gives cogent and adequate reasons for rejecting the credibility of the appellant's account.

8. Regarding the third ground, Mr Katani referred to paragraph 54 of the Determination. He submitted that the judge had referred to gaps in the appellant's knowledge of Falun Gong as justification for her negative credibility findings. The appellant's evidence was that he had never participated in Falun Gong whilst in China save for attending the one meeting. However, the Determination at paragraph 15 refers to the appellant's witness statement in which the appellant claims that, since he came to Glasgow in January 2010, he has been practicing Falun Gong exercises at home and attending meetings with practitioners every two months; it would not be unreasonable to expect the appellant to demonstrate some knowledge of Falun Gong as a consequence of his practice of it in the United Kingdom. It follows that it was open to the judge to regard the appellant's apparent ignorance as diminishing of his credibility.
9. Mr Katani referred to the judge's reference to the appellant's ability to leave China using his own passport. He submitted that she had failed to engage with the appellant's explanation that he had bribed officials. Mr Mullen submitted that, if the Chinese authorities had been interested in arresting the appellant, they could have done so at the airport and this was a legitimate feature for the judge to highlight. He submitted that the evidence, taken cumulatively, indicated the appellant was not at any real risk from the authorities in China. Again, the judge does not specifically deal with the appellant's explanation but we are satisfied that she made her findings fully aware of that explanation and in the context of all the evidence and that her finding that the appellant's account lacks credibility is not tainted by legal error.
10. It is important to read the determination as a whole. The judge did not find the appellant to be credible and gave adequate reasons. At paragraph 53, she pointed out that the appellant did not claim asylum until 2012 when he was apprehended whilst working illegally. He admitted he knew he was in the United Kingdom illegally following the expiry of his student visa. There was no reference to Falun Gong or the Chinese authorities having any interest in him until he made his asylum claim on 2 October 2012 despite being in detention and having had two separate legal advisers initiating claims on his behalf. Those were all aspects of the appeal to which the judge gave weight and which she was fully entitled to find seriously undermined the appellant's credibility.

Decision

11. This appeal is dismissed.

Signed

Date

Immigration Judge F J Farrelly

Sitting as a Deputy Judge of the Upper Tribunal.