



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

Appeal Number: AA/01731/2015

**THE IMMIGRATION ACTS**

**Heard at Newport  
On 5 January 2016**

**Decision and Reasons  
Promulgated  
On 8 January 2016**

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**MINXING LIN**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr H Dieu instructed by Fadiga & Co, Solicitors  
For the Respondent: Mr I Richards, Home Office Presenting Officer

**DECISION AND REMITTAL**

1. The appellant is a citizen of China who was born on 17 February 1981. On 27 August 2014, the appellant claimed asylum. His partner and two daughters were dependents in that claim. On 7 January 2015, the Secretary of State refused the appellant's claim for asylum and on 2 February 2015 made a decision to remove him to China by way of directions.

2. The appellant appealed that decision to the First-tier Tribunal. A hearing took place before Judge Metzger on 10 June 2015. The appellant relied exclusively on Article 8 of the ECHR, abandoning his claim to asylum, for humanitarian protection and under Article 3 of the ECHR.
3. The substance of his claim under Article 8 remained that, if returned to China, he and his partner would face a real risk of ill-treatment as a result of China's 'one child' policy.
4. In a determination promulgated on 25 June 2015, Judge Metzger dismissed the appellant's appeal under Article 8.
5. The appellant sought permission to appeal to the Upper Tribunal on the basis that the Judge had failed properly to consider his claim under Article 8 because he had excluded consideration of the risk on return to the appellant and his wife as a result of the 'one child' policy.
6. On 17 July 2015, the First-tier Tribunal (Judge Frankish) granted the appellant permission to appeal.
7. On 4 August 2015, the respondent filed a rule 24 Notice. In that notice, the respondent stated that she did not oppose the appellant's appeal and invited the Tribunal to remake the decision under Article 8 at a hearing.
8. The appeal was listed before me on 5 January 2016.
9. At that hearing, Mr Richards confirmed on behalf of the respondent that she accepted that the Judge's decision could not stand and should be set aside.
10. Both Mr Richards and Mr Dieu, who represented the appellant, invited me to remit the appeal to the First-tier Tribunal for a *de novo* rehearing. It was pointed out to me that the appellant's circumstances had changed and it was desirable that the appellant and his partner had an opportunity to give further evidence. However, Mr Dieu indicated that neither spoke English sufficiently well to give evidence without the assistance of an interpreter. Unfortunately, no interpreter was available at the hearing. Mr Dieu invited me to remit the appeal on the same basis that was accepted by Mr Richards, namely that the hearing should be *de novo* and that none of Judge Metzger's findings should stand.

## **Decision**

11. I agree that the decision of the First-tier Tribunal to dismiss the appellant's appeal under Article 8 involved the making of an error of law. That decision is, as a result, set aside.
12. Having regard to paragraph 7.2 of the *Senior President's Practice Statement*, I am satisfied that the appropriate disposal of this appeal is to remit it to the First-tier Tribunal for a *de novo* rehearing before a Judge other than Judge Metzger.

13. None of Judge Metzger's findings are preserved and the sole issue for the First-tier Tribunal will be whether the appellant has established his claim under Article 8 of the ECHR.

Signed

A Grubb  
Judge of the Upper Tribunal

Date: