

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76348

AT AUCKLAND

<u>Before:</u>	C M Treadwell (Member)
<u>Counsel for the Appellant:</u>	H Hylan
<u>Appearing for the Department of Labour:</u>	No appearance
<u>Date of Hearing:</u>	13 July 2009
<u>Date of Decision:</u>	28 July 2009

DECISION

INTRODUCTION

[1] This is an appeal against a decision of a refugee status officer declining the grant of refugee status to the appellant, a national of China.

[2] The crux of the claim is that the appellant says she is at risk of being seriously harmed in China by the authorities, on account of her activities as a Falun Gong practitioner in China and in New Zealand. The issues which arise are the credibility of the account and, on the facts as found, the question whether the appellant faces a real chance of serious harm.

THE APPELLANT'S CASE

[3] The account which follows is a summary of the evidence given by the appellant on appeal. It is assessed later.

[4] The appellant is one of five children, born to a farming couple in a village in rural Guangdong province. Her childhood was uneventful.

[5] On leaving school in the mid-1980s, the appellant found work as a dressmaker in a private factory. She gave up this work in 1991, when she married AA, an electrician from a nearby village.

[6] Between 1992 and 1995, the appellant had three children, persisting because the first two were girls. She went into hiding during her third pregnancy, fearing that she would be forced to have an abortion. After the birth of her third child, the couple were fined and the appellant was required to undergo sterilisation. The operation was poorly performed and, thereafter, she suffered lower abdominal pain and headaches.

[7] Nothing of relevance occurred for the next seven years.

[8] In 2000 or 2001, the couple decided that the poor economy in China was such that they should emigrate. The appellant's husband, AA, applied for a work visa for New Zealand, after doing a course of study as a chef, to assist with the application. It was granted and he arrived in New Zealand on 9 June 2002 as part of a group of four or five. The appellant and her husband found the money for his trip by borrowing money from family and friends.

[9] At about this time, the appellant applied for a passport, intending to join the appellant in New Zealand when finances permitted. It was issued in July 2002.

[10] Earlier, in May or June 2002, the appellant had been told by the friend of a neighbour, one BB (also known as CC), that her health would improve if she practised the Falun Gong exercises. The appellant had never heard of Falun Gong, because she was a mother of young children and a housewife, who rarely left the house. She was keen to improve her health, however, and agreed to participate. Her husband, who had not yet left for New Zealand, warned her that it was illegal but she ignored his advice.

[11] BB owned a property with a large, walled garden some twenty minutes from the appellant's house. The appellant began going there early in the morning, to practise exercises with BB in the garden, while listening to a tape of instructions.

[12] After three or four months, the appellant's health began to dramatically improve and she began telling everyone she met about the benefits of Falun Gong. Some told her that it was illegal, but she persisted in promoting it and the numbers attending the early morning sessions several times a week swelled to forty. It became necessary to have several tape recorders playing, to cater for groups at different stages of advancement.

[13] The increasing numbers attracted the attention of the local authorities. In March 2003, Public Security Bureau officers (“the PSB”) came to the appellant’s house and told her that they had heard that she was practising Falun Gong. The appellant denied doing so. The PSB had a look around before leaving, but they did not search the appellant’s home.

[14] Shortly thereafter, a friend, DD, advised the appellant that he had heard from his sister-in-law’s husband, who worked as a high-ranking officer at the local police station, that there was to be a raid on Falun Gong practitioners.

[15] At the time, the appellant had a book about Falun Gong, called “Turning Wheel”, which she had obtained from another practitioner. The PSB had not noticed it earlier because it was in a drawer in her bedroom. After hearing DD’s warning, the appellant was fearful that they would return and so she put the book in her rubbish bin outside the house.

[16] Three or four days after the PSB’s visit, they returned to the appellant’s house and arrested her, because another practitioner, EE, had given them her name.

[17] At a detention centre, the appellant was accused of practising Falun Gong. She was held for 14 days and was interrogated often. She was forced to drink salty water because she refused to eat, she was burned on the buttocks by an electric baton several times and she was kicked.

[18] For the first week, the appellant denied the accusation, but eventually she admitted it because the mistreatment was more than she could endure. Even so, her family was forced to pay a bribe of RMB10,000 for her release.

[19] After her release, the appellant was required to report to the police station on five or six occasions, when she would be made to watch a “brainwashing” programme about the evil cult of Falun Gong.

[20] In May 2003, about a year later, the appellant spoke to a friend, FF, who worked as a clerk at the police station. FF told her that a relative of a high-ranking officer required a kidney transplant and pointed out that the appellant was of a similar age. In fear, the appellant went into hiding with a relative in a village called ABC, where she remained for some weeks while she obtained a visa to come to New Zealand.

[21] The appellant did not travel to New Zealand alone. Instead, she arranged to travel with the wife of one of the men with whom her husband, AA, had travelled to New Zealand in 2002. The appellant met the woman in Guangzhou by arrangement and they travelled by bus (and without difficulty at the border) to Hong Kong. From there, they flew to New Zealand.

Events in New Zealand

[22] On arrival on 7 July 2003, the appellant was met by her husband AA. They boarded with a man known by AA for about a month, before renting a room in a house in Auckland.

[23] On 22 March 2004, after about eight months together in this country, the appellant's husband obtained a dissolution of the marriage from the Family Court at Auckland because he was in a relationship with another woman. During the year together, AA would sometimes stay away overnight, telling the appellant he was working. Towards the end, she says, he would "often" stay away. He kept the extra-marital relationship hidden from the appellant until about a month before the marriage was dissolved.

[24] The appellant did not return to China because she had no money and because she was ashamed of losing face in front of the family members who had lent her money to travel. She was also afraid of being arrested for being a Falun Gong practitioner.

[25] The appellant's visitor's permit expired in May 2005 and she became an overstayer.

[26] In the interim, her (now former) husband AA married a New Zealand national of Chinese descent, one GG on 10 February 2005. GG is ten years his junior. AA and the appellant then signed a "Children Custody and Maintenance Agreement" on 18 March 2005, in which the appellant acknowledged that she was "unable or unwilling" to look after their three children and giving AA:

"... **full discretion and control** of all matters pertaining to the Children including the removal of the children from the Peoples (*sic*) Republic of China and migrating to New Zealand".

[27] AA and his new wife GG had two children, in quick succession and AA was granted permanent residence on the basis of his marriage on 31 October 2005.

[28] In late 2006, a year later, AA sought visas to bring the three children from China to New Zealand. The appellant signed a statutory declaration on 1 November 2006, confirming that she had ceded all custody and guardianship of the children to AA.

[29] In September 2007, AA obtained a dissolution of his marriage to GG. By November 2007, the appellant and AA had resumed cohabiting and agreed to re-marry once their children had arrived in New Zealand. She understands that AA had stopped living with GG about a month before she (the appellant) resumed living with him. She thinks that AA and GG had “argued quite a lot” and that “he didn’t go home very often”.

[30] Since the dissolution of his marriage to GG, AA has paid no child support of any kind to GG because, the appellant says, once their own three children arrived from China, he cannot afford to do so.

[31] In July 2008, the appellant began working illegally at a restaurant. She was apprehended there by immigration officers on 29 October 2008 (though she tried to abscond) and underwent a ‘humanitarian interview’ (an Immigration New Zealand policy, designed to ensure that at the time of removal, New Zealand’s international treaty obligations are substantively respected). In the course of that interview, the appellant explained that she did not want to return to China because of the loss of face. She gave no other reason.

[32] The appellant’s children arrived from China on 9 November 2008. They have been granted permanent residence in New Zealand, on the basis of their father’s residence.

[33] On 12 November 2008, the appellant’s solicitor, Mr Hylan, wrote a letter to the Associate Minister of Immigration, seeking intervention in the appellant’s plight on the grounds that she and her husband AA had reconciled, only for her to be arrested the very day before their wedding. Mr Hylan gave as her only reason for wanting to remain in New Zealand her wish to be united with her family.

[34] On 19 November 2008, the appellant was released from custody.

[35] Because her few weeks in custody had caused all her old symptoms of ill-health to re-emerge, the appellant immediately began practising Falun Gong exercises again. She had only done so in private after her arrival in New Zealand, but she now felt that her health required her to practise in public because “the effect is more obvious”.

[36] Her Falun Gong practise involved the appellant attending at protests outside the Chinese Embassy on a number of occasions. There, she has not only performed Falun Gong exercises, she has also helped to hold up banners protesting against the mistreatment of Falun Gong practitioners by the Chinese government. She has done so, she says, whenever she has been asked to help in this manner.

[37] On 27 November 2008, eight days after she had been released from custody, the appellant lodged a refugee claim. In a statement made no later than 27 January 2009, she asserted a risk of being harmed by the Chinese authorities because of her Falun Gong practises both in China and in New Zealand. She was interviewed by a refugee status officer on 12 January 2009.

[38] On 30 January 2009, the appellant recorded, at an American website, that she was quitting the Chinese Communist Party because of the “evil” nature of the regime.

[39] The appellant says that, since she left China, her parents have been visited by the authorities several times, asking about the appellant’s whereabouts and wanting to know if she is still practising Falun Gong. She concedes, however, that the authorities will usually visit relatives when people stay out of China longer than their stated intentions.

[40] On 24 April 2009, the appellant’s application for refugee status was declined, giving rise to the present appeal.

Documentary evidence

[41] The Authority and the appellant have been provided with copies of the file of the Refugee Status Branch, including copies of all documents submitted by the appellant at first instance. The whole of the file has been read and taken into account, but particularly significant documents on it, to which further reference will be made, include:

- (a) the transcript of the appellant’s ‘humanitarian’ interview on 29 October 2008;
- (b) Mr Hylan’s letter of 12 November 2008 to the Associate Minister of Immigration;

- (c) the Order Dissolving Marriage, issued by the Family Court at Auckland on 22 March 2004, in respect of the appellant and AA;
- (d) nine photographs of the appellant and others, holding up banners and practising Falun Gong exercises outside the Chinese Consulate;
- (e) the appellant's written statement (including a second translation);
- (f) a medical certificate dated 25 February 2009 from Hong Kong Surgery in Auckland, recording the presence of a 5.5cm x 4cm scar on the appellant's buttock;
- (g) the appellant's "Global Service Center for Quitting Chinese Communist Party" certificate, dated 20 January 2009;

[42] Mr Hylan has submitted brief written opening and closing submissions, together with a more comprehensive set of written submissions dated 7 July 2009. With his submissions, he has provided the following items of country information:

- (a) CRS Report for Congress, "China and 'Falun Gong'", updated 12 February 2003;
- (b) Listener article by Graham Reid, "Nothing Left to Lose", published April 29-May 5 2006;
- (c) Printout of a page from the website of the Chinese Embassy in New Zealand, listing numerous press reports (presumably Chinese in origin), critical of Falun Gong;
- (d) The webpage for an Amnesty International article, "China: Torture in China – a Growing Scourge in China: Time for Action", dated 12 February 2001;
- (e) Ten pages of print-outs from the website www.falundafa.org, including the contents pages of the book *Zhuan Falun* (Turning the Law Wheel), by Li Hongzhi.

THE ISSUES

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

"... owing to a 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."

[44] 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

[45] Before considering the issues raised by the Convention, it is necessary to address the question of the credibility of the appellant's account.

[46] The Authority finds the appellant's account of having been a Falun Gong practitioner in China, and to having been detained and mistreated for that reason, to be untruthful. In reaching that conclusion, the following factors are taken into account.

Falun Gong activities in China

[47] The appellant claims that she had never heard of Falun Gong before being invited to practise it in 2002 and did not know it was banned. That is implausible. As the country information records, there was a massive government publicity campaign across China in 1999, stressing the illegality of Falun Gong and its cult status. It is beyond belief that, in a country as state-controlled as China, the appellant would have failed to have become aware at any time in the ensuing three years of the banning of Falun Gong. Her claim that she lived in a village and stayed at home, being a mother and a housekeeper, and so did not hear such things, is specious. Chinese government control of the media is pervasive and she admits that her village was subject to the 'neighbourhood committee' system of monitoring and that it had its own police station. It cannot have escaped her notice as she claims.

[48] It is also implausible that she would have ignored warnings by her husband when he first learned she was practising Falun Gong. She says that she disregarded his advice because her health had improved dramatically. Yet his warning must have come before he left China in June 2002, at which point the appellant had been practising Falun Gong for a short time only and well short of the three or four months she says it took her to realise she had become well.

[49] The appellant's explanation for continuing to practise Falun Gong in the face of warnings by her husband and friends is that she knew that, if she was caught, she could not be punished because she would simply deny it. The PSB would have no evidence, she claimed, and would be compelled to accept her denial. That explanation is far-fetched. Not only could she not anticipate whether or not the PSB would have evidence, it fails to address the reality that the PSB would not require evidence. It is a tenet of the appellant's own case that the Chinese authorities routinely act in breach of basic human rights, including the denial of the right to freedom of expression and the lack of fair and impartial police and judicial processes. For her to have such faith in the practises of the PSB simply flies in the face of reality.

Arrest and detention

[50] To the Refugee Status Branch, the appellant said that she received a warning from DD before the first police visit to her home and so threw her Falun Gong book in the rubbish bin. For this reason, it was not found when the house was then searched. She was then arrested on their second visit, three to four days later. To the Authority, however, the appellant claimed that the first visit from the PSB had been without warning, that there was no search of the house on that occasion. The book was not found because the PSB did not search the house and so did not look in the drawer in her bedroom. The warning she received for DD, she said, happened after the first visit, but before the second. She thus put the book in the rubbish before the second visit, not the first.

[51] Asked to explain the significant discrepancies in the two accounts, the appellant could not. She suggested, without foundation, that she may have misrecalled events at the Refugee Status Branch interview. That does not explain, however, why the account given by the appellant in her written statement clearly matches the account she gave to the Refugee Status Branch.

[52] Initially, the appellant told the Authority that she did not see the PSB again after she was released from detention. It was only when she was reminded that

she had told the Refugee Status Branch that she had subsequently been required to attend five or six sessions of “brainwashing” at the police station that she recalled that this had occurred. She could not explain her lapse of memory in respect of multiple events which took place over approximately a month and which were, if she is to be believed, her last contact with the PSB.

Passport and travel

[53] According to the appellant, her husband AA sent her passport (endorsed with a New Zealand visa) to her while she was in hiding in ABC village, by sending it to a friend in Guangzhou, whom she then arranged to meet at a fast-food outlet. The friend met her and gave her the passport. Asked by the Authority to explain why she had told the Refugee Status Branch that the passport had been collected by a friend, who gave it to her parents-in-law who, in turn, gave it to the appellant’s parents, who then gave it to her, she speculated that the inconsistency might have arisen from an interpreting error at the Refugee Status Branch interview. That suggestion is rejected. The appellant did not point out any such error when she was given an opportunity to comment on the interview report, in spite of her solicitor’s eight-page response, which addressed other errors and made fulsome comment. Nor is it sensible that an interpreting error could account for one intermediary transmuted into three.

[54] The appellant initially claimed in her refugee application form that the date of issue of her passport was “unknown”. She declared it to be lost. She then asserted in her written statement that, after going into hiding at ABC village, she “got” her passport “after much ado”. Interviewed by the Refugee Status Branch, she claimed that she had applied for her passport “at the end of ’02 or the beginning of ’03” and that she had to pay money to get it because:

“... they told me I’ve been arrested because of my Falun Gong involvement. I won’t be able to obtain a passport without paying them.”

[55] Fortunately, Immigration New Zealand were able to obtain a copy of the passport, revealing that it had been issued in July 2002, well before the appellant claimed to have had any difficulties with the Chinese authorities and certainly well before her claimed arrest in May 2003. Although she attempted to explain this by saying that the bribe had not been paid to the passport office but to the people in the village who had written references for her (and who, she says, knew by July 2002 that she was practising Falun Gong), that does not account for her clear evidence to the refugee status officer that the bribe post-dated her arrest in May 2003.

[56] It is also implausible that, if the appellant really were being sought by the Chinese authorities, that she would have been able to leave the country without being stopped at the border. Her explanation that it was because she had a New Zealand visa is nonsensical. There is no reason why the presence of the visa would preclude the authorities from detaining a person being sought in connection with illegal activities.

Falun Gong activities in New Zealand

[57] The appellant says that she continued practising Falun Gong in New Zealand after she arrived, but only in private. Asked why, given that group practise had been so important to her in China that she had risked arrest to participate, she had no sensible answer, stating that she was afraid that if she did so here, “people” might pass a message to her family that she was doing so. As to how anyone would know who she was, her evidence became increasingly tenuous, first with the implausible claim that there are many people from her village here in New Zealand and then with the fanciful explanation for her sudden willingness to practise in public outside the Chinese Consulate, that the health benefits are “more obvious” if the exercises are done in public. Nor could she explain how holding a protest banner constitutes practising Falun Gong exercises.

[58] The appellant’s actions in protesting outside the Chinese Consulate were, the Authority is satisfied, a cynical attempt to bolster her refugee claim. Her explanation for this gratuitous self-publicising is that she was simply asked to help out and so she did. Bearing in mind her claim to have been so afraid that she had practised Falun Gong in private for five years (before suddenly doing so in public immediately her removal became imminent), the Authority is satisfied that her actions in practising Falun Gong outside the Chinese Consulate in late 2008/early 2009 and in holding a protest banner there, were undertaken with the sole objective of creating grounds for claiming refugee status. The same applies to her gratuitous registration on 29 January 2009 at a website in the United States, declaring that she was quitting the Chinese Communist Party.

Fraud in New Zealand

[59] Section 39(2) of the Family Proceedings Act 1980 requires a couple to have lived apart for two years immediately preceding an application for dissolution of marriage (save for periods not exceeding three months in aggregate where reconciliation was the motive – see s40). Asked to explain how it was that the appellant and AA had secured a dissolution of their marriage in New Zealand in

March 2004, in spite of having lived together from at least July 2003 to February 2004, the appellant would not say. She denied knowing anything of the dissolution proceedings, save that she and AA had gone to the Department of Internal Affairs, where she had had a document interpreted to her, which she then signed.

[60] It is inconceivable that the appellant could have been unaware that she was making a misleading statement on oath, given that the affidavit or declaration which she signed had to expressly confirm that they had been living apart for the preceding two years. She could not explain why she had signed such a document, which was clearly untrue, except to say that she could not remember.

[61] The dissolution of the appellant's marriage to AA is not the only one to have been obtained in suspicious circumstances. The appellant admits that AA continued to live with his second wife, GG, until about a month before he reconciled with the appellant in November 2007. Yet his marriage to GG was dissolved in September 2007, at about the very time the appellant says that he stopped living with GG. Asked if she knew how AA had been able to circumvent the two-years' separation requirement of s39(2) of the Family Proceedings Act, the appellant claimed not to know.

[62] The evidence raises the possibility that the appellant and AA have set out to deceive Immigration New Zealand into grants of permanent residence. She admits that, by the late 1990s, she and AA were looking for ways to emigrate. Although AA came here on a work permit in 2002, the evidence suggests he would not have qualified for permanent residence under any of the categories of residence policy. A marriage to a New Zealand citizen would, however, have brought him within the Family (partnership) category of policy. The deceit which led to the hasty dissolution of his marriage to the appellant was followed by his marriage to GG (ten years his junior), whom there is no reason to suspect knew what was happening. That marriage lasted only long enough for AA to be granted permanent residence (allowing a short but decent interval afterwards, to avoid suspicion), before AA obtained a second dissolution, again by fraud, and the appellant and AA immediately resumed cohabiting. If the plan had not been interrupted, their remarriage would no doubt have been followed by a residence application by the appellant. The children, of course, had already been brought here and remarriage would have restored the family to completeness. Their actions bear all the hallmarks of a scam.

[63] When this scenario was put to the appellant for comment, she denied it, pointing out that GG had had two children by AA before he left her. That GG had

two children is accepted, but that alone does not establish that they did not falsely arrange their separation long enough for AA to get residence. The appellant did not produce AA to give evidence to the Authority (surprisingly, given that he is available and could have corroborated much of her account, if true), but the evidence which is before the Authority raises strong suspicions that the appellant and AA lied on oath to the Family Court, that AA lied on oath to the Family Court a second time and that, using GG (possibly cynically and unsuspected by her), they both conspired to defraud Immigration New Zealand into granting residence to AA, a grant which would have been followed by an application for residence by the appellant in the fullness of time. On the evidence before it, the Authority is satisfied that this is what occurred.

[64] The Authority reminds itself that acts to defraud Immigration New Zealand are not directly relevant to the issue of whether the appellant is at risk of serious harm in China on account of her Falun Gong activities (or for any other reason). Genuine refugees sometimes tell lies and commit fraud. Indeed, their very anticipation of harm can lead them to do so. That is well understood. The relevance here of what the Authority finds to have been an attempt to defraud Immigration New Zealand is that the appellant continues to lie on oath by denying it. The significance lies in the adverse impact on her general credibility.

Failure to mention Falun Gong when detained in New Zealand

[65] Immediately after being taken into custody by an immigration officer in October 2008, the appellant was interviewed. She was given several opportunities to explain why she should not be returned to China. She responded only that she did not know how to face her family and relatives. Surprisingly, she made no mention whatsoever of being at risk of detention and serious harm on account of her Falun Gong activities in 2002-2003. Questions which one would expect to have elicited such information included:

“Why have you not returned to your home country?

What effect will it have on you if you are returned to your home country?

Is there anything else you wish to tell me? (this asked on two occasions)”

[66] In spite of these open questions, the appellant mentioned only her fear of losing face. As to why she did not mention her Falun Gong activities, she stated that, since leaving China, she had been too afraid to even mention Falun Gong to anyone in case word got back to the Chinese Consulate. That is disbelieved.

Within days of being released from custody, she was protesting publicly outside the Chinese Consulate – acts wholly inconsistent with her claimed fear.

[67] Nor did Mr Hylan mention any risk of harm to the appellant because of her Falun Gong activities when he wrote to the Associate Minister on 12 November 2008. Mr Hylan has appeared in refugee proceedings on numerous occasions. Had he known that the appellant feared harm because of Falun Gong activities, we have no doubt that he would have mentioned it. That the appellant and AA would have failed to mention it to him, if it were true, is difficult to comprehend.

[68] In her refugee application form, lodged on 27 November 2008, the appellant did not give any particulars of her claim. They did not emerge until the first version of her statement was lodged two months later, on 28 January 2009. In the November application, however, she had been required to answer some specific questions, as follows (including her answers, in square brackets):

C6. Are or were you wanted or under investigation by the police, military or any other authorities in any country? [No]

C8. Have you ever been arrested by the police or military or any other authorities in any country? [In NZ for immigration matter]

C9. Have you ever been detained by the police or military or any other authorities in any country? [In NZ for immigration matter]"

[69] Asked why she had failed to mention here being arrested and detained by the PSB in May 2003, and why she had denied being under investigation or being wanted by the PSB, the appellant claimed, inexplicably, that she had not dared to do so. She then changed her answer and stated that she had been confused. Neither explanation is sensible. Indeed, they are contradictory.

Doctor's certificate

[70] The appellant has lodged a doctor's certificate from the Hong Kong Clinic, in Auckland. It asserts that she has a "buttock scar induced by Police in China because of religious practices – FA LUN Kung member."

[71] That the appellant has a scar on her buttock is accepted. It is not accepted, however, that the doctor can have had any knowledge as to the circumstances in which it was obtained. The gratuitous comment that it was "induced by Police in China because of religious practices – FA LUN Kung member" can only be information provided by the appellant herself and, as such, it is of no weight.

[72] The circumstances in which the appellant acquired the scar are unknown. The most that can be said is that the Authority does not accept that it occurred in the circumstances she has claimed.

Conclusion on credibility

[73] The foregoing concerns, taken cumulatively, lead the Authority to conclude that the appellant's account of practising Falun Gong in China in 2002-2003, of being arrested, detained and mistreated, and of being wanted by the Chinese authorities today, is not credible. It is disbelieved. As to her claimed Falun Gong activities in New Zealand, the Authority accepts that on a small number of occasions, the appellant was present at protests outside the Chinese Consulate in Auckland and that she undertook Falun Gong exercises and stood by a protest banner, holding the edge of it. It disbelieves her claim to have practised Falun Gong in private between 2003-2008 and does not accept that she has any genuine ongoing interest in Falun Gong whatsoever.

[74] All that is accepted is that the appellant is a Chinese woman who, in late 2008/early 2009, was present at a small number of protests outside the Chinese Consulate in Auckland where she undertook some Falun Gong exercises and stood by a protest banner, sometimes holding the edge of it, for long enough to be photographed at least six times.

Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to China?

[75] "Being persecuted" comprises two elements – serious harm and the failure of state protection. See *Refugee Appeal No 71427/99* (16 August 2000) at [67]. Further, the appropriate standard for persecution is a sustained or systemic violation of core human rights. See, in this regard, J C Hathaway *The Law of Refugee Status* (Butterworths, Toronto, 1993) at p108 and *Refugee Appeal No 2039/93* (12 February 1996).

[76] The appellant says she is at risk of serious harm at the hands of the Chinese authorities because she is a Falun Gong practitioner and will have been seen at the protests and exercises she attended outside the Consulate in Auckland. She claims that she will be detained by the authorities if she returns to China and will be mistreated.

[77] Such claims have arisen frequently before the Authority. See, for, example, the list given in *Refugee Appeal No 76088* (6 November 2007), at [99], a decision

in which Mr Hylan also appeared as counsel. There have been numerous further claims since then.

[78] There is no doubt that, since the banning of Falun Gong in 1999, many practitioners in China have been detained and mistreated, and that the repression of it and its branding as a cult, is ongoing. See, for example, *Refugee Appeal No 76030* (13 August 2007) at [44]. See also the Human Rights Watch report *Dangerous Meditation: China and the campaign against Falun Gong* (January 2002). We accept that practitioners detained in China who refuse to renounce their beliefs are at risk of being detained and seriously mistreated.

[79] There is, however, no prospect of the appellant practising Falun Gong if she returns to China. She was not a Falun Gong practitioner in that country before she left in 2003, she has not been one in New Zealand (her self-serving activities outside the Chinese Consulate notwithstanding) and there is no credible evidence that she would take it up if returned to China now. It follows that there is no discernible risk to her for that reason.

[80] Having found that the appellant will not engage in activities in China that will put her at risk, it must nevertheless be determined whether her limited activities outside the Chinese Consulate in Auckland have created a profile with the Chinese authorities that puts her at risk of serious harm on her return to China.

[81] It is likely that Chinese Consulate officials do monitor Falun Gong networks abroad. The Authority has heard credible evidence in other appeals, describing the filming of the practices and protests outside the Consulate and outside the Embassy in Wellington. Evidence that the “610 office” (the PSB division responsible for suppressing Falun Gong in China) monitors Falun Gong in New Zealand has been noted in previous decisions of the Authority. See, for example, *Refugee Appeal No 75536* (25 May 2006) at [32].

[82] The question of risk on return to China for an appellant who has participated in such Falun Gong activities outside China was considered by the Authority in *Refugee Appeal No 76088* (6 November 2007) (also an appeal in which Mr Hylan appeared as counsel), at [76]-[97], where it reviewed extensive country information and concluded that a Chinese national who has practised Falun Gong overseas (including engaging in protests outside embassies and consulates), does not face a real chance of being mistreated unless there are significant additional aspects to their profile.

[83] The country information available to the Authority does not disclose any change to this since November 2007, when the decision in *Refugee Appeal No 76088* (6 November 2007) was delivered. It is satisfied that minor participation in Falun Gong activities in another country does not, without more, create a real chance of the person being seriously harmed on return to China. That is particularly so where, as here, the undertaking of Falun Gong activities has been a device to bolster a refugee claim and there is no prospect of the person engaging in such activities thereafter.

[84] The appellant's efforts to bolster her profile by registering on an American website that keeps a record of those who wish to declare that they are quitting the Chinese Communist Party because of its "evil nature" are noted. There is no evidence, however, that the authorities are aware of the website, that (even if they are) they are concerned about it or that they would be capable of identifying the appellant. As to this last point, the appellant could not say whether the website does anything more than publish her name. While she claimed that the particular combination of her three names would be rare, she produced no evidence of this and, given the size of China's population, the notion that the Chinese authorities would know that it was the appellant is simply speculative. It follows that the evidence does not establish that her registration at the website has elevated her profile beyond that of a minor participant in a small number of protests.

[85] In summary, the appellant has never come to the attention of the Chinese authorities for activities in China, as she has claimed, and there is no evidence that there is any adverse interest in her now. Further, none of her activities while in New Zealand have led to a profile that will have created a real chance of her being mistreated on return to China. It follows that the first issue raised by the Convention must be answered in the negative and the second issue – that of a Convention reason – does not require consideration.

IMMIGRATION STATUS OF HUSBAND AND CHILDREN

[86] It has been necessary to address the possibility that the permanent residence of the appellant's husband (and the later residence permits of their children, which were predicated upon the *bona fides* of the husband's status) was obtained by fraud. For the avoidance of doubt, it should be stressed that the relevance of that issue to the appellant's appeal is only in respect of the impact

that the appellant's participation in the fraud, and her continuing denial of it, has on her general credibility.

[87] The Authority does not overlook that s129W of the Act Immigration Act 1987 provides:

"129W. Immigration matters not within functions of refugee status officers and Authority

The following are matters for the Minister and any appropriate immigration or visa officer only, and are not within the functions, powers, or jurisdiction of refugee status officers and the Authority:

- (a) The grant or issue or giving under this Act of any visa, permit, exemption, or special direction:
- (b) The revoking or cancellation under this Act of any visa, permit, exemption, or special direction:
- (c) The conditions to be attached to any visa, permit, exemption, or special direction:
- (d) The removal or deportation of any person from New Zealand:
- (e) Any issue of a humanitarian nature that arises outside the context of a decision relating to the recognition of refugee status in New Zealand."

[88] It follows that any inquiry into the correctness or otherwise of the grants of permanent residence to the appellant's husband and their children would be a matter for other agencies and the Authority is not presuming to determine those issues herein.

CONCLUSION

[89] For the foregoing reasons, the Authority finds the appellant is not a refugee within the meaning of Article 1A(2) of the Convention. Refugee status is declined. The appeal is dismissed.

"C M Treadwell"

C M Treadwell
Member