

**REFUGEE STATUS APPEALS AUTHORITY**  
**NEW ZEALAND**

**REFUGEE APPEAL NO 76200**

**REFUGEE APPEAL NO 76201**

**AT AUCKLAND**

**Before:** B L Burson (Chairperson)  
J Baddeley (Member)

**Counsel for the Appellant:** I S Anand

**Appearing for the Department of Labour:** No Appearance

**Date of Hearing:** 26, 27 & 28 May 2008

**Date of Decision:** 21 July 2008

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**DECISION DELIVERED BY J BADDELEY**

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[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 appellants, nationals of the People's Republic of China ("China").

**INTRODUCTION**

[2] The appellants are husband and wife. They have lived their entire lives in China. They visited New Zealand in 2004 to stay with their daughter. On their return to China in 2004 they took with them some Falun Gong literature which is banned in China. They distributed this material to other Falun Gong practitioners a few days prior to their final departure from China in 2006. They claim that this illegal material was discovered by Chinese authorities. Fearing the consequences, they claimed refugee status on 26 February 2007 approximately four months after their arrival in New Zealand on 20 October 2006. They were interviewed by a

refugee status officer on 31 May and 1 June 2006. The principal issue to be determined is the credibility of their account.

### **THE APPELLANTS' CASE**

[3] By consent, the evidence given by each appellant is considered in relation to the other's claim. Their evidence is summarised below. It is assessed later.

[4] Both the appellant husband and the appellant wife gave evidence to the Authority. In addition the Authority heard from three Falun Gong practitioners, friends of the appellants. The appellants' daughter advised the Authority that she was not available to give evidence because of the health of her infant son.

[5] Both appellants were born in Shandong Province and moved to Harbin City in the 1950s. They met at their place of employment. They had four children. The appellant wife retired in 1993 and the appellant husband in 1996. Both received state pensions. They moved into a new apartment building and the appellant husband bought the leasehold of their apartment.

[6] In 1998, the appellant husband suffered renal complications and the following year the appellant wife suffered from hypertension. They were advised by a friend to begin Falun Gong exercises to improve their health. They found the exercises very beneficial and, along with several other friends, attended regular Falun Gong practices at a site near the library.

[7] In July 1999, the Chinese government banned Falun Gong. The appellant husband and the appellant wife continued practising at their usual site until later in July 1999 when the police raided their practice site. All the practitioners fled except the appellant husband who, due to a hearing impediment, had not heard the police arrive. He was taken to the local police station. The appellant wife followed and remonstrated with the police who released the appellant husband after a few hours, warning them both against continuing to practise Falun Gong. The police posted notices around the neighbourhood warning that anyone practising Falun Gong would be punished by having their wages cut. This punishment would also apply to their children and a practitioner's children or grandchildren could be expelled from school.

[8] The woman who had taught Falun Gong at the practice site was arrested. She had given the appellants some Falun Gong material including books and video tapes. The police visited the appellants' home and confiscated this material. Thereafter the appellants were monitored by the local neighbourhood committee and the retirement centre. The monitoring involved the appellants being watched to determine whether or not they were meeting other Falun Gong practitioners or distributing banned literature. They also heard that Falun Gong practitioners were being detained, tortured and brainwashed.

[9] The appellants never practised Falun Gong again in public and restricted their practice of Falun Gong to their own home and they were very circumspect in their discussion or meeting with other Falun Gong practitioners. They never again met as a group but occasionally encountered their fellow practitioners in the neighbourhood. One of them, AA, lived in the same apartment block as the appellants. He and the appellant husband met frequently as they each went about their daily business.

[10] In December 1999, the appellants travelled to New Zealand to visit their daughter, BB, who lives in Auckland with her husband. They remained with her until June 2000. They practised Falun Gong in the bedroom of BB's home. They did not consider practising it elsewhere because they assumed that Falun Gong was also banned in New Zealand and did not ask their daughter about it. Because they were elderly and could not speak English they did not leave their daughter's home unless she accompanied them. On return to China they resumed their private Falun Gong practice as before.

[11] In November 2004, they travelled again to New Zealand in order to help BB with her newborn baby. In June 2005, BB brought home a copy of the *Epoch Times*, a Chinese language newspaper, which contained an article about Falun Gong. The appellants then realised that it was legal to practise Falun Gong in New Zealand. Their daughter also brought home articles published by the *Epoch Times* entitled "The Nine Commentaries on the Communist Party" ("the Nine Commentaries"). The Nine Commentaries were a critique of the policies and repressive methods employed by the Chinese Communist Party over recent decades. Some of the information was familiar to the appellants who had lived through and witnessed some of the excesses of the Cultural Revolution. However, the Nine Commentaries went beyond the situation in Shandong Province and

described what had occurred elsewhere in China. It made clear the misleading propaganda spread by the Chinese Communist Party. It also recounted the recent persecution of Falun Gong followers. Much of this information was new to the appellants.

[12] The appellant husband and the appellant wife were very impressed with the Nine Commentaries and decided it should be made available to Falun Gong practitioners in China because most of the content would be unknown to them. They planned to secrete the Nine Commentaries in their luggage on their return flight to China. Their check-in baggage had not been searched on their previous flights to and from China so the appellant husband put the Nine Commentaries and an excerpt from the *Epoch Times* wrapped in his clothes in the suitcase which was carried in the hold. Although they were very frightened, they made the journey home without the material being discovered.

[13] On arriving at their home in August 2005 they hid the papers in a desk drawer and told no one about them. They had asked their daughter, BB, to make enquiries about where Falun Gong was practised in New Zealand and to make contact with other Falun Gong practitioners. In June 2006, BB told them she had met a Falun Gong practitioner in New Zealand, CC, who would introduce them to other practitioners when they returned to New Zealand.

[14] They decided to travel again to New Zealand and booked flights for 27 October 2006. The appellant husband planned to distribute the material they had brought from New Zealand among a few trustworthy Falun Gong practitioners. The appellants' daughter-in-law ran a photocopying shop and they made 45 copies of these materials with their daughter-in-law's help. On 22 October 2006, they gave these to three of their relatives and two of their close friends, including the appellant wife's oldest friend DD, with instructions to keep them safe and not to pass them on to others until 30 October, after the appellants had arrived in New Zealand.

[15] On 24 October 2006, they received a telephone call from DD. She told them that XX, a member of the neighbourhood committee, had seen the copies of the Nine Commentaries when she had visited DD to collect cleaning fees. DD warned the appellants that XX would be certain to report what she had seen to police.

[16] The following day the appellants were visited by an officer from the local Public Security Bureau, a close friend of the appellants' son. He said he would delay any further official action against them for a few days but that they had to get away or face serious consequences.

[17] The appellants left their home and went to stay with the appellant wife's sister who lived in a distant part of the city. They stayed there for two days until their plane left for New Zealand. After arriving in New Zealand on 28 October 2006 they heard from their son that his wife's photocopying shop had been closed down by the police. Both their sons and their remaining daughter had been questioned by the police as to the appellants' whereabouts and informed by them that the appellants had committed a serious crime. A warrant had been issued for their arrest.

[18] The appellants later received a letter from DD describing how the police had questioned her as to the provenance of the Falun Gong material. She had told them that the appellant wife had given them to her. The appellants were the only people in their neighbourhood who had recently travelled overseas and the *Epoch Times* article was not available in China so they were obvious suspects for providing the Falun Gong material. They also received letters from their sons and daughter describing the adverse interest taken by the Chinese authorities and their enquiries as to the appellants' whereabouts. These letters were produced at their RSB interview.

[19] A few days after their arrival in New Zealand their daughter, BB, introduced them to CC who took them to the local Falun Gong practice site and introduced them to the teacher, YY. They talked about their predicament with other Falun Gong practitioners and it was suggested that they could apply for refugee status.

[20] Immediately upon their arrival in New Zealand in October 2006, they became very involved in Falun Gong activities here. They attended regular classes and practice sessions several times a week; distributed Falun Gong pamphlets in their neighbourhood; and attended protests outside the Chinese consulate and other public demonstrations protesting against the persecution of Falun Gong. In November 2006, the appellant husband left the Chinese Communist Party by authorising a fellow Falun Gong practitioner to post a notice quitting the Chinese Communist Party on the *Epoch Times* website.

[21] They continued to study and practise Falun Gong every day either at home or with others. Their health continues to benefit from regular Falun Gong practice.

[22] After discussing their situation with their daughter, BB, they decided to apply for refugee status in February 2007 because they feared imprisonment and “brainwashing” on return to China as a consequence of the authorities discovering their importation and distribution of illegal material.

### **Witness evidence**

[23] The Authority heard evidence from their Falun Gong teacher, YY, who stated that her initial impression was that although the appellants’ Falun Gong practice was not “standard” in some respects, it was obvious that they were not novices. She stated that they still regularly attend lessons, studied text and practised Falun Gong exercises.

[24] Falun Gong practitioner, HH, described how she had met the appellants every week since October 2006 for practise and study of Falun Gong. She told the Authority they helped her in distributing Falun Gong practises.

[25] The third witness, CC, described how she had first met the appellants and introduced them to the Falun Gong group practising in Auckland. She had reassured them then that it was legal to practise Falun Gong in New Zealand.

### **Documents produced**

[26] The appellants also produced documents to the Authority. The appellants’ counsel provided four witness statements, a memorandum of opening submissions and various photographs of the appellants participating in Falun Gong activities in New Zealand include public practices and protest marches and Falun Gong celebrations. In addition, during the course of the hearing, a statement was produced from the appellants’ daughter in New Zealand and a medical certificate concerning her son’s illness which caused her to be unavailable to give evidence. All these documents and oral submissions by counsel have been taken into account in reaching this decision.

## **THE ISSUES**

[27] 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."

[28] 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 APPELLANTS' CASE**

[29] Before determining the abovementioned issues an assessment must be made of the appellants' credibility.

[30] The appellants' evidence was generally consistent with that given in their initial statements and at their subsequent interviews with the RSB. Interpretation problems had been experienced during the RSB interviews because of the appellant wife's dialect and the appellant husband's hearing impairment. The Authority, aware of the particular requirements of each appellant, made appropriate provisions and no such problems were encountered in the course of the appeal hearing. The appellants were frank and direct in the delivery of their evidence. Although there are concerns as to certain aspects of their accounts (noted below), the Authority finds that their core account is truthful.

### **Areas of concern**

[31] The Authority questioned the appellants closely about particular aspects of their evidence which caused it some concern. The appellants were asked in some detail about the circumstances of the first two visits to New Zealand. In particular, it appeared initially to the Authority to be unusual that the appellants had not made

enquiries about whether the practice of Falun Gong was legal in New Zealand. Having seen the appellants it is quite apparent that their inability to communicate in English rendered them entirely reliant on their daughter for any interaction outside her home. As to their failure to make any enquiries of their daughter, they advised that she was very busy studying and working and that they did not wish to upset or worry her with enquiries about an organisation they assumed was illegal. Their reticence is plausible in light of the real and pervasive dangers experienced by Falun Gong practitioners in China over the preceding years and their own avoidance of any contact with their fellow practitioners or other potentially risky situations.

[32] Furthermore, while in New Zealand on these two visits they continued to practise Falun Gong as they had in China in the privacy of their daughter's home. As such there was no disruption to their daily routine. Upon discovery that Falun Gong was freely practised in New Zealand they urged their daughter to make contact with other practitioners and once this contact was made they began immediately to participate in Falun Gong group practices.

[33] In view of the caution with which they had practised Falun Gong in China, their carrying illegal material back to China appeared to be out of character. The appellant husband was the instigator of this enterprise; he planned it and it was he who packed the material in their luggage. The previous three occasions on which they accessed the border had led him to expect no difficulties and he persuaded the appellant wife to this effect. However, it also clearly emerged that, after arriving home in China, their nerve failed them. When faced with the reality of the authorities' ubiquitous oppression, they were unable to overcome their fear of the consequences of discovery of the illegal material. Their retention of the documents for 14 months until the eve of their departure is supportive of this. They had planned to be safely out of the country before any of the material was distributed beyond their five trusted and well known friends and instructed these five accordingly. They believed (wrongly) that they had taken adequate precautions.

[34] The Authority closely questioned and observed these appellants over three days. Having heard them, we accept as plausible their explanations for the initial concerns we held as to the foregoing aspects of their account. To the extent that

the Authority has residual doubts we accord them the benefit of the doubt in this regard.

[35] In particular we accept that they are genuine Falun Gong practitioners who began this practice in China in 1998 before it was banned and continued to practise exercises and meditation in their home.

[36] We also accept that they came to the attention of the authorities shortly after Falun Gong was banned because of their defiance of the official prescription on Falun Gong and therefore they were monitored by local neighbourhood committee members and other officials.

[37] It is also accepted that they photocopied and distributed the banned Nine Commentaries on the eve of their departure for New Zealand in the belief that they would be safely overseas before their enterprise was discovered. This came to the attention of the authorities with the consequences that their daughter-in-law's photocopying business was closed down and their family members were questioned.

### **Country information**

[38] Country information is consistent with the appellants' account of the repression they experienced as Falun Gong practitioners. In the United States Department of State *Country Reports on Human Rights Practices for 2006: China* it is recorded that:

“Since the government banned the Falun Gong in 1999, the mere belief in the discipline (even without any public manifestation of its tenets) has been sufficient grounds for practitioners to receive punishments ranging from loss of employment to imprisonment. Although the vast majority of practitioners detained had been released, many were detained again after release ... Falun Gong sources estimated that at least 6,000 Falun Gong practitioners had been sentenced to prison, more than 100,000 practitioners sentenced to re-education through labour and almost 3,000 had died from torture while in custody. Some foreign observers estimated that Falun Gong adherence constituted at least half of the 250,000 officially recorded inmates in re-education through labour camps, while Falun Gong sources overseas placed the number even higher. In March UN Special Rapporteur Nowak reported that Falun Gong practitioners accounted for 66 per cent of alleged torture while in government custody.”

[39] Falun Gong adherents found with illegal material would face serious consequences including being sentenced to re-education through labour (refer United Kingdom Home Office *Border and Intelligence Agency Country Information Reports: China* (17 August 2007)).

[40] It is reported in the United States Department of State (*supra*) that suspected Falun Gong adherents are placed under surveillance by local security personnel:

“The government continued to wage a severe campaign against the Falun Gong movement. Falun Gong practitioners were subject to close scrutiny by local security personnel, and their personal mobility was tightly restricted, particularly at times when the government believed public protests were likely.”

[41] It is still possible to practise Falun Gong in China but only in the privacy of one's home and even there caution needs to be exercised as reported in United Kingdom Home Office *Country Report (supra)* at 21.36:

“As reported by the Canadian IRB in the same response, “practising Falun Gong in the privacy of one's own home may be possible but according to HRW, it could become dangerous if officials or the police became aware of it”. Citing Maria Hsia Chang writing in her book “The End of Days” the Canadian IRB stated that “many followers still risk arrest and beatings to perform the exercises but they do them in their homes instead of public parks”. Citing Gail Rachlin the IRB also noted “while it is possible to practise in private, concealing one's beliefs and daily practice from relatives and neighbours is difficult”.”

[42] The suppression of the practice of Falun Gong in China continues. There has been no softening of the official attitude in this regard.

### **Well-foundedness**

[43] The appellants were already known to the authorities as Falun Gong practitioners but managed to evade any adverse attention by discreetly practising Falun Gong in their home. On return to China they would also be identified as Falun Gong practitioners who have imported banned Falun Gong material which is deeply critical of the regime and distributed it to others in China.

[44] They can expect at the least to be sentenced to education through labour. The duration of such detention is uncertain and the conditions under which they will be detained (including a real chance of torture) can be expected to be extremely harsh and even life-threatening. They face a real chance of being subjected to serious harm amounting to being persecuted for reason of their religion (belief in Falun Gong). Both the issues aforementioned are therefore answered in the affirmative.

**The *sur place* claim**

[45] The appellants claim to fear being persecuted on return not only for having distributed Falun Gong material in China but also for reason of the participation in Falun Gong activities in New Zealand. The Authority has previously determined a number of *sur place* claims based on the promotion of Falun Gong in New Zealand: *Refugee Appeal No 75536* (25 May 2006); *Refugee Appeal Nos 74349, 74350, 74351 and 74352* (11 March 2003); *Refugee Appeal No 75203* (14 August 2004); *Refugee Appeal No 76007* (19 July 2007) and *Refugee Appeal No 76088* (6 November 2007).

[46] The Authority is aware that others in New Zealand have undertaken public demonstrations of their opposition to the Chinese regime in order to found a claim to refugee status. The Authority accepts that the appellant husband and the appellant wife are genuine and committed followers of Falun Gong, however, it notes that the frequent and public nature of their protests against the Chinese regime and their promotion of Falun Gong raises the likelihood that this activity was undertaken, in part, to promote their claim to refugee status. Nevertheless, in view of our findings above as to the well-foundedness of the appellants' claim for reason of their activities in China, it is not necessary for the Authority to determine whether their activities in New Zealand have placed them at risk of being persecuted in China

**CONCLUSION**

[47] For the reasons mentioned above, the Authority finds the appellants are refugees within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeals are allowed.

"J Baddeley"

J Baddeley  
Member