



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

appeal number: PA/03542/2018

THE IMMIGRATION ACTS

Heard at Glasgow

**Decision and Reasons
Promulgated**

On 16 November 2018

On 23 November 2018

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

[D W]

~~(anonymity direction not made)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S F Winter, Advocate, instructed by Katani & Co,
Solicitors

For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against the decision of FtT Judge Kempton, promulgated on 6 June 2018, dismissing his appeal to the FtT, on grounds stated in his application filed on 20 June 2018.

2. The grounds, in summary, are these:

(1) Error of law in relation to the appellant's practice of Falun Gong.

(i) No finding, or no adequately explained finding, on whether the appellant practises Faun Gong, or on why he would not be at real risk if he continues to do so.

(ii) Error at [26] in finding no independent evidence of the appellant practising Falun Gong, when there was independent evidence, from his partner.

(iii) No reason, or no adequate reason, at [27] for finding that a letter confirming the appellant is being sought by the police is a means to bolster his account.

(iv) At [20] - [21], error in noting that the appellant said a discrepancy arose as he was nervous or under pressure, without explaining why that explanation was not reasonable.

(2) Errors of law in relation to loan sharks, at [28].

(i) Inconsistency with case law, by “failing to be slow to draw adverse inferences” from failure by the appellant to mention his religion at screening interview.

(ii) No reasons, or inadequate reasons, for finding account about loan sharks not credible.

3. Mr Govan conceded that the grounds disclosed error, in particular at (1) (i), through failure to assess the *sur place* element of the claim, and that a fresh hearing was required. The following outcome was agreed.
4. The decision of the FtT is set aside, and stands only as a record of what was said at the hearing.
5. 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.
6. The member(s) of the FtT chosen to consider the case are not to include Judge Kempton.
7. No anonymity direction has been requested or made.



Dated 16 November 2018
Upper Tribunal Judge Macleman