



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: AA/09768/2014**

**THE IMMIGRATION ACTS**

**Heard at** Glasgow

**On** 25th June 2015

**Decision and Reasons  
Promulgated  
17th July 2015**

**Before**

**MR C M G OCKELTON, VICE PRESIDENT  
DEPUTY UPPER TRIBUNAL JUDGE DOYLE**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MING CHUAN CHEN**

Respondent

**Representation:**

For the Appellant: Mr S Duffy, Senior Home Office presenting Officer

For the Respondent: Ms A Cole, of Katani & Co, solicitors.

**DECISION AND REASONS**

1. The appellant is a national of China who arrived in the UK on 31 January 2007 and claimed asylum. When he claimed asylum, the respondent granted temporary leave subject to reporting conditions. He absconded from Immigration Control and was not known again to the respondent until November 2010, when there were a number of subsequent submissions made on his behalf, including a claim to be considered under the so called "*legacy policy*".

2. The Secretary of State's decision was not made until 24 September 2014. Against that decision refusing asylum and rejecting the appellant's claim to face a risk of ill treatment contrary to Article 3 ECHR, the appellant appealed to the First-tier Tribunal.

3. The appeal was heard by First Tier Tribunal Judge Quigley ("the judge") on 2 March 2015. Ms Cole, Solicitor, represented the appellant. The respondent was unrepresented. The judge heard oral evidence and submissions. She regarded the appellant as a credible witness and concluded that there was a real risk of persecution for the reasons claimed by the appellant and therefore allowed the appellant's appeal.

4. The Secretary of State sought to appeal the decision of the judge on three grounds:

- (1) The judge should not have determined the appeal. Instead, the judge should have remitted the case to the Secretary of State to make a fresh decision.

We do not know what power of the judge is referred to by the Secretary of State and we find that there is nothing in that ground of appeal.

- (2) The FTTJ should have taken the appellant's "absconion" (between 2007 and 2010) into account.

That ground may be viable but it goes nowhere. It is correct to say that Section 8 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 provides that the judge should take account of the appellant's conduct between 2007 and 2010 as a factor which works against the appellant's credibility. It is impossible to say that provisions of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 would have made a difference to the conclusion reached by the judge.

5. Ground 3 has greater substance and is set out in the notice of appeal as follows:

"The Immigration Judge has also erred in law by failing to have regard to the country guidance case LL (Falun Gong, Convention Reason, Risk) China CG [2005] UKIAC 122. The Immigration Judge has accepted the appellant's account that he may be subject to further investigation as a result of his release from prison (paragraph 31). However, the Immigration Judge has given no reasons why the appellant would undertake activities that would bring him to the attention of the authorities on return to China as required at paragraph 38 of LL. The determination contains no consideration of whether the appellant has undertaken any such activities in the UK."

6. Ms Cole represents the appellant again today. She tells us that she was aware of it but did not put LL (Falun Gong, Convention Reason, Risk) China CG [2005] UKIAC 122 before the judge because she did not propose to rely on it. Today, she tells us that she has no submission to make in relation to that case.

7. We have considerable concerns about what appears to have been Ms Cole's deliberate decision to fail to draw the First-tier Tribunal judge's attention

to applicable country guidance. The judge was bound by country guidance unless she was provided with reliable evidence which would cause her to depart from it. In this case, although the appellant was caught up in a Falun Gong arrest before leaving China, it has always been his case that he is not a member of Falun Gong. It was approximately eight years ago that he had the difficulties that the judge found proved.

8. Following LL, there is no basis for concluding that the appellant is currently at risk. The judge therefore made an error in law.

9. We set aside the decision and on the basis of LL, we substitute our decision dismissing the appeal on asylum and Article 3 ECHR grounds.

### **Decision**

**10. We set aside the decision of the First-tier Tribunal because it contains a material error of law. We substitute the following decision.**

**11. The appeal is dismissed.**

Signed

Date

Deputy Upper Tribunal Judge Doyle