

REFUGEE STATUS APPEALS
AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76536

AT AUCKLAND

<u>Before:</u>	M A Roche (Chairperson) R P G Haines QC (Member)
<u>Counsel for the Appellant:</u>	K Gore
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Date of Hearing:</u>	16 & 17 August 2010
<u>Date of Decision:</u>	15 November 2010

REASONS FOR DECISION

[1] This is an appeal against the decision of a refugee status officer of the Refugee Status Branch (“RSB”) of the Department of Labour (“DOL”) declining the grant of refugee status to the appellant, a national of China.

INTRODUCTION

[2] The appellant first arrived in New Zealand in December 2000 on a student permit. Between December 2000 and October 2009 the appellant completed a course of study in New Zealand and worked in accordance with the terms of work permits she was issued. She returned to China for visits to her family in 2003 and 2005. Following the decline of her application for permanent residence in New Zealand she claimed refugee status on 2 October 2009 on the basis that she was at risk of being persecuted in China because of her involvement with the *Falun Gong* movement. Following an interview on 6 November 2009 her refugee status claim was declined in a decision dated 6 May 2010 leading to her present appeal.

[3] The appellant is a *Falun Gong* practitioner and for several years was the co-

ordinator for *Falun Gong* in Rotorua. She claims that the combination of her activities on behalf of *Falun Gong* (including her participation in public protests during the visit of the Deputy Premier to New Zealand in June 2010), her involvement with the *Epoch Times* newspaper, and her involvement with the Shen Yun Performing Arts Group will have made her a person of interest to the Chinese authorities. She considers that if she returns to China, she will be persecuted because of these activities and because of her ongoing devotion to *Falun Gong*.

THE APPELLANT'S CASE

[4] The Authority heard evidence from the appellant and from two witnesses who appeared on her behalf. A summary of their evidence follows. It is assessed later in this decision.

Evidence of the appellant

[5] The appellant is a 28 year-old single woman currently living in Auckland. She is from a city in Jiangsu Province, China and is her parents' only child.

[6] In June 1999, the appellant's mother began to practise *Falun Gong* and read *Falun Gong* books. She was introduced to the practice and provided with the books by a relative who was a *Falun Gong* practitioner who suggested that practising *Falun Gong* would assist the appellant's mother with some health problems she was experiencing.

[7] In July 2000, the same relative suggested to the appellant that she would benefit from practising *Falun Gong* and reading *Falun Gong* books. The appellant took her advice and began to read the literature and practise *Falun Gong* privately at home with her mother.

[8] In December 2000, the appellant travelled to New Zealand on a student permit and began a course of study at Waikato University.

[9] In February 2001, she made contact with the local *Falun Gong* group in Hamilton and obtained from them a music tape which she used to practise *Falun Gong* at home. From this time on she read books and performed the *Falun Gong* exercises for approximately one hour a day. Although she occasionally joined in public practices in Hamilton, she usually just practised and read at home.

[10] In June 2003, the appellant learnt from her mother that the relative in China who had introduced them both to *Falun Gong*, had been arrested and detained for her *Falun Gong* activities and had been released one month later after providing an undertaking not to further participate.

[11] The appellant visited China in November 2003. She visited the relative who informed her that her telephone was monitored and that she was receiving visits from the Public Security Bureau ("PSB") and members of the neighbourhood street committee from time to time to check whether she was producing *Falun Gong* materials at home.

[12] During 2004 and 2005, the appellant's interest in *Falun Gong* waned. Around this time she was having difficulties with a boyfriend. These difficulties came to a head during November 2005 while she was on her second visit back to China to see her family. While she was away, her boyfriend terminated the relationship. Her relative advised her to return to the study and practise of *Falun Gong* because this would console her. The appellant followed this advice and from this time on had a greater commitment to *Falun Gong*.

[13] The appellant returned to New Zealand in February 2006 and resumed her studies. Shortly after this, she came across a report on the Internet concerning organ harvesting from *Falun Gong* practitioners in detention in the Sujiatun District in China. The appellant was horrified and outraged by this and has since then tried to inform as many people as possible about the organ harvesting as well as the other atrocities carried out against *Falun Gong* practitioners by the Chinese government. Her informing of others about these things fulfils the obligation she has to "truth-tell". The appellant believes that truth telling is one of the essential components of the practice of *Falun Gong*.

[14] From approximately March 2006 onwards the appellant began to attend public practices every Saturday with other *Falun Gong* practitioners in Hamilton. Around this time she became the assistant co-ordinator for *Falun Gong* in Hamilton. In this role she organised fundraising for the *Epoch Times* newspaper (a weekly Chinese language newspaper staffed entirely by *Falun Gong* adherents) and was a volunteer advertising salesperson for the newspaper. She also helped organise a protest trip to Wellington to protest against the visit of the Chinese Premier, Wen Jia Bao, to New Zealand.

[15] In February 2007, the appellant obtained employment at a tourist attraction in Rotorua. She was employed as an interpreter because she was fluent in

Japanese and Mandarin and in this capacity often assisted Chinese tourists to make purchases in the attractions' gift shop. The tourists were brought on buses by tour guides. The appellant would strike up conversations with the Chinese tourists and, if they seemed receptive, would talk to them about *Falun Gong* telling them that it was good. She would also tell them about the organ harvesting from *Falun Gong* practitioners in China. She would suggest to them that they should withdraw from the Chinese Communist Party ("the CCP"). Sometimes when she had these conversations with the Chinese tourists their tour guide would tell the tourists to stop talking to her and leave. Occasionally, the people she talked to were receptive to what she had to say and thanked her for telling them.

[16] The appellant saw this as part of her truth telling and continued to "truth tell" in this manner until she left her position at the tourist attraction in 2009. She also visited the Rotorua lakeside during the weekends where she would approach Chinese people and attempt to tell them the truth about *Falun Gong* and the CCP.

[17] The appellant believes that the Communist Party is evil and that the CCP must be destroyed. She accepts *Falun Gong* teaching that anyone who remains in the CCP has a seal in their body and will be destroyed along with the CCP when it is ultimately destroyed in accordance with the teachings of the leader of *Falun Gong*, Master Li. She feels responsible for warning CCP members about this as they are in danger.

[18] While living in Rotorua the appellant was the *Falun Gong* co-ordinator for the city. She practised *Falun Gong* in the public gardens and organised for practitioners to come from Hamilton for various events. She helped organise the *Falun Gong* "float" for the Christmas parade in Rotorua. She would also travel to Hamilton from time to time to join in *Falun Gong* activities there. For example, on several occasions she helped exhibit photographs at the Frankton market which showed *Falun Gong* practitioners who had been mistreated by the Chinese authorities. She also participated in the *Falun Gong* float in the Hamilton Christmas parade.

[19] In Rotorua, the appellant delivered the *Epoch Times* newspaper every week to Chinese restaurants and also donated money to assist with the costs of producing the paper.

[20] The appellant's mother visited her in New Zealand between January 2008 and May 2009. During her time in Rotorua, the appellant's mother practised *Falun Gong* at home with the appellant but did not take part in any other *Falun Gong*

activities because she intended to return to China and thought that she may have difficulties if she did so. Since returning to China, the appellant's mother continues to practise *Falun Gong* at home. She has never had any problems arising from this.

[21] The appellant's involvement with the *Epoch Times* newspaper dates back to 2002 when she spent two weeks training as a typesetter. In January 2010 the newspaper's editor, Max Shen, telephoned her and asked her if she would like to assist with the translation of some news articles. She agreed to become involved. Working as a translator meant that she would scan newspaper websites (predominantly the New Zealand Herald) for articles of interest and translate them into Mandarin for publication in the *Epoch Times*. She initially translated about one article a day and now translates two or three. All these articles are published under the appellant's pen name. It is the practice of the *Epoch Times* not to publish the real names of its staff because this might give rise to problems with the Chinese authorities.

[22] In April 2010, Max Shen asked the appellant to relocate to Auckland and to carry out reporting on the visit and performances in Auckland by the Shen Yun Performing Arts Group. Although the main purpose of the performances were to showcase traditional Chinese culture, all the performers are *Falun Gong* members and sections of the performance related to *Falun Gong*. The appellant agreed to Mr Shen's request and moved to Auckland to join the *Epoch Times* reporting team. Before she was able to work as a reporter she needed to acquire press accreditation from the newspaper. Her personal details were entered on the *Epoch Times* international personnel website and she was accordingly issued with an *Epoch Times* identification card which shows her photograph and her genuine name.

[23] Between 30 April and 2 May 2010 the appellant was involved with reporting and producing articles for the *Epoch Times* after each of the Shen Yun performances carried out in Auckland. This involved conducting interviews with performers and others associated with the production while wearing her *Epoch Times* identification card. After the Shen Yun performances finished, the appellant continued to work as a translator for the *Epoch Times*. She works from home as do all the *Epoch Times* staff. She also does interviews for the paper, proofreading and editing.

[24] In June 2010, the appellant was appointed to the position of editor for the

global news section of the *Epoch Times* and in this regard translates international news items for the New Zealand edition.

[25] Since moving to Auckland the appellant has continued to study and practise *Falun Gong* at home. She also attends a Saturday evening study group in Pakuranga along with approximately 80 other members and from time to time participates in public events of which there have been four or five. In mid-June 2010 she participated in a protest in front of the Auckland hotel where the Deputy Premier of China, was staying. This protest was filmed and broadcast by the New Tang Dynasty television station.

[26] In early July 2010, the appellant participated in a *Falun Gong* event held in Queen Elizabeth Square which was a gathering for people who have quit the CCP. She also participated in another event in Queen Elizabeth Square on 20 July 2010 which was a gathering to remember *Falun Gong* practitioners who had been persecuted by the CCP. Each of these gatherings in Queen Elizabeth Square was attended by approximately 100 people. As well as participating in these events, the appellant wrote articles about them which were published in the *Epoch Times*.

[27] The appellant fears that if she returns to China she would be persecuted because of her *Falun Gong* activities. In the event that she is not stopped at the border and is able to return safely to her home, she would be forced to conceal her practice of *Falun Gong* and would not be able to comply with her obligation to truth tell because it would be too dangerous to do so. However, she does not believe that she would be able to safely return to her home. She considers that her activities in New Zealand on behalf of *Falun Gong*, Shen Yun and the *Epoch Times* will have brought her to the attention of the CCP and that she will be subjected to the same kind of mistreatment in China that other *Falun Gong* practitioners have experienced.

[28] The appellant believes that if she fails to truth tell then she is failing to be a genuine *Falun Gong* adherent. In China it is necessary for practitioners to be very careful when they conduct truth telling activities because they can be reported on and arrested. However, this dangerous activity is important because if the truth is not told, people will not know how the CCP has persecuted *Falun Gong* members and people in China will fail to realise how evil the CCP is and as a result "more people will die and more persecution will happen".

[29] In a book written by Master Li, the appellant has read a comment he made concerning truth telling in which he said that it is not the target of *Falun Gong* for

Falun Gong adherents to be imprisoned and that the aim of practitioners should be to tell the truth, not to go to prison. The appellant does not believe that she would be safe as a *Falun Gong* practitioner in China if she was careful while telling the truth. This is because in China, it is your belief in *Falun Gong* itself that gets you imprisoned. Once it is realised by people around you that you are a member of *Falun Gong*, you are at risk. However, in China she would attempt to clarify the truth even if it exposed her to the risk of being persecuted.

Evidence of AA

[30] AA is a Chinese national and a New Zealand resident. She began practising *Falun Gong* in China in 1998 while it was still legal. Truth telling was not at that time an essential component of *Falun Gong*. This only started when *Falun Gong* was banned and the persecution of *Falun Gong* practitioners began. Truth telling is now an essential component of being a *Falun Gong* practitioner. However, people in China are more limited in the truth telling activities they can undertake because of safety issues.

[31] AA arrived in New Zealand in 2002. Between 2002 and 2006 she practised *Falun Gong* in private in New Zealand because she was fearful of Chinese government spies.

[32] AA returned to China for visits in 2003 and 2005. During her 2005 visit she renewed her passport.

[33] AA was granted New Zealand residence in 2005 as a skilled migrant.

[34] From 2006 onwards AA was involved in public *Falun Gong* activities such as Christmas parades and protest activities. These included demonstrations at the Frankton Market. She also worked delivering the *Epoch Times*. Her mother arrived in New Zealand in 2006 and has been granted refugee status because of her own practice of *Falun Gong*.

[35] AA visited China for the final time in May 2009. Her grandfather had died and her father was unwell and so she returned to China for a period of three weeks to assist with her grandfather's funeral. She did not tell people in New Zealand or China of her intention to travel and while in China she remained home as much as possible in order to avoid attention. She passed through the airport in Beijing on her arrival and departure without difficulty.

[36] AA has known the appellant since February 2003 when she met her at a *Falun Gong* study session. She and the appellant have participated in various *Falun Gong* activities together including the organisation of the Quit Chinese Communist Party march at the Frankton Markets in Hamilton in June 2006 and Christmas parades. In 2010 AA was the co-ordinator for the promotion of the Shen Yun Performing Arts Group show tickets in Hamilton. The appellant came to Hamilton and assisted her to sell tickets at the Hamilton central shopping centre with other *Falun Gong* practitioners on Thursday mornings for three weeks. AA considers that the appellant is a committed *Falun Gong* practitioner and has had many discussions with her over the years about *Falun Gong*.

Evidence of Max Shen

[37] Max Shen is the editor of the New Zealand branch of the *Epoch Times* newspaper. He is from China, where he began practising *Falun Gong* in 1996 while it was still legal. In 1997, he immigrated to New Zealand as a permanent resident under the Skilled Migrant category and later became a New Zealand citizen. He has never returned to China.

[38] Mr Shen has been with the New Zealand branch of the *Epoch Times* since its establishment in New Zealand in 2001. The head office of the *Epoch Times* organisation is in New York and New Zealand is one of the 30 countries in which the newspaper has a local edition.

[39] There are no formal *Epoch Times* premises in Auckland. Staff including the appellant work from home.

[40] The appellant first became involved with the *Epoch Times* newspaper in 2002 when she did some typesetting training and practical work. After that she helped deliver the *Epoch Times* in Hamilton and Rotorua for several years. The nature of her involvement with the newspaper changed this year. Two senior editorial members resigned during 2009 leaving a gap at the paper. Mr Shen heard that the appellant had good language skills and, because she also had been trained in typesetting, he contacted her and asked her if she would like a full-time job at the paper in the news team. She accepted this position and from January 2010 has been involved in editing, news translating, composing articles, interviewing and events reporting. Like all *Epoch Times* reporters, the appellant uses a pseudonym for her articles.

[41] The appellant undertook reporting for the *Epoch Times* in relation to its

coverage of the 2010 Shen Yun Performing Arts Group show. In order to get the *Epoch Times* press pass the appellant required for this work Mr Shen placed her personal details including her name and educational background onto the *Epoch Times* global internal human resources website. It is an *Epoch Times* head office requirement that such details are supplied prior to the issue of press passes. This information can only be accessed by the chief editor of each *Epoch Times* branch. Mr Shen is the only person in New Zealand able to access this website and is required to use a password to do so. Despite such security precautions Mr Shen is of the view that the security of the website against the Chinese government cannot be guaranteed.

[42] Mr Shen suspects that there have been attempts on behalf of the CCP to infiltrate and sabotage the *Epoch Times* computer system. He cited several instances where his system has been attacked by viruses including viruses attached to emails purporting to be from people in his address book but not actually sent by those people.

Written Evidence – *Epoch Times*

[43] Counsel filed a letter dated 23 June 2010 from the Chairman of the *Epoch Times* English language edition, Stephan Gregory, and two sworn statements from Chinese nationals resident in the United States, CC (sworn 20 June 2010) and DD (sworn 30 June 2010). The statements provide details of their author's experiences of treatment in China by reason of their involvement in the *Epoch Times*. Summarised, these are as follows:

[44] CC states that he was suspended from university in June 2000 because of his involvement with *Falun Gong*. He joined the *Epoch Times* in 2000 and worked in Zhuhai city as a reporter in charge of international news for the *Epoch Times* website. Along with all other *Epoch Times* staff in Zhuhai city, he was arrested on 16 December 2000. He was sentenced to five years' imprisonment in September 2002. He states that during his time in prison he experienced "many kinds of torture, such as forced slave labour, forced brainwashing, shocking with electric clubs, forced feeding, long-term sleep deprivation, beatings, abuse etc". After five years' imprisonment he fled China and gained asylum in the United States.

[45] DD states that because of his involvement with *Falun Gong* and the *Epoch Times* he was arrested in Beijing on 15 March 2001 and detained in Beijing in the

Haidian Detention Centre and in Changsha Prison in Hunan province. He gives details of the mental and physical mistreatment he says he endured there. He left China in February 2005 for the United States where he applied for and was approved for political asylum.

[46] In his letter, Mr Gregory outlines the history of the *Epoch Times* and states that immediately after its founding in 2000, it became a platform for all Chinese including democratic dissidents. He states that the Chinese government seeks to interfere with the *Epoch Times* because it publishes criticism of the CCP and details of human rights abuses including the persecution of *Falun Gong*.

[47] Mr Gregory asserts that the PRC's 'strategic battle plan' to interfere with the operations of the *Epoch Times* includes:

... the detention and torture of *Epoch Times* staff who formerly worked inside the PRC; threats made against the family members of *Epoch Times* staff by PRC officials; phone calls from Consular officials to advertisers in the *Epoch Times* urging them not to advertise in our paper; Consular officials attempting to prevent *Epoch Times* reporters from covering stories; and Consular officials urging that venues not be rented to our newspaper.

In addition to these cases that involve direct action by PRC officials, there is a longstanding pattern of other actions aimed at disrupting the operations of The *Epoch Times* that we believe are carried out by agents of the PRC or those paid or otherwise encouraged by agents of the PRC to do so. These actions include: the beating of The *Epoch Times* chief tech officer in his home and the theft of his computers; attempts to intimidate *Epoch Times* staff; the smashing of *Epoch Times* printing equipment; the theft of *Epoch Times* newspapers; the mailing of envelopes of white powder to *Epoch Times* offices, which require the shutting down of operations while police hazmat teams analyze the threat; the vandalizing of vehicles used by The *Epoch Times*; the vandalizing of *Epoch Times* newspaper boxes; and jamming the phone lines of *Epoch Times* offices with large numbers of phone calls.

[48] He states that when EE, the former PSB officer, sought asylum in Australia in February 2005 he brought with him copies of a number of official public security documents. Included amongst these was a record of a meeting held at the Tianjin City Public Security Bureau in October 2004, the purpose of which was to review, organise, and encourage efforts to interfere with the *Epoch Times* by the public security agencies of several provinces.

Further Documents Filed

[49] Counsel filed a large volume of material in support of the appeal. This material included a DVD recording of a New Tang Dynasty television news item showing the protest held outside the Langham Hotel in June 2010. The appellant is identifiable amongst the protesters. Also included amongst the material filed

were written submissions, witness statements, and items of country information. This country informational included the United States Congressional Executive Commission on China Annual report 2009 (10 October 2009) and the Report of the United States House of Representatives Committee on International Relations, Serial No. 109-62 (21 July 2005). This report which is entitled 'Falun Gong and China's Continuing War on Human Rights' includes the transcript of testimony given to the Committee by various witnesses including the former Chinese diplomat, Chen Yonglin.

THE ISSUES

[50] The Inclusion Clause in Article 1A(2) of the Refugee Convention provides that a refugee is a person who:

... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

[51] In terms of *Refugee Appeal No 70074/96* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

ASSESSMENT OF THE APPELLANT'S CASE

CREDIBILITY

[52] Prior to determining the framed issues it is necessary to make an assessment of the credibility of the appellant and her witnesses. In short, the Authority found them to be credible and reliable. They answered questions in a straight-forward and direct manner and made no discernable attempt to embellish or exaggerate their evidence. Their evidence as to the appellant's and their own activities and experiences in relation to *Falun Gong*, the *Epoch Times* and the Shen Yun Performing Arts Group is accepted in its entirety.

[53] Having accepted the evidence of the appellant and her witnesses, it is necessary to determine whether she has a well-founded fear of being persecuted should she return to China. In order to make this determination, it is necessary to consider country information about the treatment of *Falun Gong* practitioners by the Chinese authorities, and their attitude towards and treatment of those associated with the *Epoch Times* and the Shen Yun Performing Arts Group. It is also relevant to consider the treatment of Chinese nationals who criticise the CCP, as much of the appellant's activity in New Zealand has been directed towards exposing atrocities committed by the Chinese authorities and attempting to persuade fellow Chinese nationals to make symbolic defections from the CCP. It is also necessary to consider information relating to the monitoring of Chinese nationals abroad by the Chinese government and its agents.

Country information

Falun Gong

[54] We turn first to the treatment of *Falun Gong* practitioners in China.

[55] Since July 1999, the *Falun Gong* movement has been an illegal organisation in China. Both public and private practice of *Falun Gong* exercises are banned, as is the distribution of *Falun Gong* literature. In the early days of the ban, the Chinese authorities made a distinction between *Falun Gong* organisers, who were treated harshly, and ordinary followers who were subjected to brief stints of ideological education: Human Rights Watch *China Uses "Rule of Law" to Justify Falun Gong Crackdown* (9 November 1999).

[56] According to some reports, since early 2002, the mere belief in *Falun Gong* has been sufficient for practitioners to suffer punishments ranging from loss of employment to imprisonment: United States Department of State *Country Reports on Human Rights Practices 2003: China* (February 2004).

[57] The 2002 Human Rights Watch report, *Dangerous Meditation*, stated that the majority of *Falun Gong* practitioners apprehended by the authorities are sent to labour camps. Similarly, in 2005, an Amnesty International report stated:

The *Falun Gong* spiritual movement remained a key target of repression, which reportedly included many arbitrary detentions. Most of those detained were assigned to periods of 'Re-education through Labour' without charge or trial, during which they were at high risk of torture or ill-treatment, particularly if they refused to renounce their beliefs.' Amnesty International *AI Report: China 2005* (May 2005).

[58] A 2005 United Nations High Commissioner for Refugees (UNHCR) report stated:

...even lower level members may risk longer-term detention if they go out and practice in public. Likely punishment would be detention without trial for approximately four years in so called 'reform through labour' camps and (extra-judicial) beatings that often accompany such detention.

[59] The UNHCR report went on to say that, although membership of *Falun Gong* alone would not give rise to refugee status, a prominent role in certain overt activities (such as proselytising or organising demonstrations) which bring the membership to the attention of the authorities, may do so. It identified as a relevant issue the question as to whether there are elements in the asylum seeker's individual profile that would raise the likelihood of his/her membership becoming known to the authorities: United Nations High Commissioner on Refugees *Position Paper on Falun Gong* (1 January 2005).

[60] Rather than any softening of attitude on the part of the Chinese authorities, the repression of *Falun Gong* practitioners within China appears to have increased in recent times.

[61] Amnesty International has reported that the Chinese government campaign against the *Falun Gong* intensified in 2009 with sweeping detentions, unfair trials leading to long sentences, enforced disappearances and deaths in detention following torture and ill-treatment. The report described the campaign against Falun Gong as "severe and systematic". It also recorded that former detainees who had been in re-education centres reported that Falun Gong activists constituted one of the largest groups of prisoners: *Amnesty International Report 2010 – China* ("the Amnesty report") (28 May 2010).

[62] The United States Department of State *Country Reports on Human Rights Practices for 2009: China* ("the DOS report") (11 March 2010) records that:

Authorities continued a general crackdown on groups considered to be "cults." These "cults" included not only *Falun Gong* and various traditional Chinese meditation and exercise groups (known collectively as "qigong" groups) but also religious groups that authorities accused of preaching beliefs outside the bounds of officially approved doctrine.

[63] The DOS report also states that mere belief in the discipline (even without any public practice of its tenets) sometimes was sufficient grounds for practitioners to receive punishments ranging from loss of employment to imprisonment and that *Falun Gong* sources estimated that since 1999 at least 6,000 *Falun Gong* practitioners had been sentenced to prison, more than 100,000 practitioners had

been sentenced to Re-education Through Labour (RTL), and almost 3,000 had died from torture while in custody. The DOS stated that some foreign observers estimated that *Falun Gong* adherents constituted at least half of the 250,000 officially recorded inmates in RTL camps, while *Falun Gong* sources overseas placed the number even higher.

[64] Intolerance of *Falun Gong* extends to lawyers defending practitioners. Two prominent lawyers involved in the defence of *Falun Gong* practitioners, Tang Jitian and Liu Wei were disbarred in May 2010 after being accused of behaving illegally. Lawyers who were scheduled to represent them at the disbarment hearing were themselves subjected to intimidation and prevented from attending: Amnesty International “Chinese Human Rights Defenders Subjected to ‘Absurd’ Disbarment Hearing” (22 April 2010); Radio Free Asia, “China: Lawyers’ Licenses Revoked” (8 May 2010).

[65] The United Nations Special Rapporteur on Torture and other Cruel, Inhuman, or Degrading Treatment, Manfred Novak, has stated that ‘re-education’ constitutes ‘mental torture’ and that most of the inmates in re-education through labour camps are members of Falun Gong, sex workers and others who have exhibited “unsocial behaviour” and that they can be held for up to three or four years without trial. According to Novak, “They want to re-educate you so that you can finally see that you have done something wrong. And that means trying to break the will of the people. If it didn’t work during trial, during police custody with torture or whatever, then they try to break your will afterwards”: “Mental Torture Alleged” *State News Service* (21 June 2010).

[66] The current attitude of the Chinese authorities to Falun Gong is reflected in a fact sheet recently produced by the Chinese Embassy in the United States. This fact sheet describes Falun Gong as an anti-society cult which is responsible for the deaths of over 1,000 cult practitioners who have died after following Falun Gong teachings and refused to seek medical treatment for their illnesses. The fact sheet also describes Falun Gong as a political group that is “utterly anti-China”. It describes Falun Gong’s activities as encompassing the fabricating of stories to attack and vilify the Chinese government and engaging in anti-Chinese propaganda aimed at undermining China’s stability and overthrowing the Chinese government: “Facts about the so called ‘Divine Performing Arts Spectacular’” 2010 Embassy of the People’s Republic of China in the United States of America (19 August 2010) www.china-embassy.org/eng/sghd/t725926.htm.

Shen Yun Performing Arts Group

[67] The Shen Yun Performing Arts Group was formerly known as the Divine Performing Arts Group. The attitude of the Chinese government towards it can be discerned from the fact sheet referred to above which states that it is a political tool of Falun Gong which is used to preach cult messages, spread anti-China propaganda, increase Falun Gong influence and raise funds.

[68] Reportedly, within the United States, Chinese officials have written to public officials where Shen Yun performances are scheduled urging them not to attend or to endorse the performance and have also sent letters and made telephone calls to the venues rented for the performances in an effort to get the shows cancelled: "Beijing Fails to Stop World Tour of Chinese Performers" the *New American* (18 February 2008).

[69] In January 2010, seven Shen Yun Performing Arts Group shows in Hong Kong were cancelled after six crew members were denied visas purportedly due to the Chinese authorities pressuring the Hong Kong government. See "Six artists in Falun Gong show denied Hong Kong visas" *South China Morning Post* (23 January 2010).

[70] There are reports of the disappearance of the husband of a Shen Yun Performing Arts Group member, Mei Xuan. These reports allege that Mei Xuan's husband, Jiang Feng, was taken away by public security officials at Shanghai airport as he was on his way to join his wife in New York. Amnesty International have stated that the purpose Jiang Feng's detention may be in order to pressure his wife to cease her involvement with the Shen Yun performing Arts group: Amnesty International "Falun Gong practitioner missing in China" (10 May 2010).

Epoch Times

[71] The Authority has considered a number of news articles which report on the attitude and actions of the Chinese government towards the *Epoch Times*. The impression created by this material is that the *Epoch Times* is viewed with antipathy by the Chinese government which has conducted a systematic campaign to sabotage the paper's operation.

[72] The articles considered by the Authority included one reporting that in 2004, the Chinese ambassador to Japan urged all local Chinese people to refuse to support the Falun Gong or read the *Epoch Times* and that Japanese companies

placing advertisements in the paper received telephone calls from the embassy threatening that they would have difficulty doing business with mainland China. “Japan: Editor accuses Chinese embassy of trying to shut down paper” *Asia Africa Intelligence Wire* (28 June 2004).

[73] A BBC Worldwide Monitoring Report in 2006 stated that there had been a break-in at the Hong Kong printing house of the *Epoch Times* by four hammer-wielding men who damaged the computer to the plate machine used for printing. The newspaper’s editor stated her belief that the attackers were CCP agents. The same article noted allegations made by another *Epoch Times* spokesperson in Hong Kong that the paper’s employees had received harassing telephone calls on their private telephones and that relatives of staff in mainland China had received threats from CCP officials: “Newspaper critical of China attacked in Hong Kong – Kyodo” *BBC Worldwide Monitoring* (1 March 2006)

[74] A statement issued by the International Federations of Journalists (IFJ) in February 2006 also reports the 2006 Hong Kong attack and alleges that *Epoch Times* staff members in the United States have been the target of threats and harassment including an incident on 8 February 2006, when the chief of information technology of the *Epoch Times* was beaten in his home in the United States by a gang of Chinese men who only stole his work-related computers. The IFJ statement also alleges that the *Epoch Times* in Malaysia had been blocked from publication following “the Chinese regime’s interference” and that the newspaper’s offices in Sydney and Toronto have received suspicious envelopes in their mail suspected of containing toxic materials. The statement characterises the campaign against the *Epoch Times* by the Chinese government as a “dirty war and a “vicious witch hunt aimed at crushing the voice of dissent”: International Federation of Journalists press release *BBC Monitoring International Reports* (1 February 2006).

[75] An article from a Canadian newspaper alleges that in response to terms laid out by the Chinese consulate, the Prime Minister’s office organised the visit of the Chinese Premier, Hu Jintao, around specific demands to keep New Tang Dynasty TV and the *Epoch Times* away from the premier: Susan Delacourt “Harper helps Hu keep critics away” *Toronto Star* (25 June 2010).

[76] A number of articles report the detention within China of Chinese nationals who have posted articles on the *Epoch Times* website. Writer and activist Guo Qizhen was reported as being detained and prosecuted on charges related to his

prolific writing for US-based Chinese language websites including the *Epoch Times*; “In China, a jailed Internet writer is mistreated, denied access to family” Committee to Protect Journalists (31 August 2007). Internet writer Lee Jian Ping was reportedly charged with ‘Inciting subversion of state authority’ in May 2005 in respect of 31 articles Lee had written for a number of websites including the *Epoch Times*. “*Writer Lee Jian Ping tried for online pro-democracy articles*” Committee to Protect Journalists (12 April 2006).

[77] In March 2007, another writer, Zhang Jianhong, was sentenced to six years’ imprisonment on a charge of ‘Incitement to subvert the state’s authority’. He is reported as having written regularly for websites including the *Epoch Times*: “*Cyber dissident Zhang Jianhong gets six years in prison*” Reporters Without Borders (19 March 2007).

Monitoring of Chinese nationals abroad – the 610 office

[78] On 21 July 2005, Chen Yonglin, the former first secretary and consul for political affairs at the Chinese Consulate in Sydney, Australia, testified before the United States House of Representatives Subcommittee on Africa, Global Human Rights and International Operations as part of a panel discussing ‘*Falun Gong* and China’s continuing war on human rights’.

[79] In the course of his testimony, Mr Chen stated that there were over 1,000 Chinese secret agents and informants in Australia and that since February 2001, there has been a special group within the Chinese Consulate in Sydney for the struggle against *Falun Gong* which is part of the 610 office system and whose sole task is to ‘monitor and persecute the *Falun Gong*’. He stated that to his knowledge, similar groups have been established in Chinese missions in the United States and other countries where *Falun Gong* is active. He also stated that besides the diplomatic system, there is an intelligence collection system working against *Falun Gong*. Accordingly, ‘some local Chinese and Chinese students are encouraged to mix with the *Falun Gong* practitioners for the purpose of collecting information, and [are rewarded for this]’.

[80] In the course of his testimony, Mr Chen stated that while he was working in the Chinese Consulate in Sydney, he often received reports from Beijing providing the latest information about the activities of *Falun Gong* in Australia and in the world. He also stated that in small Chinese overseas missions, there must be at least one official in charge of *Falun Gong* affairs but that in the United States and

Australia, there are more: Statement by Chen Yonglin made to United States House of Representatives Committee on International Relations, ("CIR") serial number 109-62 (21 July 2005).

[81] Mr Chen's widely publicised claims concerning the 610 security office and its spy network in Australia were corroborated by a second defecting 610 office official, Hao Feng Jun: "Spy Claim Backed by Second Chinese Defector *nzherald.co.nz* (article sourced from Reuters, undated, accessed 27 May 2010). In the course of his testimony to the United States House of Representatives Committee, Mr Stephen Gregory of the *Epoch Times* claimed that Hao Fen Jun smuggled out of China a record of a meeting held by the 610 officers of six provinces and three major cities in China to develop a strategy for dealing with the "three media" (the grouping of the Epoch Times, New Tang Dynasty TV and Sound of Hope radio). The plans outlined in the document included the collection of 'evidence' against the three media's staff and their contacts within China.

[82] A number of reports make similar claims concerning the monitoring of overseas *Falun Gong* groups by the Chinese government. An article in Jane's Intelligence Digest states that Chinese agents in the United States seek information concerning the United States-based operations of groups such as the *Falun Gong*, which the Chinese government considers a threat to its authority. Similarly, an article in the Australian cites "security sources" as saying that "Chinese spies perform three roles in Australia; acquiring sensitive technology for military and strategic advantage; stealing technology and information for commercial gain; and monitoring and infiltrating groups that Beijing tries to suppress, such as *Falun Gong*". "Chinese Spying on Canberra" *The Australian* (31 May 2008).

Criticism of Chinese government

[83] Those who publically criticise the Chinese government are subject to sanctions. The DOS report states:

Those who aired views that disagreed with the government's position on controversial topics or disseminated such views to domestic and overseas audiences risked punishment ranging from disciplinary action at government work units to police interrogation and detention.

[84] The DOS report also stated that public speeches, academic discussions and speeches at meetings or in public forums covered by the media remained circumscribed as did speeches pertaining to sensitive topics. Authorities

frequently intervened to halt public speeches and lectures on sensitive political topics. The DOS report goes on to detail the arrests and detentions of Chinese nationals who have made politically sensitive remarks or criticised the government within China. These include the arrest in March 2009 of Zhan Gshi Jun, a former soldier who publicly expressed regret over his involvement in the Tiananmen Square uprising. His whereabouts remained unknown at the year's end. Many intellectuals and activists who signed the Charter 08 petition calling for democracy experienced harassment during the year, especially around the time of sensitive anniversaries, trials or official visits. One of these, Liu Xiaobo, has been held incommunicado since his detention on 8 December 2008. His formal arrest on 24 June 2009 followed the disbarment of several leading rights lawyers in May 2009, a tightening of media censorship around the 20th anniversary of the June 1989 Tiananmen Square crackdown and a directive requiring computer manufacturers to include with all computers a new software which gives the Chinese government increased control of internet communications: Human Rights Watch *China: Critic's arrest signals hardening of political climate* (24 June 2009).

[85] The Amnesty International report recorded that lawyers, journalists, environmental activists and proponents of democratic reform were subject to arrest, held in incommunicado detention and imprisoned and that many in detention were tortured. Family members of human rights activists, including children, were increasingly targeted by the authorities, including being subjected to long-term house arrest and harassment by security forces.

Assessment of risk

[86] For the purposes of refugee determination, "being persecuted" has been described as the sustained or systemic violation of basic or core human rights demonstrative of a failure of state protection; see *Refugee Appeal No 2039/93* (12 February 1996) and *Refugee Appeal No 74665/03* [2005] NZAR 60; [2005] INLR 68 at [36] to [125]. Put another way, it has been expressed as comprising serious harm plus the failure of state protection; *Refugee Appeal No 71427* (17 August 2000).

[87] The Authority has consistently adopted the position taken in the decision in *Chan v Minister of Immigration and Ethnic Affairs* (1989) 169 CLR 379 (HCA), which held that a fear of being persecuted will be well-founded when there is a real, as opposed to a remote or speculative, chance of such persecution occurring. This entails an objective assessment as to whether there is a real or substantial

basis for the anticipation of being persecuted. Mere speculation will not suffice.

[88] There is no evidence before the Authority of any interest shown in the appellant or her family by the Chinese authorities on account of her *Falun Gong*, *Epoch Times*, or Shen Yun activities in New Zealand. There are no reports of visits to her family home or enquiries being made about her. Her mother travelled out of China in 2008 and returned there in 2009 without any difficulty even though at the time the appellant was acting as the *Falun Gong* co-ordinator for Rotorua and persistently “truth-telling” there.

[89] Despite this however, the Authority accepts that the Chinese authorities would be aware of the appellant’s activities in New Zealand. It is accepted that some monitoring of *Falun Gong* and “three media” activities in countries outside China are carried out by the Chinese government. It would be surprising if this was not the case given the hostility of these organisations towards the Chinese government and *Falun Gong*’s stated goal of the destruction of the CCP.

[90] The appellant was the sole *Falun Gong* organiser/promoter in Rotorua between 2007 and 2009 and in this capacity exposed herself to large numbers of Chinese nationals and their tour group leaders at the tourist attraction she worked at, at the lake, and while distributing the *Epoch Times*. Her presence and involvement in the demonstration outside the Langham Hotel in June 2010 was filmed and broadcast on the New Tang Dynasty station which is one of the reviled “three media”. She is a person of some rank at the *Epoch Times* and was visibly involved with the Shen Yun performances while wearing a press card identifying her by name and signifying her seniority with the paper.

[91] Given the likelihood that *Falun Gong*, the *Epoch Times* and Shen Yun activities are monitored within New Zealand, and the appellant’s high profile in respect of all three, it seems probable that the Chinese authorities will be aware of her identity and activities.

[92] The question arises as to what consequences this will have for the appellant, should she return to China.

[93] In *Refugee Appeal No 76088* (6 November 2007) the Authority considered the position for persons who have undertaken public protest in support of *Falun Gong* who return to China. After reviewing the limited country information available, the Authority concluded:

[96] As can be seen from these reports, evidence of problems or persecution of

failed asylum seekers who have previously had a Falun Gong association or been involved in protests overseas appears to be very scant. The same return from Germany appears to be reported several times. None appear to fall into a similar profile to the appellant. They are either quite dated, going back six or seven years or, as with the Australian report, refer to an activist who has been involved in anti-Chinese government activities going back to Tiananmen Square.

[97] The Authority's conclusion, based on this country information and the very few examples available, is that a failed asylum seeker who may have practised Falun Gong while overseas and has been returned to China, is not at a real risk of being mistreated unless there are significant additional aspects to the profile of the claimant. The Authority reaches this conclusion given that there are reports of hundreds of thousands of practitioners and that considerable numbers of these practitioners have no doubt moved in and out of China over the past six to seven years. That conclusion is supported by noting the considerable number of asylum cases, many of which fail, which have been presented around the world, in Europe, Canada, USA, Australia and this country. Beyond this, it is, of course, incumbent on the appellant to establish his own case and certainly, even if this Authority was to attach some credibility to the appellant's claim that he would be returning to China as a genuine Falun Gong practitioner from New Zealand who had been identified through his blatant activities in this country, the objective country of origin information the Authority has noted does not show a real risk of him being persecuted for those reasons on return to China.

[94] On 10 September 2010, counsel filed further written submissions addressing the position noted in *Refugee Appeal No 76088*, that information about *Falun Gong* practitioners encountering problems at the border on return to China is scant, and also addressing the inference to be drawn from the evidence of the witness AA, that she encountered no difficulty re-entering China in 2009 despite her profile as a *Falun Gong* practitioner here.

[95] In his submission, counsel suggests that the reason for the lack of information noted in *Refugee Appeal No 76088* is the suppression of information by the Chinese authorities. He also notes a number of reports concerning overseas *Falun Gong* practitioners who have encountered difficulties in China. These difficulties include arrest and detention in jails, re-education centres and forced labour camps.

[96] The material filed by counsel is of limited relevance to the question as to whether the present appellant will encounter difficulty upon return either at the border or within China. The majority of the reports are dated. They also largely concern the arrest of overseas based *Falun Gong* practitioners for activities within China rather than for activities conducted outside China.

[97] Should the appellant return to China, she can be expected to return to her family home in Jiangsu Province. According to the 2010 report by the Commission on International Religious Freedom, Jiangsu is one of several provinces where security officials have been instructed to 'strike hard' against *Falun Gong*

adherents. The report states that these instructions included recommendations for surveillance, cultivation of paid informants, and propaganda efforts: US Commission on International Freedom Annual Report 2010 – Countries of Particular Concern: People’s Republic of China (29 April 2010).

[98] Within Jiangsu province, the appellant is likely to renew her close relationship with her relative who is already under surveillance as a result of her earlier arrest and detention for *Falun Gong* activities. Given the monitoring of this relative, by the local PSB and street committees, it appears likely that the appellant will similarly be monitored because of her own considerable profile as a high level *Falun Gong* activist in New Zealand (the term *Falun Gong* activist encompasses her activities and association with Shen Yun and the Epoch Times as well as with *Falun Gong*) and her association with the relative. At this point there is a real chance that the appellant’s continued adherence to *Falun Gong* (including the denunciation of the CCP) could result in her detention in a re-education camp.

[99] It is unknown what specific factor or event would trigger the appellant’s detention in China. To predict this would require the Authority to engage in speculation. However, given our assessment of the appellant, the level of her activities in New Zealand, her association with a known *Falun Gong* activist and the level of her commitment to *Falun Gong* in New Zealand, it seems unlikely that she would be able to resume a normal life within China. Instead, we consider that there is a real chance that she would sooner or later have an encounter with the Chinese authorities, most likely her local Jiangsu PSB, that would result in her detention and mistreatment. Given the country information before the Authority concerning the treatment of *Falun Gong* practitioners in detention, the Authority is satisfied the treatment she is likely to encounter would amount to being persecuted for the purposes of the Refugee Convention. The first issue framed for consideration is answered in the affirmative.

Convention reason

[100] The Authority must next consider whether the appellant’s fear of being persecuted is for a Convention reason.

[101] A number of Authority decisions in *Falun Gong* cases have been decided under the Convention ground of religion. In other jurisdictions, the Convention grounds of particular social group and imputed political opinion have been applied.

In *LL (Falun Gong-Convention Reason-Risk) China CG* [2005] UKAIT 00122, the application of the imputed political opinion in a *Falun Gong* case was discussed. The judge stated at [32]:

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.

[102] The appellant is a member of an organisation which has amongst its aims, the destruction of the CCP. She has participated in public demonstrations and extensive "truth telling" in furtherance of this aim. She has an important role at the *Epoch Times* which publicises CCP atrocities and has a clear stance of opposition to the regime. She has also had a peripheral but visible association with Shen Yun Performing Arts group which, as noted earlier in this decision, is viewed by the Chinese government as a political tool of *Falun Gong* which is used to spread anti-China messages (see [67] above). While there are clearly a number of overlapping Convention grounds available in this case, in our view, the most relevant is political opinion.

CONCLUSION

[103] For the reasons outlined above, the Authority finds that the appellant is a refugee within the meaning of Article 1A (2) of the Refugee Convention. Refugee status is granted. The appeal is allowed.

"M A Roche"
M A Roche
Member