



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07969/2019**

THE IMMIGRATION ACTS

Heard at Edinburgh

On 12 March 2020

**Decision & Reasons
Promulgated
On 19 March 2020**

Before

UT JUDGE MACLEMAN

Between

CONGGUAN [X]

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Martin, of Jain, Neil & Ruddy, Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against the decision of FtT Judge Handley, promulgated on 5 November 2019.
2. The appellant's two grounds are set out in his application to the FtT dated 11 November 2019.
3. The first ground says that the judge erred by not deciding whether the appellant has lived in the UK, as he claims, for 20 years; and that if that had been shown, the appeal should have been allowed, without consideration of "insurmountable obstacles" to his reintegration in China.
4. The second ground alleges error in assessing risk arising from alleged selling of books promoting Tibetan independence and Falun Gong.

5. The FtT granted permission on 11 December 2019, saying expressly that ground 1 was arguable, but not restricting its grant.
6. The FtT said in passing at [45] that the appellant “had been in the UK for around 20 years”, but at [49] that he “claims to have lived in the UK for the past 20 years”. There is no discussion of the evidence on that issue, and the matter is left unresolved.
7. The point might not have been the entire resolution of article 8. Mr Govan pointed out that by his own dates the appellant had not reached the 20 year mark at the date of his application, which governs the rule, or perhaps even by the date of the hearing – although he had done so by the date of promulgation. However, I gave my decision that failure to resolve that obviously important issue is an error of law.
8. Based on that indication, the following outcome was agreed.
9. The decision of the FtT is set aside. It stands only as a record of what was said at the hearing. (Although ground 2 was not debated, this remit is not restricted.)
10. The nature of the case is such that it is appropriate under section 12 of the 2007 Act, and under Practice Statement 7.2, to remit to the FtT for an entirely fresh hearing.
11. The member(s) of the FtT chosen to consider the case are not to include Judge Handley.
12. No anonymity direction has been requested or made.

A handwritten signature in black ink that reads "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

12 March 2020
UT Judge Macleman