



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

Appeal Number: PA/03763/2017

THE IMMIGRATION ACTS

**Heard at Glasgow
on 8 January 2018**

**Decision and
Promulgated
on 12 January 2018**

Reasons

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

**DENING CHEN
(Anonymity Direction Not Made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr A Caskie, Advocate, instructed by Latta & Co, Solicitors
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against a decision by First-tier Tribunal Judge David C Clapham SSC, promulgated on 7 September 2017, dismissing his appeal on all available grounds.
2. Mr McVeety at the outset conceded that the article 8 decision was defective (the final point in the grounds), in particular for failure to evaluate the best interests of the children. In that respect, parties agreed there should be a remit to the FtT for a fresh decision.
3. Mr Caskie said that the appellant continued to argue the rest of the grounds, and asked for a remit on all aspects of the case. He adopted the summary in the grant of permission:

A decision of 15 pages, but only one page of analysis;

First decisive paragraph, based on delay in claim from 2009 – 2015;

Second, based on inconsistencies in appellant's practice of Falun Gong, but without saying what they are;

Third, referring to snakehead allegations, but without a finding on the trafficking claim;

Fourth, rejecting a summons by reference to *Tanveer Ahmed* but nothing more;

Fifth, referring to following *LL* absent special circumstances, but not to the submission that such circumstances applied;

Final paragraph, addressing article 8 but without reference to part 5A of the 2002 Act, the case outside the rules, or the best interests of the children.

4. Mr McVeety at first advanced the argument that there were major discrepancies and other weaknesses in the appellant's case, which emerged clearly from the part of the decision setting out the lengthy cross-examination of the appellant and his witness, and that although the decision-making part was brief and did not spell out those defects, it was justified when read in context. In course of submissions, however, it became apparent that a fresh decision is required also on the protection claim.
5. The decision of the FtT is **set aside**. It stands only as a record of what was said at the hearing.
6. The nature of the case is such that it is appropriate in terms of section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 to **remit the case to the FtT** for an entirely fresh hearing.
7. The member(s) of the FtT chosen to consider the case are not to include Judge David C Clapham.
8. No anonymity direction has been requested or made.



9 January 2018
Upper Tribunal Judge Macleman