

IMMIGRATION APPEAL TRIBUNAL

Date heard: 25 July 2002
Date notified: 03/09/2002

Before:-

DR H H STOREY (Chair)
MRS J HARRIS
MS S S RAMSUMAIR JP

Between

MR MING HE

Appellan

t

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. The appellant, a national of China, has appealed with leave of the Tribunal against a determination of Adjudicator, Mr A W Rose, dismissing the appeal against the decision by the respondent to refuse to grant leave to enter on asylum grounds. Mrs H Gore of Counsel instructed by Corbin & Hassan Solicitors represented the appellant. Ms M Banwait appeared for the respondent.

2. The Tribunal has decided to dismiss this appeal.

3. The adjudicator accepted that the applicant's parents were Falun Gong (hereafter FG) practitioners. He accepted that after the banning of FG in July 1999, the appellant and his parents may in the course of a round-up of actual or suspected FG activists have been detained, his parents as actual followers and the appellant as a suspected follower of FG. He further accepted that during this detention the

appellant may have been subjected to ill treatment and some form of re-education, including having to sign a written recantation abjuring any connection with or practice of FG. Because, however, he considered the applicant's account otherwise contained inconsistencies, vagueness and implausibilities, he concluded that the appellant had not shown that this detention was for as long as claimed or that the ill-treatment went beyond being struck on occasion with an electric baton. He did not accept that the appellant had ever gone into hiding or that the police had been to his home since his release. Noting that on his own account the appellant had not left China until nearly 5 months after his release from detention, he concluded that the appellant had not shown a well-founded fear of persecution when he left China in June 2000 nor that he had such a well-founded fear now.

4. The principal contention raised in the grounds of appeal was that the adjudicator should have allowed the appeal since it was reasonably likely that upon being accosted as a returnee and by reference to the signed document, the authorities' suspicion about the appellant's connections with FG may be rekindled and any punishment he received for leaving the country could be disproportionately severe.

5. The grounds also challenged the adjudicator's adverse credibility findings. We must say straightaway that we were not at all persuaded that the adjudicator's adverse credibility findings were unsound. Plainly the appellant had not give a consistent account about not knowing where his parents were after they were released, or about police visits or about going into hiding. In our view the adjudicator was perfectly entitled to reject as unsatisfactory the appellant's attempts at explanation of these inconsistencies on the grounds of nervousness

6. In amplifying the grounds Mrs Gore emphasised two points in particular. One was that the adjudicator had accepted that the authorities had targeted the appellant and that they – despite the appellant not being a FG practitioner - had perceived him as a FG member or potential member. He had experienced past persecution and it was reasonably likely the authorities upon return would view him adversely. In both respects, she said, the appellant's situation was different from that considered by the Tribunal in the cases of *Ying He* (an appellant who had never been caught) and *Xu Fong Hu* (whose claimed arrest was not believed). The other point was that the objective country materials continued to demonstrate that FG members faced a real risk of persecution in the form of arrest, detention, ill treatment and compulsory re-education. Those risks had, she submitted, to be considered cumulatively bearing in mind that the adjudicator had also accepted that the appellant would face a fine or short term of imprisonment for having left the country illegally. Mrs Banwait with detailed reference to the objective country materials argued that the adjudicator's conclusions were sustainable.

7. We must deal at the outset with one other contention raised in the grounds. It was argued that since the authorities in China had forced the appellant to sign a document preventing him from joining FG, the appellant upon return would not have the freedom to decide whether or not to join FG. However, on the appellant's own emphatic evidence, he was not a practitioner of FG and he has expressed no desire to become a FG member or follower. Given therefore that he himself did not manifest any desire to exercise any right to freedom of thought or conscience or religion or assembly or association in connection with FG, it cannot be seriously argued that

upon return any of his civil and political rights of this kind would be interfered with. Mrs Gore urged us to take a broader view of the appellant's beliefs, taking into account that he was still a young man who may well change his mind and decide later on to become a FG follower. With respect, she was at this point putting words into the appellant's mouth. He did not say that he was contemplating becoming a FG follower and, given that even whilst in the UK he has not shown any interest in FG, we see no valid reason to decide the case on the basis of nothing more than an academic possibility.

8. We agree with Mrs Gore that the facts of the Tribunal cases of *Xu Fong Hu* [2002] UKIAT 01478 and *Ying He* (01TH02648) are very different. However, we see no reason to differ from the conclusions drawn by the Tribunal in *Xu Fong Hu* (after very careful analysis of the evidence relating to the issue of punishment for illegal departure) that "imprisonment is rare and if it happens it is for a very short period and that the normal penalty is more likely to be a fine". We also see no reason to differ from the conclusion reached by the Tribunal in *Ying He*, by reference to the CIPU Assessment at paragraph 5.116 that the Chinese authorities have made a distinction between ordinary followers of FG and its leading figures.

9. The key question in this case is how would the authorities view this appellant upon return? First of all we accept that the appellant would be viewed as someone who had made an illegal departure and who therefore stood to be punished by short-term imprisonment and/or a fine. We are also prepared to accept that the Chinese authorities would identify him as someone who had been previously arrested and detained for suspected FG membership in 1999 and as someone who had signed an undertaking not to practise FG. We are also prepared to accept that the same authorities would know that the appellant's parents were FG members or practitioners who had also been arrested and detained in July 1999. However, on the evidence in this case they would have no reason to consider his parents had continued to be anything other than ordinary members of FG and no reason to consider that he had done anything to breach the undertaking he gave in 1999 not to involve himself in FG.

10. We need to elaborate these reasons somewhat. It is true the authorities would in all likelihood view him as someone they had had previous cause to arrest and detain as a suspected FG practitioner and to subject to a recantation requirement. He would not therefore be in the same position as an ordinary FG practitioner who had no previous history of arrest or detention or harassment by the authorities. We accept that. However, we cannot see that that in itself would lead them to further harass him. After all, they had released him after a short period in July 1999 and there was no good reason to conclude that they would assume that he had in the intervening period breached his undertaking. It seems to us that whilst they might well maintain a record on him noting his return (and might possibly impose some renewed condition on him requiring him not to involve himself in FG), they would have no reason to take matters any further. We bear in mind at this point that it was not accepted by the adjudicator that they had come looking for him or his parents after their arrest and detention in July 1999. We reiterate that there was no satisfactory evidence that the appellant's parents had, since that arrest and detention, done anything further to concern the Chinese authorities. Nor, given the appellant's own indifference to the FG philosophy, do we think that any condition imposed or re-

imposed on him not to practise FG would have any real effect on his daily life and his freedom to live his life and go about his business like any other Chinese citizen.

11. Ultimately, therefore, it seems to us that, notwithstanding the fact that there was past persecution of him and his parents, the appellant would not face a real risk of persecution upon return. We bear in mind at this point that although he and his parents had been arrested and detained and ill treated in July 1999 this was on the appellant's own account in the context of a mass round-up of FG practitioners in his home area. Even if this could be described as targeting, it can clearly be distinguished from the specific persecutory treatment accorded to leading FG members, as evidenced by the objective country materials. Thus at paragraph 5.142-143 of the CIPU Assessment October 2001 it was noted that there have been arrests on criminal charges of 111 key FG activists and that up to 70 organisers have been imprisoned and have or are likely to face prosecution on criminal charges. Whilst we entirely accept that it is equally clear from this Assessment and from other materials placed before us that ordinary FG practitioners have also on a significant number of occasions been subjected to human rights abuses of various kinds, it is only in respect of FG activists that the scale and level of interference with their human rights has been sufficient to warrant a conclusion that upon return they would face a real risk, as opposed to a possible risk, of persecution or serious harm.

12. Mrs Gore is right to say that the risk of serious harm to this appellant has to be considered cumulatively, so that the real possibility of imprisonment and a fine is also weighed in the balance. We have done this. However, it does not alter our conclusion that the adjudicator was correct to conclude the appellant did not face a well-founded fear of persecution nor did he face a real risk of treatment contrary to his human rights, whether considered under Article 3 or any other articles of the ECHR.

13. For the above reasons this appeal is dismissed.

**DR H H STOREY
VICE-PRESIDENT**