



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

PA/00068/2018

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
On 19 October 2018**

**Determination and Reasons  
Promulgated  
On 30 October 2018**

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**L C**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

For the Appellant: Mr Bill Criggie, of Latta & Co, Solicitors  
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This decision is to be read with:
  - (i) The respondent's decision dated 15 December 2017, refusing the appellant's claim.
  - (ii) The appellant's grounds of appeal to the First-tier Tribunal.
  - (iii) The decision of FtT Judge McGrade, promulgated on 9 March 2018.
  - (iv) The appellant's grounds of appeal to the UT, stated in the application for permission to appeal filed on 22 March 2018.

- (v) The grant of permission by FtT Judge Grimmett, dated 9 April 2018.
- (vi) The respondent's rule 24 response, dated 8 June 2018.
- (vii) The appellant's rule 25 response (undated).

2. Mr Criggie submitted further as follows:

Ground 1, the Falun Gong claim.

- (i) There were 4 elements to the judge's approach to the issue, each of which showed error. (1) The judge founded on delay in the claim, but failed to deal with the appellant's explanation at paragraph 58 of his witness statement; he did not claim during his partner's claim, while not in danger of being sent back. (2) The judge was wrong to find that the appellant acted opportunistically in resuming the practice of Falun Gong. He had said at paragraph 27 that his practice was important to him, and he would keep to it if returned. (3) The judge erred by commenting on absence of supporting evidence from other practitioners, which imposed a requirement for corroboration. (4) The judge erred in founding on a lack of support in his partner's evidence. She said at paragraph 14 of her statement that he read Falun Gong books, performed the exercises at home, and attended meetings almost every week.

- (ii) Ground 1, on those 4 points combined, required a remit.

Ground 2, the family planning claim.

- (iii) There was a particular social group of males in breach of policy, even if sterilisation rates were lower for men. There was an implication of risk from the sterilisation on the appellant's mother, being an instance of persecution of his family in the past.

Ground 3, article 8 ECHR.

- (iv) The judge founded upon non-production of an English language certificate, when there is no requirement for one, and there was evidence the appellant had attended English language classes.
- (v) The judge said the children would be returning to China, which implied he was unaware they had never been there.
- (vi) If the "best interests" analysis had no particular outcome, that should be given effect by maintaining the status quo, i.e. the children's residence in the UK.

3. In course of submissions for the respondent, attention was drawn to a letter copied at page 17 of the appellant's FtT bundle, where a PhD student of Chinese migrants in Glasgow confirms encountering the appellant at a Falun Gong meeting. Mr Criggie when replying said that the judge's absence of reference to this item was another error supporting ground 1.

4. I reserved my decision.

5. On ground 1 (1) and (2), the judge gave delay in claiming, and the timing of resumed Falun Gong practice no more adverse weight than he was entitled to do.
6. On ground 1 (3), the judge did not misconceive the law about corroboration of protection claims, but noted the absence of evidence which might obviously have been forthcoming, as a judge is entitled to do.
7. There was at first sight some force in the criticism that the judge did not take account of the evidence of the appellant's partner about his interest in Falun Gong, ground 1 (4), but on closer inspection, the judge's point was soundly based on a specific anomaly in their evidence. He said he practised at home one hour every morning, but her account of his interest made no mention of that (paragraph 23).
8. Judges do not have to mention every item of evidence. The letter from the PhD student did not advance matters significantly. It verified attendance at a Falun Gong group on one occasion, but the judge accepted that he was involved to that extent.
9. The judge was entitled to find the appellant's interest in Falun Gong no more than opportunistic, and gave sound reasons for doing so.
10. Ground 1 is not upheld.
11. Mr Criggie did not press ground 2 with much force. As Mr Govan submitted, it does not appear to be covered by the grant of permission. There is no more in it than insistence and disagreement. The outcome in respect of family planning policy was inevitable, applying country guidance to the evidence.
12. The appellant gave evidence through an interpreter, and his case would not have advanced significantly even if he had proved himself to be fluent in English. The judge knew that the two younger children had not been to China. The oldest child has gone there with the appellant's mother. The proposition that an evenly balanced case on the children's interests confers a right on them, and hence on the appellant, to remain here, is highly over-optimistic. Rather, it would require something quite significantly to their advantage to turn the scales. Ground 2 shows no error in resolution of the case under article 8, which was plainly weak.
13. The decision of the First-tier Tribunal shall stand.
14. There does not appear to be any need for anonymisation; but as the matter was not addressed in the UT, the FtT's anonymity direction is maintained.



22 October 2018  
Upper Tribunal Judge Macleman