



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

Appeal Number: PA/02006/2015

IMMIGRATION ACTS

Heard at Royal Courts of Justice, Belfast

**Decision & Reasons
Promulgated**

On 27 July 2017

On 21 August 2017

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**W W
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Peters, instructed by Tim McQuoid Solicitors

For the Respondent: Mr McVeety, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, who is a citizen of China, appeals with permission against the decision of First-tier Tribunal Judge Farrelly, promulgated on 30 June 2016, dismissing his appeal against the decision of the respondent made on 8 October 2015 to remove him from the United Kingdom consequent upon refusal of his asylum claim.
2. The applicant's case is that he is a follower of Falun Gong and would be at risk on return because of that. He was introduced to Falun Gong by a friend [ML]. The appellant worked in a shop in which the documents were produced on the computer [Q43, Q44]. The police had arrested [ML] and

brought him to the shop where he identified the appellant as a person who worked there. He was then arrested, ill-treated but later released.

3. The appellant made arrangements to leave China by applying for a student visa which was granted. He then left and travelled to the United Kingdom where he claimed asylum in April 2015.
4. The respondent accepted that the appellant was a Falun Gong practitioner but did not accept that he had been detained by the Chinese authorities or that he had been involved in the production of leaflets or documents for Falun Gong. The respondent did not accept that the appellant would be at risk on return relying on LL (Falun Gong, Convention reason, risk) China CG [2005] UKAIT 00122.
5. On appeal the First-tier Tribunal Judge did not accept the appellant's claim, considering it was false [38]. In particular, he did not accept the appellant's account of him coming to the adverse attention of the authorities for the production of leaflets, nor did he accept that the appellant had been arrested and detained. He did not accept either the reliability of evidence produced to show that the Chinese police had seized a computer [37].
6. At [39] the judge addressed the situation of the risk of the appellant on return on the basis of the acceptance alone that he is a Falun Gong practitioner having "not believed the index incident". He considered that a large majority of those who practise Falun Gong with discretion did not experience problems with the authorities concluding that if the appellant were returned to China [42] his involvement with Falun Gong would be discreet and would not place him at risk from the authorities, such discretion not being out of fear of what might happen but from choice and consistent with his behaviour whilst here where there was no fear.
7. The appellant sought permission to appeal on the grounds that the judge had erred:-
 - (i) in misunderstanding and misinterpreting the evidence about what [ML] had done and said in the shop, wrongly concluding that [ML] was betraying him, the evidence being only that [ML] had identified him as an employee in the shop, this mistaken fact amounting to an error of law;
 - (ii) in his assessment of the reasons given by the appellant for his delay in claiming asylum, taking account of irrelevant matters and failing properly to address the main explanation given by the appellant;
 - (iii) in failing to consider the main element of claim namely that the appellant was arrested on suspicion of production of Falun Gong printed materials, conduct the judge has accepted was likely to attract significant sanctions from the authorities [25].
8. On 26 August 2016 Upper Tribunal Judge Gill granted permission.

The Hearing

9. Mr Peters, for the applicant, submitted that the applicant would, even on the facts as found by the judge, be at risk on return as a Falun Gong practitioner. He submitted that in light of MSM (journalists; political opinion; risk) Somalia [2015] UKUT 00251 (IAC), upheld on appeal to the Court of Appeal, and the decision of the European Court of Justice C-199/12, X, Y and Z, the decision of HJ (Iran) v SSHD [2010] UKSC 31. In particular he drew attention to the fact that the Court of Justice had rejected the abstention argument, that is that essentially, if the applicant is required to abstain from doing something that is not a factor which can properly be taken into account. The appellant cannot be required to modify his behaviour.
10. Mr Peters submitted also that the judge had erred in the finding of fact the appellant's friend had betrayed him.
11. Mr McVeety submitted that on the face of this case the appellant had been found not likely to carry out his beliefs and accordingly that he would not be abstaining from anything given that he had not done so in the first place. He submitted also that the issue whether or not the applicant had been betrayed or not was simply semantics, when viewing the evidence as a whole it was clear that [ML] had gone to the shop and had not said that he did not know the appellant but had identified him as somebody who worked there.

Discussion

12. I do not consider that the judge erred in stating at [28] this would suggest his friend was betraying him. I note what was said in interview in that the applicant has consistently maintained that there was an agreement between him and [ML] [28] that they would not, whoever was arrested, admit that the other one was practising Falun Gong. The appellant also said that it was [ML] who had told him to produce the cards. The appellant also said when describing the incident that five people came to the shop, told the customers to leave and then three people came including [ML]. The person in charge asked [ML] "was it here" and he said "yes". He was then asked if he knew the appellant and he said yes. He is one of the staff here.
13. Whilst this might not have been identifying the appellant as somebody practising Falun Gong, it was clearly identifying him as a person who worked in the shop where it appeared that he had said the material was produced. I am not satisfied in the circumstances that this finding by the judge is contrary to the evidence. On the contrary, the fact that [ML] identified the appellant and said that he knew him and he was one of the staff working in the shop which he had said was where the leaflets were produced, is very clearly identifying him as a potential person of interest to the authorities.

14. Whilst Mr Peters did not address me directly on the other credibility findings, they are still within the grounds of appeal and I consider that I should address them.
15. In interview, at Q.88 the appellant was asked why he had not claimed asylum until 2015. He said that when he first arrived he did not speak English, that people had told him that if he claimed asylum he needed a solicitor and he could not afford one and it was only when his girlfriend had applied for asylum he found out there was legal aid and he applied. Asked why, if his girlfriend had applied on 9 July 2014, he did not claim sooner, he said that by then he had a daughter and by then she had told him about legal aid. There is no mention here of what he later said in his witness statement.
16. For these reasons, I consider that there is no substance in the challenges to the judge's findings of fact or as to credibility.
17. With regard to the risk on return to China. I accept that it is now some twelve years since country guidance in LL was handed down but I bear in mind also that LW (China) v SSHD [2012] EWCA Civ 519 is more recent and approved LL. The reality is that the applicant has nothing to abstain from. I do not consider that X, Y and Z is inconsistent with HJ (Iran) - see LC Albania v SSHD [2017] EWCA Civ 351 at [51]. There is simply no basis for the submission that simply by being a member of Falun Gong he would be at risk. Accordingly, I am not satisfied that the decision of the First-tier Tribunal involved the making of an error of law and I uphold it.

SUMMARY OF CONCLUSIONS

1. The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.
2. I maintain the anonymity direction made by the First-tier Tribunal

Signed

Date 18 August 2017



Upper Tribunal Judge Rintoul