



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

Appeal Number: PA/ 01303/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 15 October 2021**

**Decision & Reasons
Promulgated
On 8 February 2022**

Before

**UPPER TRIBUNAL JUDGE PERKINS
UPPER TRIBUNAL JUDGE RINTOUL**

Between

**S L X
(ANONYMITY DIRECTION IN FORCE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr V Lingajothy, Legal Representative from Duncan Ellis Solicitors

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Interpreter: Ms Shu-Hui Poon, Interpreted the Mandarin and English Languages

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 we make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. We make this order because the appellant seeks international protection and so is entitled to privacy.

2. This is an appeal by a citizen of China against a decision of the Secretary of State on 29 January 2019 refusing him international protection. The appellant is subject to deportation.
3. I have previously decided that his appeal was determined unsatisfactorily in the First-tier Tribunal in a decision promulgated on 1 February 2021. I have overturned its decision and I have directed that the appeal be re-determined in the Upper Tribunal.
4. Before us it is for the appellant to satisfy us that there is a real risk of his being ill-treated in the event of his return to China or that removing him would be a disproportionate interference with his private and family life. In order to show that the decision is contrary to his rights under Article 8 of the European Convention on Human Rights, he must establish the necessary facts on the balance of probabilities and the respondent must justify any interference.
5. The reasons for refusing the application are set out in a letter dated 29 January 2019 and a supplementary decision dated 17 February 2020. We begin by outlining the reasons given by the Secretary of State for refusing him protection.
6. The letters show that on 12 June 2018 the appellant was notified that he appeared to be liable for deportation as a foreign criminal because he had been sentenced to twelve months' imprisonment and therefore his deportation was conducive to the public good.
7. The appellant arrived in the United Kingdom in April 2003 and claimed asylum on arrival. He was given temporary admission but did not return as instructed and his application for asylum was refused on non-compliance grounds. He came to the attention of the authorities in January 2010 when he was subject to reporting conditions. His case was reviewed and further submissions entertained but not accepted as further submissions after they had been considered.
8. In September 2014 he lodged further submissions based on Article 8 grounds and they were said not to constitute a fresh claim in September 2017.
9. The appellant remained in the United Kingdom.
10. On 25 May 2018 at the Crown Court sitting at Harrow he was convicted of two counts of importing a class B drug with intent to invade a prohibition or restriction and also of possessing class B drugs with intent to supply and he was sentenced to two years' imprisonment.
11. On 11 July 2018 he was seen by an Immigration Officer and explained that he could not return to China because of problems with the government.
12. There was a substantive interview in connection with the asylum claim in November 2018 and on 25 November 2018 he was served with a "Section 72 Liability Notice" to which his solicitors responded on 18 December 2018. Section 72 of the Nationality, Immigration and Asylum Act 2002 provides, in broad terms, that a person who has been convicted in the United Kingdom of an offence and sentenced to a period of imprisonment

of at least two years is presumed to be outside the protection of the Refugee Convention by reason of his bad behaviour.

13. Nevertheless, such a person cannot be returned to his country of nationality if he is able to show that there is a real risk of him facing serious ill-treatment if he were returned there. The respondent did not accept there was such a risk to this appellant.
14. The appellant's claim was summarised as a fear of persecution because he would be subject to the death penalty and shot because he was accused both of taking the leadership role in an illegal religious group and of selling military related "top secrets".
15. It was his case that he came from the Fujian province of China and had lived with his parents and two sisters. He was educated to middle school level and worked in the construction business. He had a sister and a cousin in the United Kingdom but no family in China.
16. He said that in 1997 he joined Falun Gong, which he considered to be a religion. He had been advised it would be good for his psychological wellbeing. The government of China regarded Falun Gong as an illegal religious group and he was accused of breaking laws restricting its practice. The appellant denied being any kind of leader. He gave details of how he practised Falun Gong.
17. He claimed that he was noticed by the police when someone reported him and fellow practitioners and he removed to a different part of China. He said he left his village in 1998 and continued to practise Falun Gong privately but had no problems with the authorities.
18. He maintained that he was in a part of China where few people practised Falun Gong and the authorities were not interested.
19. He further maintained that he was on a "wanted list" until he left China and came to the United Kingdom in 2003. He said that there is an identification system in China which means that officials in other areas would know he was wanted in his home city. He maintained that if he did return to China his identity information would come to the attention of those managing the "wanted" list.
20. He based his claim that he feared execution on his contention that he would be accused of selling secrets. He occasionally socialised with a friend in the military who sometimes told him working arrangements in the armed forces. It was the appellant's contention that his friend wore a uniform when they met and so was noticeable and therefore the person who reported him to the police for practising Falun Gong would have seen him with his friend and would have reported that association too. He has not sold secrets. He does not know who reported him to the police.
21. The appellant claimed that he had stronger ties with the United Kingdom than with China.
22. The Secretary of State noted that although there was evidence that the government of China took a poor view of Falun Gong there was country guidance from this Tribunal, particularly **LL (Falun Gong, Convention**

Reason, Risk) China CG [2005] UKAIT 00122, which indicated that, in the absence of special factors, practitioners of Falun Gong did not risk persecution in China. The Secretary of State noted evidence that since that decision had been promulgated it had been reported that the Chinese authorities instructed neighbourhood communities to report Falun Gong members to officials but the guidance also indicated that people can practise Falun Gong privately without drawing adverse attention and that there was no basis for finding that the appellant was not content to practise Falun Gong privately, assuming he had practised it at all. He had no well-founded cause for concern.

23. However, the Secretary of State did not accept that the appellant had a strong desire to practise Falun Gong. It was the appellant's case that he had given up practice in prison because he could not get to a gym. The Secretary of State took this as an indication that the appellant who was not highly motivated to practise Falun Gong. The Secretary of State did not accept that there was any link between that appellant practising Falun Gong and any reason to consider him a spy. The Secretary of State did not believe that he was wanted by the authorities or that he could not establish himself back in his country of birth where he had lived for the greater part of his life. On his own case he had no family alive and the private life he had established was not something to be given any great weight in an Article 8 balancing exercise.
24. The supplementary decision of 17 February 2020 acknowledged that it had been accepted that there were reasonable grounds for believing that the appellant may have been a victim of modern slavery. The appellant was brought into the United Kingdom with the help of agents and was required to pay money to the agents. It is his case that he had been kept originally as a captive working excessive hours for no reward and was ill-treated until he was eventually able to escape. It was accepted by the National Referral Mechanism decision maker, that is the government appointed body established to determine such matters, that the appellant probably was a victim of trafficking and the Secretary of State took no issue with that.
25. However, the Secretary of State did not accept that the appellant could not be returned to China. The Secretary of State did not accept that the appellant could not establish himself in a part of China where he would not be known by traffickers and there was no reason why he should be at risk of re-trafficking. She upheld her reasons for refusing his application for leave.
26. There is evidence that the appellant is psychologically damaged. We regarded him as a vulnerable witness but we were not asked to adopt any specific adjustments to assist him. Given his condition, we had not expected him to give evidence before us. He did give evidence but it was limited to adopting his statement and he was not cross-examined. This was not an indication on Mr Melvin's part that he did not challenge the evidence but rather that he did not see any point in cross-examining someone whose responses may well be inherently unreliable.

27. Mr Melvin put his case very simply and said that he relied on the Home Office grounds. The appellant was a victim of trafficking and modern slavery but he was also a convicted criminal. The appellant denied any guilt but he had pleaded guilty and it was the opinion of the writers of the OASys Report that he might reoffend if he was in financial difficulties.
28. The reasons for the decision were read out and summarised in translation. The appellant was represented and a summary translation may not have been strictly necessary but it was desirable that the appellant was helped to understand what was going on.
29. We have considered the statement that the appellant adopted.
30. He repeated his claim that he first entered the United Kingdom in April 2003 and claimed asylum on arrival. He was fearful of being persecuted because he practised Falun Gong. He had become a leader of a local group. He came to understand that the government was fearful of attempts to undermine the regime and regarded practitioners of Falun Gong as at the very least suspects. The police made inquiries and his name was given to them. He described himself as "very afraid" because detainees were always tortured in China. In 1999 the Communist Party launched its formal campaign to eradicate the Falun Gong. He entered the United Kingdom in 2003 with help from snakeheads and followed their instructions. He thought he had made proper arrangements for his money to be transferred to them but found that he had not paid them what they thought they were entitled to have and they required him to work in a restaurant until he had worked off the debt. Essentially he was kept as a hostage until the money was paid because he had no means of raising it. He was able to escape and lived by doing what casual work he could find. It was hard to make a living.
31. His involvement in the matters that led to his conviction were helping somebody with a parcel. He said he had no idea that he was breaking the law.
32. There is a psychiatrist's report dated 2 May 2019. This is at page 61 in our bundle. It is a report of Dr Saleh Dhumad, whose qualifications include Membership of the Royal College of Psychiatrists as well as other relevant medical qualifications. The report concluded that the presentation of the appellant then was consistent with a moderate depressive episode and also that he suffered from post-traumatic stress disorder. There was a moderate risk of suicide but he was not receiving treatment.
33. We were asked to look on the matter humanely and not to jettison the appellant.
34. In assessing the appellant's account of what happened to him in China, we have considered the evidence in the round, in the light of the background evidence, bearing in mind the report of Dr Dhumad and the length of time that has elapsed since the events are said to have occurred.
35. A major difficulty faced by the appellant is the absence of any evidence to show that there is a real risk of his being of interest to the authorities in China. There is no evidence that he had any inclination to practise Falun

Gong in a way that would interest the authorities and no evidence that his professed fears of being arrested as a spy are remotely likely to be well-founded. We regard them as speculation inspired by panic.

36. We do not believe that his name was on a “wanted list”. Given the evidence that China maintains an effective surveillance state that he was able to live freely away from his home area the claim undermines that claim.
37. It is perfectly plain that the appellant is a poorly man, or at least was when the medical report was prepared, but there is no good reason to doubt that proper treatment is available in China.
38. There is no persuasive evidence that the Chinese authorities are in cahoots with traffickers. If there is any truth in his professed fear of snakeheads he can expect protection from the Chinese authorities, who will help him access proper medical treatment.
39. We were referred to a decision of Linden J in R (on the application of KTT) v SSHD [2021] EWHC 2722 (Admin). This concerned the leave to be given to an asylum seeker who was also the victim of trafficking and decided, broadly, that in some circumstances the Respondent’s policies required her to give some leave to a victim of trafficking who was pursuing a protection claim. It did not decide that a victim of trafficking would be entitled to settle in the United Kingdom.
40. We are aware that victims of trafficking are often thought to be vulnerable to re-trafficking but we are quite unpersuaded that the appellant would be at risk of being re-trafficked, or would be unable to seek protection from the authorities in China if such a risk occurred.
41. We do not believe his claim to fear persecution or other ill treatment at their hands is well founded objectively. The plain facts are that he was able to live in China for many years without being persecuted because he followed Falun Gong.
42. Further, we have considered the US State Department Report “2021 Trafficking in Person Report: China”. We accept that the Chinese authorities’ interest in prosecuting trafficking offences appears to be declining but people are still prosecuted. Some victims of sex trafficking are too ashamed to seek help but the appellant is not in that category. Neither is he a refugee or ethnic minority in China and these are the people who might find it hard to get help. Accordingly, we are satisfied that, on the material before us that there is in place in China a sufficiency of protection for this appellant.
43. We realise that the appellant’s life has been very frustrating for him. However, he has committed a criminal offence. He may not have appreciated what he was doing in the sense of having a full understanding of what he was helping transport and he may not have appreciated how seriously his “helping” could be viewed but if there was any defence to the charges his lawyers would have advised him. There is no point to be made there. He has been convicted and the consequences of the sentence include his being liable for automatic deportation.

44. Accordingly, for these reasons, the appellant has failed to demonstrate to the lower standard that he is at risk of persecution or serious harm on return to China.
45. He has undoubtedly established rudimentary “private and family life” whilst in the United Kingdom but he has identified nothing that would be placed at the “family life” end of the private and family life continuum. His “private life” was all established when the appellant had precarious or no status.
46. There is nothing in Part 5A of the Nationality, Immigration and Asylum Act 2002 or at all that helps him establish a right to remain in the United Kingdom on article 8 grounds. Any interference is manifestly proportionate. We find that he has not established that he falls within exception 1 or 2 within section 117C of the 2002 Ac, nor that there are very compelling circumstances over and above those, such that his removal would be disproportionate.
47. He has no right to be in the United Kingdom in any event and has not identified anything capable of supporting a decision that he is entitled to remain in human rights grounds.
48. In the circumstances we dismiss this appeal on all grounds

Notice of Decision

49. This appeal is dismissed.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 26 January 2022