



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

Appeal Number: PA/05944/2017

**THE IMMIGRATION ACTS**

**Heard at Eagle Building, Glasgow  
On 4 January 2018**

**Decision & Reasons Promulgated  
On 17 January 2018**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**XING LIN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**And**

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

Respondent

**Representation:**

For the Appellant: Mr B Price, Latta & Co solicitors

For the Respondent: Ms Pettersen, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge David Clapham promulgated on 16 August 2017, dismissing his appeal against a decision of the respondent made on 9 June 2017, refusing his protection and human rights claim on the basis that was not a refugee.
2. The appellant is a citizen of China born in 1983. His case is that he is a practitioner of Falun Gong, and had encouraged others to do the same. His father was a practitioner of Falug Gong, and he had helped his father to

distribute leaflets about Falun Gong. He had been doing so in July 2015 when he had been stopped by officials who threatened him and told him that he should not be doing so.

3. Not long after this incident the appellant's father was detained, the appellant finding out only some time later from one of his father's friends who also practised Falun Gong that this had happened.
4. In May 2016, officials came to look for him at his home, but he was not there. On learning of that, the appellant made arrangements to be smuggled out of China, arriving in the United Kingdom in September 2016. He claimed asylum in December 2016.
5. It is not in dispute that Falun Gong was tolerated in China until a severe crackdown from July 1999 onwards.
6. The respondent did not accept that the appellant practised Falun Gong, nor that he had come to the adverse interest of the Chinese police as a result. The reasons for those conclusions are set out in the refusal letter dated 9 June 2017.
7. On appeal, the judge found that:
  - (i) It was significant that he had delayed in claiming asylum, rejecting the explanation for the delay [44];
  - (ii) The appellant had been inconsistent as to why he had been attracted to Falun Gong [45];
  - (iii) It was reasonable to expect someone who had practised Falun Gong to have conducted research and that it was extraordinary that someone delivering leaflets would not have a detailed knowledge of what it said, or where he had been distributing them, given the risk of imprisonment through his activities [46]; and, that it was unclear why he would continue with the Falun Gong given the risk when it was the appellant's evidence he did not practise very often.
  - (iv) There was no evidence that the police came to the appellant's home due to him practising Falun Gong [47];
  - (v) He agreed with the respondent's submissions that the appellant was not credible [48]; and, even were he a Falun Gong practitioner, he would not be at risk, occasionally practising Falun Gong at home not be likely to bring him to the attention of the authorities.
8. The appellant sought permission to appeal on the grounds that the judge had erred:
  - (i) in commencing at [44] his assessment of the appellant's credibility with section 8 of the Asylum and Immigration (Treatment of

Claimants, etc) Act 2004, contrary to SM (Section 8: judge's process) Iran [2005] UKAIT 116;

- (ii) in assessing credibility in that he:
    - (a) found incorrectly [45] that the appellant had been inconsistent in his explanation for being attracted to Falun Gong;
    - (b) failed [46] to take into account the appellant's explanation for continuing to practise Falun Gong despite the risk of imprisonment;
    - (c) failed properly to take into account the appellant's explanation for not researching elements of Falun Gong when at [46] drawing an adverse inference for not so doing;
  - (iii) In failing to have regard to the respondent's guidance and the principles set out in HJ (Iran) v SSHD [2010] UKSC 31 in assessing why the appellant was not at risk if practising Falun Gong in private.
9. On 3 November 2017 First-tier Tribunal Judge Norton-Taylor granted permission on all grounds.

10. I heard submissions from both representatives, and reserved my decision.

11. I address the grounds in turn.

#### Ground 1

12. Despite Mr Price's submissions I do not accept that the judge acted unlawfully in considering the appellant's delay. An assessment of credibility has to begin somewhere, and this is not a case where the judge held, as would not be permissible, that credibility was significantly undermined by this matter alone. On the contrary, the judge stated only that it was significant. That is an indication of weight being attached, and was a matter open to the judge. Further, as I observed during the hearing, while section 8 of the 2004 Act requires a judge to take certain matters into account, the judge had not referred to it. There is nothing in SM (Iran) indicating that the judge was not entitled to draw inferences adverse from delay. As was held at [10]

It is the task of the fact-finder, whether official or judge, to look at all the evidence in the round, to try and grasp it as a whole and to see how it fits together and whether it is sufficient to discharge the burden of proof. Some aspects of the evidence may themselves contain the seeds of doubt. Some aspects of the evidence may cause doubt to be cast on other parts of the evidence. Some aspects of the evidence may be matters to which section 8 applies. Some parts of the evidence may shine with the light of credibility. The fact-finder must consider all these points together; and, despite section 8, and although some matters may go against and some matters count in favour of credibility, it is for the fact-finder to decide which are the

important, and which are the less important features of the evidence, and to reach his view as a whole on the evidence as a whole.

13. It is not averred in the grounds that the judge rejection of the explanation for the delay was unlawful. On the contrary, I am satisfied that the judge's rejection of the reasons for delay is adequately and sustainably reasoned. It is also evident from the decision at [48] and from the preceding paragraphs that the judge had looked at matters in the round.

#### Ground 2

14. Mr Price took me through the appellant's evidence as set out in his statement of 28 March 2017, his asylum interview on 18 May 2015 and his witness statement dated 13 July 2017 which in part responds to the refusal letter.
15. As regards the appellant's reasons for becoming involved with Falun Gong, the initial statement says simply that the appellant had been taught by his father [5], but that he was not as devoted to it. Asked at Q.31 why he had decided to practise he said it was because his father was a Falun Gong practitioner "he sometimes taught me I just follow him and I follow his belief. At Q32, asked why attracted him to it, he said:

"I cannot remember because my father is a Falun Gong practitioner we often attended a meeting together that's what attracted me."

16. It must, however, be noted that the appellant does say it would be good to your health and he felt better after practising (Q.38) and he felt energetic.
17. In the additions to the substantive interview, adding to his response as to why his father was devout, the appellant does add that his father had recovered from a severe illness after practising Falun Gong.
18. It is in the witness statement of 11 July 2017 at [15] that the appellant states:

My father used Falun Gong due to his ill health and the positive effect of the exercises on him. I saw that work in practice. That is why I was interested in Falun Gong as it caused no harm and was good for the health. It was not about the written theory or any books for me; it was all about the health effects...

19. I do not accept Mr Price's submission that this is simply an expansion. There is a clear change in the appellant's evidence. The judge was entitled to find that there was an inconsistency, particularly as the appellant now emphasises the health effects as being the principal reason he was attracted to Falun Gong which is not what he said before; his statements about health are vague. The judge was thus entitled to draw adverse inferences and he gave adequate and sustainable reasons for so doing.

20. Turning to the appellant's explanation for continuing to practise Falun Gong despite the risk it is again relevant to consider the appellant's evidence. He does not say that he continued to practice after his arrest in July 2015. In interview in response to Qs 41 to 44, the appellant was asked how often he practised, he said not so very often, and for example when he had a day off work, maybe he would practise, not as much as one day a week. He said he could not practise at work.
21. Asked about what he did after he left the police station [Q.97] he said he did practise sometimes, but not often, but would sit to do meditation, and that he did so because his belief and his father's belief is Falun Gong. There is no mention here of any health benefits. In his witness statement of 13 July 2017, the appellant said [32] that he did not think it was fair for the police to expect him to stop practising Falun Gong, ignored the warning and "continued to do the exercises and movements...I did not stop as it was important to me."
22. Given that the judge had reasonably not accepted the appellant's explanation that he had practised Falun Gong due to the health benefits, and given the evidence that the appellant practised infrequently, and only sometimes when he had a break from work, it was open to him to conclude that it was unclear why he had continued. It is not at all clear why the father's continuing to distribute leaflets is relevant to the question of why the appellant's continuing to practise is relevant. The observation that he practised infrequently is sustainable.
23. It is of note that the appellant's account is that he and his father practised Falun Gong, and distributed leaflets about Falun Gong for a significant number of years. On his own account (interview, Q.29 - Q. 30) he was 8 or 10 when his father started which means he began, given the appellants age, in around 1993. His explanation for not conducting researched was that his father was a member of Falun Gong (Q.33 and that he had not more education (Q.34).
24. It is, however, unclear as to when the leaflets were distributed, the appellant saying [Q.56] when asked about distributing leaflets (Qs 52- 55) that at the time Falun Gong was not barred in China, but that he did not know when it had been barred. The first answer would indicate distribution prior to July 1999 when the appellant was approximately 16. It is, however, surprising in the context of the appellant's father being, on his account, a devout follower of Falun Gong that he did not know when, even roughly, it was barred, given that the father's arrest was some 16 years later, and that he only found out it was barred (Q. 58) when he was arrested.
25. In this context, and given what is said in the refusal letter at [22] which is fairly incorporated into the decision at [46], it was open to the judge to conclude that given the length of time the appellant claimed to have been involved with Falun Gong that he would have found out more about it. The explanation the appellant gives in his statement of 13 July is at [14] - [15] states that he had learned enough from his father, which does not answer

the question, and at [15] explains the health effects. The judge had properly and for sustainable reasons rejected that earlier.

26. Accordingly, for these reasons, there is no merit in ground 2

Ground 3

27. As the judge has found the appellant is not a practitioner of Falun Gong and was not credible, and his reasons for so finding are adequate and sustainable, this ground does not identify any material error as the finding that the appellant would not be at risk if were a practitioner was made in the alternative.

Conclusion

28. In conclusion, for the reasons given above, I consider that the decision of the First-tier Tribunal did not involve 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. The anonymity order made by the First-tier Tribunal is maintained.

Signed

Date 10 January 2018



Upper Tribunal Judge Rintoul