

**Upper Tribunal**

**(Immigration and Asylum Chamber) Appeal Numbers: PA/05067/2018**

**IA/33430/2015**

**THE IMMIGRATION ACTS**

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| **Heard at Field House** | **Decision & Reasons Promulgated** | |
| **On 4 January 2019** | **On 1 February 2019** | |
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**Before**

**DEPUTY UPPER TRIBUNAL JUDGE PEART**

**Between**

**NQ**

(anonymity direction MADE)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Sellwood of Counsel

For the Respondent: Mr Jarvis, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of China. He was born on 30 January 1982.
2. In a decision promulgated on 13 October 2018, Judge Brewer (the judge) dismissed the appellant’s appeal against the respondent’s refusal to grant asylum, humanitarian protection and on human rights grounds. The judge did not accept the appellant was credible, or that he would be at risk on return and that as regards human rights issues, the respondent’s decision was proportionate.
3. The grounds claimed misdirections in law, failure to consider evidence when determining credibility and failure to take into account material facts and evidence in considering **LL (Falun Gong – Convention Reason – Risk) China CG [2015] UKAIT 00122**.
4. The grounds went on to explain that the judge arguably erred in failing to take into account expert evidence of Professor Bluth and taking account of the absence of corroborating evidence when there was no requirement to do so.
5. Judge Grimmett granted permission on 8 November 2018. He said it was arguable that the judge erred in reaching conclusions as to credibility at [44]-[48] and in concluding the appellant would not be at risk on return, prior to giving consideration to the expert report.
6. There was no Rule 24 response.

**Submissions on Error of Law**

1. Mr Sellwood relied upon the grounds. The expert had produced a measured and balanced report which the judge failed to take into account. His error to do so was material. Mr Jarvis acknowledged the judge had erred in his failure to engage with the report of Professor Bluth, however, I am asked to find that there was no material error. That is because Professor Bluth’s report was based upon broad plausibility grounds and did not engage with the specific issues regarding which the judge made widespread adverse credibility findings.

**Conclusion on Error of Law**

1. Both parties agreed that the judge had erred in his failure to engage with the report of Professor Bluth. The only difference between them is the materiality of the error. The report of Professor Bluth addresses the specific issues he is asked to consider at [3(i) – (ix)] at pages 10 and 11 of the report. Professor Bluth sets out his comments on the appellant’s account, issues relating to involuntary return, Falun Gong in China at [5.3], pages 13-19, before going on to consider specific issues with regard to the appellant’s particular circumstances at [5.4], pages 20-25. Based upon Professor Bluth’s analysis of the various evidence before him, he considered the appellant’s account was plausible (see [5.4.4]). He considered the report of the appellant’s parents’ persecution plausible and also the manner in which they learned of the appellant’s mother’s death from watching the news. Country information was cross-referenced at P36 of the appellant’s bundle at [5.2.2] referring to the harassment, detention and sentencing of inter alia, family members of Falun Gong practitioners. The judge refers to this at [55(iii)].
2. The judge carried out his analysis of credibility at [31]-[49]. Unfortunately, in making his adverse credibility findings, the judge failed to take into account the expert report of Professor Bluth which he only turned to at [55] after he decided that the appellant was not a credible witness, he did not accept his account regarding his parents’ Falun Gong activities or the claimed arrest and death of his mother. As it is, the judge’s analysis of Professor Bluth’s report essentially comprises an observation that the appellant was neither a believer or practitioner of Falun Gong and there was no evidence that the deaths of two Falun Gong practitioners in 2006 would have any ongoing risks for the appellant on return [see 55(i)]. That is to ignore and fail to engage with Professor Bluth’s reasons for saying that the appellant would indeed be at risk on return.
3. There were other errors. The judge made an adverse credibility finding regarding the lack of corroborative evidence of the appellant’s claim whereas there is no strict requirement to provide the same. See [47] of the decision.
4. I find that the judge materially erred for the reasons I have set out.

**Notice of Decision**

The judge’s decision is set aside in its entirety and will be remade in the First-tier following a de novo hearing.

**Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date 4 January 2019

Deputy Upper Tribunal Judge Peart