Asylum and Immigration Tribunal

LL (Falun Gong – Convention Reason – Risk) China CG [2005] UKAIT 00122

THE IMMIGRATION ACTS

Heard at Field House	Determination Promulgated
On 29 July 2005	On 9th August 2005

Before

Mr S L Batiste, Senior Immigration Judge
Mr M E A Innes
Mr D C Walker

Between

( )

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

This determination is reported for its consideration of the availability of "imputed political opinion" as a 1951 Convention reason as described in paragraphs 26-33, and of the risk to Falun Gong practitioners at various levels as described in paragraphs 34-38.

Representation:

For the Appellant: Ms M Phelan, instructed by Messrs Thompson & Co
For the Respondent: Mr J Gulvin, Presenting Officer

DETERMINATION AND REASONS

1. The Appellant, born on 16 October 1973, is a citizen of China who appeals against a decision of the Respondent made on 20 August 2002

to refuse leave to enter after refusal of asylum, for the reasons set out in his refusal letter dated 20 August 2002

The Claim

2. The Appellant's claim as set out in her statement to the Adjudicator can be summarised as follows.

3. She was born and lived in Fujian Province. She was introduced to Falun Gong by a friend in 1998. She began by watching others doing the Falun Gong exercises but later began to practice in a group of more than 10 people in a rented house. She attended every meeting and demonstration since July 1999. However, because Falun Gong was a banned organisation, the police came every time to break them up. As there were hundreds at the meetings and demonstrations, the Appellant was always able to escape.

4. In July 2001, she became more active within Falun Gong. She joined demonstrations and practiced in public places; she recruited new members; and she helped to organise the meetings and demonstrations.

5. In January 2002, whilst practicing with many others in a park, the Appellant and some other members were arrested. Some escaped. The Appellant was held in a "re-education" centre for 3 days. She was forced to repeat over and over again that Falun Gong was evil and should be stopped. She was beaten and received no medical treatment. She was kept with 8 people in a small crowded room and received only minimal food and water. Then she was released with a serious warning and fined 3000 RMB.

6. The Appellant decided in the light of her treatment that she would not quit the movement but would instead become more involved. She recruited more new members, distributed leaflets and joined in peaceful demonstrations. In June 2002, whilst the Appellant was at a Falun Gong gathering in a park, she and others were arrested. She was taken to a police station and held there for a week. She was badly ill-treated. She was charged for participating in Falun Gong despite the restriction set by the Chinese Government. She was temporarily released on bail.

7. The Appellant knew that as she had a record she would receive a long prison sentence and face serious ill-treatment if detained again, so she decided to leave China, as she could not register to live safely elsewhere in the country. She travelled to Shanghai on 10 July 2002. A friend arranged an agent, with whose help she flew to the UK. She arrived here on 17 July 2002 and claimed asylum on arrival. As stated above this was refused on 20 August 2002.

8. That was the evidence in her written statement. However in her oral evidence to the Adjudicator, the Appellant said as recorded in the determination at paragraph 14(f), as follows.

> "(f) In June of 2002 at a Falun Gong gathering in her home city she was again arrested. During detention she has given an account in her evidence of being detained for nearly one month. The statement says she was detained for one week. ..... The Appellant has said in her evidence having had bail explained to her within the meaning of the UK that she was not released on bail. She was told that if she was arrested she would be detained and treated much more severely. She has no obligation to go back to the police station and is not wanted."

Procedural History

9. The Appellant appealed against the Respondent's decision and her appeal was, as indicated above, heard on 3 January 2003 by an Adjudicator, Mr T Jones. In his determination promulgated on 27 January 2003, he allowed the appeal both on asylum and human rights grounds. He held that the Appellant was a credible witness and that as a Falun Gong organiser with a record, she would face persecution as a member of a "social group" and would face a breach of her rights under Articles 2, 3 and 5. As she faced persecution by the state, which would be able to trace her wherever she went, she had no viable internal relocation option.

10. The Respondent appealed to the IAT challenging the Adjudicator's credibility findings and his conclusion that there was no internal relocation option. On 2 March 2003, he was granted permission to argue the matters raised in the grounds of appeal dated 11 February 2003.

11. On 1 October 2003, the IAT heard her appeal. At the commencement of that hearing, the IAT raised two further issues on its own motion. The first was whether on her claim at its strongest she would be at risk on return, bearing in mind that in her oral evidence to the Adjudicator she appeared to have indicated that she was not wanted in China. The second was that membership of a "social group" did not comprise a 1951 Convention reason and the Adjudicator had erred in not identifying any particular social group to which the Appellant belonged. It found both issues against the Appellant. It also concluded that the Adjudicator's positive credibility findings were unsound as was his assessment of the internal relocation option. However, the IAT did not remit the case for any further oral hearing on credibility, but instead allowed the Respondent's appeal outright because it concluded that on the Appellant's own evidence she was not wanted in China and would not be at any real risk on return of persecution or a breach of material human rights, given that she had not given any evidence that she would continue to practice Falun Gong in China

12. The Appellant appealed to the Court of Appeal against the IAT's decision on the basis of whether Falun Gong could be a particular social group; that the Adjudicator's positive credibility findings were sound and should not have been overturned by the IAT; that if the Adjudicator's positive credibility finding was wrong, the appeal should have been remitted for re-hearing; and that the IAT was wrong to hold that the Appellant's claim to the Adjudicator was on the basis that she would continue to practice Falun Gong if returned to China, and so the IAT had proceeded on a mistaken basis of fact.

13. The Appellant's appeal was heard by the Court of Appeal on 3 November 2004 and was allowed. The neutral citation is **L China v The Secretary of State for the Home Department [2004] EWCA Civ 1441**. Its material conclusions are as follows.

> 25. The question the IAT asked itself was whether membership of the Falun Gong could be equated with membership of a particular social group within the meaning of Article 1A of the Refugee Convention. The IAT considered that it could not, because members of the Falun Gong possessed no immutable characteristics. Membership is a matter of choice, and a person can become a member and then cease to be a member at any time. The fact that members of the Falun Gong were persecuted could not itself qualify them for this purpose as members of "a particular social group", because it has been repeatedly stated that the particular social group must exist independently of the persecution. The adjudicator's finding that L would not be persecuted on the grounds of religion had not been challenged on appeal, and L could not therefore show that as a member of Falun Gong she shared characteristics with other members "which it is beyond her power to change or is so fundamental to her identity or conscience that she ought not to be required to change it".....
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> 33 Mr Fordham, who appeared for the Secretary of State, accepted that on appropriate facts a member of the Falun Gong might properly be held to have a well-founded fear of persecution in China on the grounds of imputed political opinion. In our judgment this would be the better approach to such a case, at any rate on the evidence relating to the Falun Gong which is before us. We are not prepared to accept that authoritarian pressure to cease the practice of Falun Gong in public would involve the renunciation of core human rights entitlements. As the IAT observed, the Falun Gong has no membership lists. Anyone can become a member or cease to be a member at any time and practise Falun Gong exercises by him/herself in the privacy of his/her home without significant risk of being ill-treated. We were unwilling to entertain argument on this appeal about the possibility of Falun Gong qualifying as a religion. A court would have to understand a great deal more about it than is contained in the papers at present before us before it could be ready to go down that route.

> 34 A problem has arisen on the facts of this case, however, which requires us to remit it to the IAT. We were told that it was L's case before the adjudicator that if she were to be returned to China she would continue with her Falun Gong activities which we described in paragraph 5 above, and that the IAT failed to appreciate this. As we have said (see para 1), the Secretary of State was not represented before the adjudicator, and both L and her solicitor have filed witness statements since the hearing before the IAT attesting to this fact.
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> 35 Since the IAT decided the "internal flight option" part of the appeal on a different factual basis (see para 14 above) we must remit this case to a differently constituted panel to reconsider the matter. At the new hearing the IAT will be at liberty to revisit the Secretary of State's original grounds of appeal, if it considers it fair to do so, and the appellant will be at liberty to advance arguments based on "imputed political opinion" if she believes that the evidence before the adjudicator would sustain such arguments. We have already expressed our view that a great deal more material would have to be placed before a court before it could seriously entertain the idea that Falun Gung might be a religion within the meaning of the Refugee Convention, and L has expressly disavowed any such suggestion in her own case.
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> 36 We therefore direct that the appeal be allowed and the case be remitted to the IAT for the purposes set out in paragraphs 34-35 above.

14. By virtue of the transitional arrangements following the abolition of the IAT from 4 April 2005, the appeal now comes to the Tribunal for reconsideration. As the Adjudicator's original determination predated the restriction of the IAT's jurisdiction to an error of law, we are not so restricted either, as paragraph 8(4)(b) of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 (Commencement No 5 and Transitional Provisions) Order 2005 provides that

> If, under the old appeals provisions, the appeal or application was not restricted to the ground that the Adjudicator made an error of law, then it shall not be so restricted following commencement."

15. We are limited in the issues we can consider by paragraph 62(7) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 which provides

> Where
> (a) a party has been granted permission to appeal to the Immigration Appeal Tribunal against an Adjudicator's determination before 4th April 2005, but the appeal has not been determined by that date; and
> (b) by virtue of a transitional provisions order the grant of permission to appeal is treated as an order for the Tribunal to reconsider the Adjudicator's determination,

the reconsideration shall be limited to the grounds upon which the IAT granted permission to appeal.

16. We conclude however that the terms on which the IAT granted permission to appeal were varied prior to 4 April 2005 by the judgement of the Court of Appeal and we should therefore proceed on the basis of the Respondent's grounds of appeal of 11 February 2003 as varied by paragraphs 34-36 of the Court of Appeal's judgment set out above.

17. A further factor arising from the transition from the IAT to the AIT is that it is now our normal practice that our first reconsideration hearing deals with whether the Adjudicator's determination is sustainable or not. If it is not, and the re-hearing of extensive oral evidence is required, then we would adjourn for further reconsideration.

18. The appeal to the AIT first came for hearing on 2 June 2005. However the Appellant neither attended nor was represented. This was surprising given the Appellant's past diligence in pursuing her claim. Further enquiries were made which suggested that the Notices of Hearing may have been sent to the wrong addresses, though this was not at first clear from the case file. Accordingly the hearing was adjourned and re-listed for today. Ms Evans, who was then representing the Respondent, gave some indications as to how she intended to argue the appeal and the Tribunal made some directions to facilitate the hearing of the relevant issues when the new hearing took place. Matters could not be taken any further at that hearing and of course no conclusions were reached, given the absence of the Appellant and her Representative. The hearing was therefore adjourned to a new date to enable the Appellant and her Representative to attend and, in case some oral evidence was needed from either of them on matters relating to the sustainability of the determination, given the contents of written statements made by them to the Court of Appeal, which Ms Evans indicated she wished to challenge.

19. Prior to the renewed hearing, Ms Phelan served a document described as a "Respondent's Reply" dated 24 July 2005 to the effect that "The Respondent will argue that the Immigration Judge could have or should have found the Convention reason was political opinion, actual or implied." Given that the present practice of the AIT is to describe from the commencement of any proceedings all claimants as Appellants, irrespective of who is actually appealing against a decision at any particular stage, we shall refer to Ms Phelan's Reply as being from the Appellant.

20. We have before us the following documents.
    1. The Court bundle.
    2. The Appellant's bundle.
    3. The Appellant's Reply
    4. The previous papers
    5. The Appellant's written statements of 9 August and 13 November 2002.

6. The full judgement in L China v The Secretary of State for the Home Department [2004] EWCA Civ 1441.
7. The grounds under the HRA that were before the Adjudicator.
8. The judgment in Chiver.

21. All the proceedings before us are recorded in our record of proceedings.

Preliminary Matters

22. At the outset of the proceedings before us, evidence was produced to show that the Appellant, who is heavily pregnant with twins, could not on medical advice travel to London for the hearing. This had been foreshadowed in an earlier letter to the AIT, and we fully accept her absence for this reason. It did not in the event affect our proceedings.

23. Ms Phelan then withdrew the updated written statement by the Appellant enclosed with her bundle for the hearing. She said she intended to rely in this hearing on the written statements that were before the Adjudicator.

24. After some discussion, both Representatives agreed that the scope of this hearing would be to establish whether the Adjudicator's determination was sustainable in the light of the Respondent's original grounds of appeal as varied by the Court of Appeal. Its sustainability must be assessed in terms of the guidance of the Court of Appeal in **Subesh and Others [2004] EWCA Civ 56**, the Adjudicator's determination having been promulgated prior to the restriction of our jurisdiction to errors of law. In that case, the Court of Appeal gave guidance to the IAT concerning the proper approach to be taken by it (and by us when we are not restricted to our error of law jurisdiction) to challenges against an Adjudicator's findings. In paragraph 43, Laws LJ stated it as follows.

> "In every case the Appellant assumes the burden of showing that the judgment appealed from is wrong. The burden so assumed is not the burden of proof normally carried by a claimant in first instance proceedings where there are factual disputes. An Appellant, if he is to succeed, must persuade the appeal court or tribunal not merely that a different view of the facts from that taken below is reasonable and possible, but that there are objective grounds upon which the court ought to conclude that a different view is the right one. The divide between these positions is not caught by the supposed difference between a perceived error and a disagreement. In either case the appeal court disagrees with the court below, and indeed may express itself in such terms. The true distinction is between the case where the court of appeal might prefer different view (perhaps on marginal grounds) and one where it concludes that the process of reasoning and the application of the relevant law, require it to adopt a different view. The burden which an Appellant assumes is to show that the case falls within this latter category."

Issues of General Significance

25. It was accepted at the beginning of the hearing by both Representatives that the Adjudicator's conclusion that membership of Falun Gong could constitute membership of a "social group" was an error by him. If by that he meant a particular social group that was in error also. Ms Phelan made no attempt to sustain the Adjudicator's conclusion in this respect. We hold, for the reasons given by the IAT and described in paragraph 25 of the Court of Appeal's judgement, that this constituted an error of law, in that the Adjudicator misinterpreted the law relating to particular social groups, though, as we have said above, we do not need in this appeal to find that such an error amounts an error of law in order to give us jurisdiction.

26. Thus we moved on to the first disputed issue before us, which was whether this error was material or not, in the sense of whether it would have made any difference to the outcome of the appeal, given Mr Fordham's statement to the Court of Appeal recorded in paragraph 33 that the Respondent accepted

> "On appropriate facts a member of the Falun Gong might properly be held to have a well-founded fear of persecution in China on the grounds of imputed political opinion".

27. We heard submissions by Mr Gulvin as to what was meant by "on appropriate facts". He said that if a person were established to be at real risk by reason of Falun Gong activity, it could be for imputed political opinion but it depended on how it is practiced. For example it could depend on whether it was practiced in public or in private. It could depend on whether the level of activity and the consequent risk of that activity coming to the attention of the Chinese authorities.

28. We consider however that this formulation by Mr Gulvin confuses the separate issues of "Convention reason" and "real risk". Of course how and where Falun Gong is practiced by an individual, and whether what he does would be reasonably likely to come to the attention of the Chinese authorities, are factors to be taken into account when considering whether on the established facts in any particular case a person is at any real risk by reason of his Falun Gong activities. However as far as the Convention reason issue is concerned, we conclude that if on the established facts it is held that there is a real risk of persecutory ill-treatment by reason of Falun Gong activities, then in line with Mr Fordham's statement, it is by reason of imputed political opinion and thus engages a 1951 Convention reason as well as Article 3.

29. There is no relevant country guidance on the Convention reason issue. The nearest is **MH (Risk – Return – Falun Gong) China CG [2002] UKIAT 04134** but this was concerned with whether there was risk on return for a person who had come under suspicion of involvement of Falun Gong due to his parents' activities, but had no wish to practice it himself. However Mr Fordham's statement to the Court of

Appeal reflects the clear overall thrust of the objective evidence before us. Ms Phelan identified a number of passages in that objective evidence to demonstrate why the Chinese Government impute political opinion to practitioners of Falun Gong and the extent of its hostility. For example a US State Department report in 2004 records the evolution of the Chinese government's attitude towards Falun Gong in these terms.

> "The Chinese government has stated in recent months that there are around 2 million Falun Gong practitioners in China. According to FH sources, previous government estimates put the figure at between 70 and 100 million. The Falun Gong was founded in 1992 by Li Hongzhi, who now resides in the United States. It is described by its adherents as a spiritual practice of body, spirit and mind, based on various schools of Buddhism and traditional forms of self cultivation which centre around a practice of meditation and Qi Gong exercises. These exercises sessions are often held by groups in public places. Before it was banned, the Falun Gong had training stations, practice sites and contact persons across China, with practitioners coming from all sectors of Chinese society and almost all provinces. Among the thousands detained over the past few months, the majority were ordinary workers or farmers, but they also included teachers and academics, university students, publishers, accountants, police officers, engineers and people from a variety of other professions. Those detained also include officials, notably a Railways Ministry official, a former official at the Ministry of Public Security (police), a recently retired major from the People's Armed Police, and a 74 –year-old retired in force Lieutenant-General.
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> The government's final crackdown on the Falun Gong appears to have been triggered by a large-scale demonstration in Beijing on 25 April 1999, when an estimated 10,000 practitioners from various places in China stood quietly from dawn until late into the night outside the compound of the Communist Party leadership in Beijing. According to Falun Gong sources, the demonstration was organised in reaction to incidents in which practitioners had been harassed or detained by police over the previous months. The demonstrators' purpose was to demand official status for Falun Gong and to request dialogue with the government. The authorities however are reported to have been mainly concerned by the capacity of the group to mobilise large numbers of followers, unnoticed, for a public demonstration. Subsequently, after some conflicting signals, they branded the Falun Gong a "threat to social and political stability".
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> The government banned Falun Gong on 22 July 1999 and launched a massive propaganda campaign to denounce its practice and the motivation of its leaders, in particular Li Hongzhi. Since then, the government's accusations against the group have been repeatedly publicised by the state media and government officials. At a news conference on 4 November 1999 for example the Director of the Bureau of Religious Affairs of the State Council said that Falun Gong had brainwashed and bilked

followers, causing more than 1400 deaths and threatened both social and political stability. Further emphasising that Falun Gong was a political threat he added "any threat to the people and to society is a threat to the Communist Party and the government".

30. Another illustration as to why the Chinese government imputes political motives to Falun Gong is in a CNN report of 2002 which states

> "More recently the group has taken to interrupting television broadcasts and beaming their own message into the homes of Chinese viewers. In the present year, Falun Gong supporters have interrupted cable broadcasts in at least six cities, often simply showing banners reading "Falun Dafa is good".

31. There are a number of other relevant references in the objective material but the only other we shall quote specifically comes from a joint report of Human Rights Watch and the Geneva Initiative on Psychiatry. It states

> "The Chinese authorities have frequently asserted that Falun Gong is an "evil cult" displaying the same abusive and life-threatening organisational characteristics as the Aum Shrinrikyo cult in Japan, which released sarin poison gas in the Tokyo subway in 1995, the Branch Davidians cult, dozens of whose members were killed when the US law enforcement authorities stormed its headquarters in Waco, Texas, in 1993, and the the Temple Cult many of whose Members committed collective suicide in Switzerland in 1994. On this and other implicitly political grounds, the Government has further branded the Falun Gong Movement as posing a serious "threat to state security".

32. This illustrates why Mr Fordham accepted on behalf of the Respondent before the Court of Appeal that on appropriate facts a member of Falun Gong might properly be held to have a well founded fear of persecution in China on the grounds imputed political opinion, and we agree with him. It may be that members of Falun Gong do not see themselves as expressing a political opinion, and would certainly reject the proposition that they were a violent cult. Many practitioners would ascribe a spiritual dimension to their activity. Indeed the Appellant originally presented her claim in religious terms. Nevertheless it seems clear to us on the objective evidence that the Chinese government imputes political opinion to them because of concern for their ability to mobilise public opinion on a very substantial scale outside the established structure of the Communist party, and they see this as a threat to the Communist Party and hence the state. Even the state's efforts to blacken the reputation of Falun Gong by linking it to "evil cults", derives from essentially this imputation of political opinion and activity

33. We should add at this point that Ms Phelan did not seek to argue before us that Falun Gong was a religion, which was another issue canvassed

before the Court of Appeal and about which they expressed some scepticism. Accordingly we have not pursued this question any further.

34. We then turn to the issue of risk arising from Falun Gong activities in the light of the objective evidence to which we have already referred and the further passages set out below which comprise objective material from different cited from the current CIPU report.

> 6.122 As reported by the Falun Gong web site accessed on 23 January 2005 "there are at least 6,000 Falun Gong practitioners who have been illegally sentenced to prison. Over 100,000 practitioners have been sent to labour camps.... Large groups of the Falun Gong practitioners have been forcibly sent to local brainwashing classes, where they have been subjected both to physical and mental torture."
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> 6.124 On 29 December 2004, Reporters Without Borders condemned the arrest of 11 Falun Gong practitioners for using the Internet to publish photographs of the torture some of them had undergone in prison. They calculated that at least 30 people are currently detained for posting or viewing documents on the Internet that support Falun Gong or criticise the systematic torture its followers undergo in Chinese prisons.
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> 6.126 According to Amnesty International in their January 2004 reports, controls tighten as Internet activism grows. Of the 54 people detained and sentenced for Internet activism, 29 were Falun Gong practitioners/sympathisers.
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> 6.127 as reported by the Canadian IRB in a report dated 25 October 2001, the Chinese authorities had confiscated 1.55 million copies of Falun Gong material by the end of July 1999. The IRB also reported the arrest of a number of people for illegally printing, selling and publishing Falun Gong material. Sentences ranged from six to ten years imprisonment.

35. We view with caution the respective assertions by both the Chinese authorities and Falun Gong sources, both of whom have their own agendas. <u>However our first conclusion as to risk, from the objective evidence as a whole, is that, absent special factors, there will not normally be any risk sufficient to amount to "real risk" from the Chinese authorities for a person who practices Falun Gong in private and with discretion.</u> On any assessment the number of Falun Gong practitioners in China is very large indeed. The figures quoted range from 2 million to some 100 million. So far as can be gathered from the evidence before us, the number of people who have faced detention or re-education by the Chinese authorities as a consequence of Falun Gong activity, whilst large in absolute terms, is a relatively small proportion of the overall number of practitioners. This indicates that the large majority of those who practice Falun Gong in China in privacy and with discretion, do not experience material problems with the authorities.

36. Our second conclusion is that the essential benefit of Falun Gong to an individual comes from the practice of meditation and Qi Gong exercises, which can be carried out alone or with a few friends in private. It

appears to have some spiritual dimension. There does not appear however to be any duty or pressure on a Falun Gong practitioner to proselytise, even though some plainly do. We therefore endorse the view expressed by the Court of Appeal in paragraph 33 of their judgment in this case that

> "We are not prepared to accept that authoritarian pressure to cease the practice of Falun Gong in public would involve the renunciation of core human rights entitlements."

37. Our third conclusion is that risk of material ill-treatment escalates significantly when a practitioner does engage in activities that are reasonably likely to bring him to the notice of the authorities. Such activities include the public practice of Falun Gong exercises, recruitment of new members, and dissemination of Falun Gong information. The risk of escalating ill-treatment also increases when a person who has previously come to the adverse attention of the authorities and has been detained/re-educated and warned against continuing Falun Gong activity, ignores that warning.

38. Our fourth conclusion, which follows from the previous paragraph, is that, absent special factors and credible motivation, a person displaying limited knowledge of Falun Gong or limited involvement with it, is unlikely to be committed to undertaking activities on return to China that would bring him to the adverse attention of the authorities and materially increase his risk.

Case Specific Issues

39. We come then to the case specific issues argued before us.

40. First we conclude, by reason of our general findings above that even though the Adjudicator's conclusion, that membership of the Falun Gong comprised within the terms of the 1951 Convention a particular social group, or as the Adjudicator actually put it a "social group", is an error, and indeed an error of law, it is not a material error, because activity for Falun Gong can on appropriate facts engage the alternative 1951 Convention reason of imputed political opinion.

41. Next is whether the Adjudicator's findings of fact are sustainable on the evidence before him. The IAT concluded they were not because of the discrepancy between the Appellant's written statement and oral evidence about the length of her second detention, but did not remit the appeal for fresh findings of fact, because, as can be seen from the terms of the referral by the Court of Appeal, the IAT decided the appeal on a different basis, on what was alleged by the Appellant to be a mistaken understanding of her evidence concerning her intention to practise Falun Gong if returned to China and the nature of her activities.

42. As to the general challenge to the Adjudicator's positive credibility findings, we first note the reasons given by him to support them. They are as follows.

1. The claim is in line with the objective evidence of the crack-down on Falun Gong practitioners in China.
2. The Appellant has been entirely consistent save except in one or two minor discrepancies.
3. There was no challenge to the Appellant's knowledge of Falun Gong or her claim to be a practitioner.
4. She was nervous when giving evidence and had to correct herself on two occasions but that was to her credit.
5. The only discrepancy between the papers and the oral evidence was the length of the second detention, as to whether it was one week as per the written statement or one month as in her oral evidence. The Adjudicator gave her the benefit of the doubt on this. The discrepancy could be a simple typographical or translation error when the statement was read back.

43. Mr Gulvin challenged the Adjudicator's findings, relying initially on the two matters raised in the Respondent's original grounds of appeal. First he submitted that the Adjudicator erred in not giving material adverse weight to the discrepancy between the Appellant's written statement and her oral evidence as to the length of her second detention. There was a significant difference between one week and one month. Second the Adjudicator erred in concluding that there was only one discrepancy between the written statement and the oral evidence, because there was also a discrepancy as to whether the Appellant had been released from the second detention on bail or not.

44. We conclude that there is no material substance in these two challenges.

45. First, the Adjudicator was entitled in the context of the evidence as a whole to take the view he did of the contradiction between the written statement and the oral evidence over the length of the second detention, and to accept what was said by the Appellant in her oral evidence as being true. The discrepancy could be explained by an error in the written statement that was not read back to the Appellant, as the Adjudicator accepted. Mr Gulvin essentially offers an alternative opinion to the view that was reached by the Adjudicator, but if the Respondent had wanted to further challenge the Appellant in cross-examination, he should have been represented at the Adjudicator's hearing, but he was not. In terms of Subesh we do not consider that the process of reasoning and the application of the relevant law require us to adopt a different view.

46. With regard to the second challenge, Mr Gulvin accepted that the difference between the written statement and the oral evidence on the question of bail, was not an inconsistency but a clarification of the distinction between what bail meant in the Chinese context and in the UK. Thus the Adjudicator was correct in referring to only one inconsistency

47. Thus we conclude that the Adjudicator's findings of fact are sustainable.

48. The final issue in contention is the challenge is to the Adjudicator's conclusion as to internal relocation. He held in paragraph 16 as follows.

> "The objective material before me does point to an increased crackdown on the Falun Gong movement by the Chinese authorities and as to the option of internal flight I accept the Appellant's account, given it is the state that is persecuting her and that the machinery of the state is available there to trace her wherever she were to move in China. In looking at the decision in Zheng, I note that in looking at the case here on its own facts and merits, that the Appellant here too is more than a mere practitioner. She has supported the movement in some if not significant measure on a day to day basis. I have to in looking at paragraph 18 of that decision look at the two questions posed when applying the appropriate burden and standard of proof. : (1) would this Appellant as an arranger and leader of practice sessions be the subject of the ill-treatment, and (2) if the answer to that was yes, would the ill-treatment amount to persecution? In looking at the Appellant's case, as I stressed on a case-by-case basis on its own merits, my answer to both of those questions on the basis of the evidence before me and the objective material cited must be yes."

49. Mr Gulvin challenged this on the basis that the Appellant's own oral evidence was that she had been released after her second detention and was not subject to any outstanding charge. There was no reason therefore why the authorities would seek to pursue her in any other part of China. Nor would she be at any real risk, as there was no evidence before the Adjudicator to support the contention argued on the Appellant's behalf in the Court of Appeal that she would continue with similar activities on behalf of Falun Gong if returned, as she had in the past.

50. We accept, as the Appellant clarified before the Adjudicator, that there are no outstanding charges against the Appellant in China. She will not therefore be at risk of arrest on an outstanding charge and will not be pursued by the authorities in China on that basis. The relevant issue is whether the Appellant had indicated in the evidence before the Adjudicator that she would continue with her activities for Falun Gong as before, and would therefore be at real risk, if she were re-arrested for her future activities, of being identified as a person who had already been arrested, detained and warned twice as a consequence of her support for Falun Gong.

51. Ms Phelan argued that there was ample evidence before the Adjudicator to support to the Appellant's contention that she would continue her activities for Falun Gong if returned and it was clear in the context of the determination as a whole that the Adjudicator accepted this, given the absence of any cross-examination, and that this was the basis for his concluding that there was no viable internal relocation option.

52. Having considered the submissions made to us, we conclude that the Appellant had made clear up to and at the time of the hearing before the Adjudicator and that she would continue with her activities for Falun Gong if returned to China. This was stated in terms in the additional grounds submitted with her appeal to the Adjudicator. Paragraph 6 states

> "The Appellant's attempts to practise her religion have met with such extreme opposition as to endanger her safety and force her to seek international protection. She is a committed practitioner of Falun Gong and would wish to continue to practise her religion if returned to China.....

53. The reference to continuing to practise (without any qualification) if returned to China implies continuing with the activities which she carried out previously, which included recruitment, organisation of meetings and events, and public practice as well has private practice. If the Respondent had wished to test this assertion further, he should have done so at the hearing before the Adjudicator but chose not to be represented. Given the lack of challenge, and his general positive credibility findings, the Adjudicator was entitled to accept this evidence. As Ms Phelan observed, if the Appellant had intended to give up her past activities for Falun Gong, there would have been no need for her to leave China at all, as she would no longer have been at risk there. She had already demonstrated her commitment by her response to pressure by extending her Falun Gong activities after her first detention and ill-treatment. This showed determination and motivation.

54. Reading the determination as a whole, we conclude that the Adjudicator did take into account, when considering the viability of internal relocation, the Appellant's expressed and effectively unchallenged intention to continue with her activities on behalf of Falun Gong if returned to China. He was entitled on the evidence to do so. The objective evidence we have described above shows increasing risk from the activities which the Appellant had undertaken in the past and intended to continue doing. We can see no error in his conclusion that there would be real risk in her home area and no viable internal relocation option for such a person. Her activities were significantly more than that simply those of a private practitioner. She had already come to the adverse attention of the authorities twice before. There was a real risk she would be detained again, in respect of her future activities, and then inquiry would be made where she had lived previously and her record would come to light. In the context of the objective evidence this would place her at real risk of persecution and a breach of Article 3.

55. In summary therefore we can see no material error in the Adjudicator's findings of fact and conclusions, all of which, apart from the question of particular social group, were open to him. That sole error is not material because on the established facts imputed political opinion is a viable alternative 1951 Convention reason. The Adjudicator's determination is accordingly sustainable.

Summary of Decisions

There is no material error. The Adjudicator's determination shall stand.

Signed Dated 4 August 2005

S L Batiste, Senior Immigration Judge

Approved for electronic transmission

APPENDIX OF OBJECTIVE EVIDENCE CONSIDERED

1. CIPU report of April 2005
2. US State Department Country Report of human rights practices – 2004
3. US State Department China Report – International Religious Freedom Report 2004.
4. Amnesty International "Crackdown of Falun Gong and other so-called heretical organisations – 2000.
5. Amnesty International Report on China – 2004
6. CNN – China – Falun Gong a global threat – August 2002
7. CNN – Falun Gong: a brief but turbulent history – July 2002
8. Human Rights Watch and Geneva Initiative on Psychiatry – August 2002.
9. BBC – Falun Gong: living in fear – April 2000
10. Christian Century – Falun Gong supporters denounce China – August 2000.
11. BBC – The complex web of Falun Gong – July 1999
12. BBC – Text of notice banning Falun Gong – July 1999
13. Amnesty International – UA 97/05 – 22 April 2005-08-01
14. BBC – Falun Gong hacker died in jail – December 2003