

REFUGEE STATUS APPEALS
AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76284

AT AUCKLAND

Before: A R Mackey (Chairman)

Counsel for the Appellant: I S Anand, Avondale Law

Appearing for the Department of Labour: No Appearance

Date of Hearing: 4 November 2008

Date of Decision: 26 November 2008

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 the People's Republic of China.

[2] This is the second time the appellant has claimed refugee status in New Zealand. Her first claim was declined by the RSB, and on appeal (the first appeal) by the Authority (differently constituted). The first appeal was *Refugee Appeal No 76065*. That appeal was heard along with the appeal of the appellant's son (76066) in August and September 2007 and the decision published on 27 March 2008.

[3] The appellant arrived in New Zealand in September 2006 and lodged her first application for refugee status two weeks later. The application was declined by the RSB in May 2007 and the appeal then proceeded as noted above. On 21 May 2008, the appellant lodged her second claim with the RSB. She was

interviewed by the RSB on 28 July 2008 and a decision declining refugee status, on the basis that circumstances in the appellant's home country had not changed to such an extent that the subsequent claim was based on significantly different grounds from the first claim. The appellant then appealed again to this Authority.

[4] The appellant, in her first application and appeal, predicted that she would be persecuted on return to China because of her involvement and practice of *Falun Gong* in China and subsequently in New Zealand. That appeal was dismissed, largely on credibility grounds. In the second application and appeal, it is claimed that the appellant's daughter in Beijing has been detained by the authorities, the appellant's husband has been forced to divorce her, and the appellant's former home has been ransacked by the Chinese authorities. All of this is claimed to be as a result of the appellant's involvement in *Falun Gong*. The appellant therefore predicts she will be at a real risk of being persecuted if she is returned to China.

[5] It is necessary for the Authority to consider:

- (a) whether the appellant meets the jurisdictional threshold of establishing that circumstances in China have changed to such an extent that her second claim is based on significantly different grounds from the first claim; and (only if so)
- (b) whether the facts as found in the second claim establish the appellant does have a well-founded fear of being persecuted for a Refugee Convention reason.

[6] It is appropriate to consider the question of jurisdiction first.

JURISDICTION OF THE AUTHORITY TO HEAR THE APPEAL

[7] The jurisdiction of a refugee status officer to consider a second or subsequent refugee claim is governed by s129J of the Act which provides:

"129J. Limitation on subsequent claims for refugee status—

- (1) A refugee status officer may not consider a claim for refugee status by a person who has already had a claim for refugee status finally determined in New Zealand unless the officer is satisfied that, since that determination, circumstances in the claimant's home country have changed to such an extent that the further claim is based on significantly different grounds to the previous claim.
- (2) In any such subsequent claim, the claimant may not challenge any finding

of credibility or fact made in relation to a previous claim, and the officer may rely on any such finding.”

[8] There is then a right of appeal, pursuant to s129O of the Act which provides:

“A person whose claim or subsequent claim has been declined by a refugee status officer, or whose subsequent claim has been refused to be considered by an officer on the grounds that the circumstances in the claimant’s home country have not changed to such an extent that the subsequent claim is based on significantly different grounds to a previous claim, may appeal to the Refugee Status Appeals Authority against the officer’s decision.”

[9] The question of whether there is jurisdiction to entertain a second or subsequent application was considered in *Refugee Appeal No 75139* (18 November 2004) where the relevant principles were set out at [54]-[57]:

“[54] In any appeal involving a subsequent claim under s 129O(1), the issues are not “at large”. Rather, there are three distinct aspects to the appeal.

[55] First, irrespective of the finding made by the refugee status officer at first instance, the claimant must satisfy the Authority that it has jurisdiction to hear the appeal. That is, the claimant must establish that, since the determination of the previous claim, circumstances in the claimant’s home country have changed to such an extent that the further claim is based on significantly different grounds to the previous claim. As to this:

- (a) The change of circumstances must occur *in* the claimant’s home country. It is not open to the claimant to circumvent the jurisdictional bar by submitting that at the hearing of the previous claim the refugee status officer or the Authority misunderstood the facts.
- (b) A “reinterpretation” of a claimant’s case is neither a change of circumstances, nor is it a change of circumstances *in* the claimant’s home country.
- (c) The claimant cannot invite the Authority to sit as if it were an appellate authority in relation to the decision of the first panel and to rehear the matter. The Authority has no jurisdiction to rehear an appeal after a full hearing and decision.
- (d) A second appeal cannot be used as a pretext to revisit adverse credibility findings made in the course of the prior appeal.
- (e) Jurisdiction under ss 129J(1) and 129O(1) is determined by comparing the previous claim to refugee status against the subsequent claim. This requires the refugee status officer and the Authority to compare the claims as asserted by the refugee claimant, not the facts subsequently found by that officer or the Authority.
- (f) Proper recognition must be given to the statutory language which requires not only that the grounds be different, but that they be **significantly different**.
- (g) The Authority does not possess what might be called a “miscarriage of justice” jurisdiction.

[56] Second, in any appeal involving a subsequent claim, s 129P(9) expressly prohibits a claimant from challenging any finding of credibility or fact made by the Authority in relation to a previous claim. While the Authority has a discretion whether to rely on any such finding, that discretion only comes alive once the

jurisdictional threshold for subsequent claims set by ss 129J(1) and 129O(1) has been successfully crossed.

[57] Third, where jurisdiction to hear the appeal is established, the merits of the further claim to refugee status will be heard by the Authority. That hearing may be restricted by the findings of credibility or of fact made by the Authority in relation to the previous claim, or “at large”, depending on the manner in which the discretion under s 129P(9) is exercised by the Authority.”

[10] A copy of the decision in *Refugee Appeal No 75139* was made available to counsel at the start of the hearing.

[11] Against this background, it is now necessary to have regard to the appellant’s first and second refugee claims in order to determine whether the jurisdictional threshold is crossed.

THE APPELLANT’S FIRST REFUGEE CLAIM

[12] The account which follows is a summary of the claim that was determined by a differently constituted Authority in the first appeal. The appellant was represented by counsel at the hearing.

[13] The appellant is in her 50s and was born in China. She is the younger of two sisters. Her sister, AA, has refugee status in New Zealand and gave evidence in the second appeal.

[14] The appellant married in 1980. She had a daughter (XX) that year and, 10 years later, a son (HX). The son, who is still in New Zealand on a student permit, was included on the first appeal and declined. Her husband worked in the public prosecutor’s office.

[15] The appellant predicted, in her first claim, that because of her involvement with *Falun Gong* in China, which had begun in late 1998 and had continued both in China and in New Zealand since she arrived here in 2006, she was at real risk of being persecuted if she returned to China. She claimed that in May 2000, after having a discussion with a friend about *Falun Gong*, she was asked to go to the police station and then detained for a short period until her husband was able to come and release her. He told her he would divorce her if she continued to practise *Falun Gong*. She was involuntarily “retired” from her employment as a result of this.

[16] She also stated that her sister, AA, had been arrested and detained several times due to her involvement with *Falun Gong* activities and, in December 2000,

was released. The appellant hid AA in a fuel storage compound for approximately two months but after that, lost contact with her. She was told in 2003 by her sister's son-in-law to meet with her sister at Beijing airport and there she was told that her sister was leaving for a faraway country.

[17] In May 2006, the appellant claimed, she was at home when two police officers arrived and took her to their base which was nearby. She was slapped and interrogated for some time for being in possession of a book critical of the Communist Party. She was tied up to a chair. However, when the men left the room, she was able to shake herself clear and escape. She then met with her daughter and, after renting a room for some time, XX made arrangements for the appellant's son, HX, to travel to New Zealand on a student visa with the appellant travelling with him on a limited purpose visa. After returning briefly to her home and paying bribes to obtain the necessary documentation, she left China in September 2006, with her son.

[18] Soon after arriving in New Zealand, she applied for refugee status and met a woman who was promoting *Falun Gong*. The appellant then became involved in the *Falun Gong* activities in New Zealand on a regular basis. She provided numerous photographs of her activities in that regard to the first Authority. Evidence was also given by HX, who stated that he was a practitioner and involved in some of their activities. The appellant claimed her risk of serious harm was because she was a known *Falun Gong* practitioner who had escaped from the custody of the Communist Party and would be well-known as a prominent activist.

[19] The Authority, in the assessment of her case, found serious problems with the appellant's credibility and did not believe she was a genuine *Falun Gong* practitioner.

[20] Important in the assessment of the first claim was the failure by the appellant to disclose that her sister, AA, was in New Zealand. That was only revealed at some point after enquiries were made by the RSB. Dates provided by the appellant relating to meeting AA in New Zealand were found to be false and her explanations disbelieved. The first Authority found that:

“Indeed, for reasons elaborated later in this decision, we believe that the arrival of the appellant and her sister and their sons in New Zealand was part of a plan carefully crafted from at least as early as 2003.”

[21] A comparison of the two sisters' refugee claims also led to finding a number of remarkable coincidences in their claims, the explanations for which were not

accepted and the Authority considered this appellant had deliberately set out to repeat the methodology of AA which had led to AA obtaining refugee status. A consideration of inconsistent evidence between the two sisters was undertaken and this led to further rejections of credibility in the claim.

[22] The first Authority also found a curious feature in the appellant's evidence was that she and AA gave entirely inconsistent dates of birth and death for their parents. After investigation, it was found the two stories were utterly irreconcilable. The Authority then went on to consider the appellant's practice of *Falun Gong*, allegedly in secret, from 2000 to 2006 and rejected this evidence in accordance with detailed reasoning set out in the determination between [67] and [82] of the first decision. This led to the finding that the appellant and her son had left China legally on their own genuine passports and when they arrived in New Zealand, they had no grounds whatsoever to claim refugee status.

[23] The first Authority went on to find that the appellant had attended numerous *Falun Gong* events since her arrival in New Zealand, although it did not conclude that she was a genuine *Falun Gong* practitioner and held that if she was returned to China, she would not have any involvement - public or private - in *Falun Gong*. The Authority concluded that she would have no hesitation in renouncing *Falun Gong* the moment it ceased to be a means of securing permanent residence for her and her son in New Zealand. Detailed reasons for that conclusion were then set out.

[24] The Authority referred to previous *Falun Gong* claims made in New Zealand and findings relating to bogus *Falun Gong* claims in cases such as *Refugee Appeal No 72857* (16 May 2002) and, more recently, in *Refugee Appeal No 76088* (6 November 2007). It was noted in *Refugee Appeal No 76088*, where there had also been acceptance of attendance at many *Falun Gong* gatherings and demonstrations in New Zealand, that the involvement of the appellant, in that case, had been "undertaken predominantly and significantly to bolster his otherwise very weak claim for refugee status" [66]. After a detailed consideration of the relevant country of origin information, up to the time of the publication of that decision approximately one year ago, the Authority found that on return, he would be seen as a failed asylum seeker who had attempted to manufacture a claim in New Zealand, rather than a *Falun Gong* practitioner or democracy activist. (The detailed review of the country information between [76] and [105] in that decision is noted by the Authority later in this determination.)

[25] The first Authority therefore, after thorough analysis of credibility and assessment of current risk, found that neither the appellant nor her son had a well-founded fear of being persecuted on return to China and dismissed the appeals.

THE APPELLANT'S SECOND REFUGEE CLAIM

[26] The account that follows is a summary of the evidence given by the appellant in respect of her second claim. At the outset the Authority explained, to counsel, the appellant and the two witnesses, the limited jurisdiction in this second appeal.

[27] The nub of the second claim, which was lodged less than two months after the decline of the first appeal, was that in early April 2008, the appellant received news, by notification from a *Falun Gong* website, that her daughter, XX, had been arrested. In the accompanying letter from her lawyers, who were then representing her, it was stated that the appellant did not tell the truth about how she met her sister in this country and both sisters regretted this. It was restated that the appellant had developed a strong attraction to the fundamental beliefs of *Falun Gong*.

The appellant's evidence to the RSB

[28] On 22 July 2008, the appellant's current representative sent to the RSB a written statement by the appellant, dated 22 July 2008, a letter from the appellant's sister, AA, dated 10 July 2008, a letter from the appellant's son, HX, dated 20 June 2008, letters of support from other practitioners and copies of various newspaper articles from the *Falun Gong*-sympathetic publication *Epoch Times*. Also included was a copy of an article (untranslated) from the website www.minghui.org which was stated to set out brief details of the arrest of the appellant's daughter, XX.

[29] In the written statement, the appellant stated that she was a *Falun Gong* practitioner and that the Chinese Communist Party (CCP) had seriously persecuted her for her beliefs and therefore she had run away. She stated that taking advantage of the Beijing Olympic Games, the CCP had arrested *Falun Gong* practitioners and their family members, including her daughter, whom she claimed was illegally detained.

[30] She stated she had received the news from a *Falun Gong* website "Ming

Hui” that XX had been detained. After trying to contact her husband and not receiving an answer, she called a classmate (ZZ) of her daughter to ask what had happened to XX. ZZ was not interested in helping the appellant, insulted her and told her not to contact her again. Regardless of this negative response, the appellant proceeded with her enquiries, telephoning ZZ on a number of other occasions. In the end, she stated, she had called the *Falun Gong* association in New Zealand and told them she wanted to go back to China to save her daughter. They said that she should not, as obviously it was a trap where the CCP wanted to capture her by kidnapping her daughter. She claimed that the CCP never stopped persecuting *Falun Gong* practitioners and their families and that this was a fact that she had found out from the website. For this reason, she was seeking refuge in New Zealand.

[31] She then went on to claim that the CCP had sent “10s of millions” of *Falun Gong* practitioners to prison, re-education through labour camps and mental hospitals and persecuted 3,000 to death and “millions more” were forced to leave their homes. She also claimed that live organ harvesting was still very severe, including harvesting *Falun Gong* practitioners’ organs to make a big profit.

[32] The appellant set out some details of her activities in New Zealand as a *Falun Gong* practitioner, including a claim that when she participated in a parade in Hamilton, someone had broken the windscreen of her car. After that, she claims, she was tracked by some strangers to her house in June 2008 and the windscreens of four cars were broken by someone in the yard.

[33] Towards the end of her statement, the appellant stated that while she did not tell the truth about meeting her sister, they had met unwittingly and that:

“No matter how I was met my sister, I do not think this is important. The most important thing is I am real Falun Dafa practitioner. The last two years, I never give up on Falun Dafa and I believe “truthfulness, compassion and forbearance” for all time, nothing can change that.”

[34] The appellant was then interviewed by the RSB on 28 July 2008. In that interview, the appellant, through her representatives, submitted that the second claim now stood on three pillars:

- (a) her daughter’s arrest by the Chinese authorities in China;
- (b) the vandalism of her home by the Chinese authorities; and
- (c) the appellant’s active involvement in *Falun Gong* practice in New Zealand which is known to the Chinese authorities.

[35] The RSB then conducted a comparison between the two claims and considered the circumstances had not changed significantly since the previous claim. In their assessment of credibility, the RSB noted that the appellant had allegedly claimed her daughter had been harassed in her first claim and the appellant had then been found not to be credible. They considered therefore it was not credible that XX had now been arrested. Additionally, in relation to the ransacking of her home, it was considered that this was a continuation of the first claim where she had been found lacking in credibility and not accepted as a genuine practitioner. The RSB considered that the two new incidents claimed by the appellant lacked evidentiary weight and that, accordingly, the circumstances in the appellant's home country had not changed to such an extent that the subsequent claim was based on significantly different grounds. The application was therefore declined.

[36] Prior to the hearing, the Authority received submissions from counsel, dated 29 October 2008, a number of photographs showing the appellant participating in different demonstrations, and a number of support letters from *Falun Gong* practitioners who offered to come and give their evidence orally as well. Included in the support letters was one from the appellant's son and her sister. Those letters and their evidence are covered later in this determination. The support letters from the other *Falun Gong* practitioners have all been noted by the Authority. As none of them referred to changes in China, affecting the appellant since the determination of her first appeal, after discussion with counsel, the Authority stated that it did not need to hear from these supporters and accepted that their statements were confirming the appellant's continuing involvement in *Falun Gong* activities and demonstrations in New Zealand and, in two cases, that they were aware of the message on the "Ming Hui" website that the appellant's daughter had been arrested and her house searched.

The appellant's evidence to the Authority

[37] At the outset, the Authority made it clear to the appellant that she needed to establish that there had been a significant change in circumstances in her home country of China since her first appeal was declined on 27 March 2008. That was understood by the appellant.

[38] She then explained that her daughter had been detained on 2 April 2008 and that, after that, her former home, where her ex-husband now lived, had been

searched and ransacked.

[39] In respect of her daughter, she claimed that Chinese authorities, as part of their preparation for the Olympic Games, had started arresting relatives of *Falun Gong* practitioners and that many of these were still detained. She considered that her daughter had been taken away by the Chinese Public Security Bureau personnel and was still being held by them.

[40] The information about her detention had come to her attention when her son had referred her to the internal *Falun Gong* website “Ming Hui”. The appellant looked at it on 11 April 2008 and saw her daughter’s name on a list of *Falun Gong* relatives who, according to the website record, had been illegally detained. The statement was along the lines that on 2 April 2008 the HH district of Beijing “evil police” captured a *Falun Gong* practitioner’s daughter and that she was now illegally detained at the PSB sub-bureau. It asked for anybody knowing any details to provide information and gives the telephone number of the sub-bureau. The name of the appellant is included in the statement contained on the website.

[41] The appellant stated that she had provided a copy of the screen shot from the “Ming Hui” website for 11 April 2008 to the RSB on 21 May 2008. In a further copy screen shot from “Ming Hui” website, dated 30 June 2008, she stated that the same message continued to be reported but adding that the a daughter had been illegally detained as long as two months ago and had not come back to her home. The report is then stated to go on and claim that:

“The CCP also search [the appellant’s] home and confiscate her property.”

[42] The Authority had the information, which is in Chinese, from the website screen shot, checked and confirmed by the interpreter at the hearing. She added that the term “search”, as set out on the website, could cover a wide range of actions, including “to trash” or “to ransack” and not the bare meaning of “search” in the English context.

[43] The appellant went on to state that her daughter had been taken away from a birthday party she had been celebrating with some of her old school friends at a restaurant at a well-known hotel in Beijing. The detail of how she obtained the information about her daughter being at a birthday party, she explained, had come through a letter from one of her daughter’s friends, ZZ. The letter from ZZ, dated 2 June 2008, had been provided to the RSB, along with a rough translation by her son. (The Authority noted problems with the translation and arranged for it to be

more thoroughly translated by the interpreter in the hearing. This was done later in the hearing.)

[44] The appellant said that when she first heard her daughter had been detained, she became overwrought and distressed and immediately tried to telephone her ex-husband. She was unable to get a reply on his telephone so she then started to ring various friends of her daughter. Ultimately, she was able to contact ZZ. ZZ was not happy about being telephoned and did not wish to talk to her about the incident. ZZ initially told the appellant she was mentally ill. Despite this, the appellant stated that she had rung ZZ on five or six occasions, asking if she knew who took her daughter away and begging ZZ to inform her of all she knew. She explained that she did not think that ZZ was involved at all with *Falun Gong*, nor did she have any political involvement. She thought that ZZ was about 27-28 years old, but did not know her marital situation or anything further.

[45] The appellant said that she considered the telephone of ZZ would have been monitored or bugged by the CCP and that all overseas telephone calls were under surveillance, 24 hours a day, in respect of all those involved with *Falun Gong*.

[46] After getting the English translation of the letter from ZZ corrected by the interpreter at the hearing, further evidence was given by the appellant in that regard.

[47] The letter, dated 2 June 2008, in summarised form, stated:

"I did not tell you everything because at the time our phone was wire-tapped by police. I was not nice to you when you called me and told you were crazy. I hope will not be angry with my behaviour. I'm writing this letter to you and you will wonder how I got your address. [This was done when] I went with your daughter to send an item to her brother in New Zealand. I was with her and got your address [at that time]. I'm writing this letter to inform you that on 2 April 2008 our classmate's birthday was celebrated at the [name of hotel and restaurant]. At around 5 o'clock, two policemen in plain clothes came there and they asked where's XX? XX answered it was her. I was there at the time. They asked XX where is your mother? XX asked them why they were asking this question. They replied that Olympic Games would be on soon and they wanted to have information about her mother. XX said her mother was overseas. They said they wanted to have more information so they took XX away. After that we all followed them in a car to HH public security sub-bureau police station. They did not let us in. Since that day we did not get any news about XX. After that we found from a friend's mother about the Ming Hui website. She helped us to announce this thing on the Ming Hui website. At first we were afraid you will know this so we did not write her name. But after you also came to know this and you made endless phone calls to us. I request you not to call us and I beg you again as our phone is tapped by police. After we heard that our friend's mother announced this news again on the website. Aunty do not be worried as we have heard that the people

who are arrested cannot be let out until the Olympic Games are over. We understand your feeling, but what can we do, we are also helpless. We are very afraid now, China's situation is very tense. I request you do not make a call to us anymore. Aunt you need to take care of yourself."

[48] The Authority asked who put the information on the Ming Hui website and the appellant stated that, as set out in the letter from ZZ, the mother of a friend who was also a *Falun Gong* person, had put the information on the website.

[49] The appellant stated that her last contact with her daughter had been in February 2008. The contact had been on approximately a monthly basis by telephone. Her daughter was not a *Falun Gong* practitioner and ran her own business in vehicle grooming. The appellant stated she had not rung her daughter during March and did not ring her when she found out that her first appeal to this Authority had been declined. The reason for this was that it was expensive and there was no point as her daughter was far away and had then not come to the notice of the Chinese authorities. In addition, "bad people" had gone to her shop so her daughter had closed her business.

[50] When asked why she had not contacted her daughter when she heard that her appeal had been declined, given the impact this would have on her life, the appellant replied that if she had rung her, this would have put her daughter into a terrible state and that XX could not help her anyway. The appellant stated that she had not rung anyone else in China when she heard the result of the first appeal. She had not been in touch with her husband for some period of time.

[51] When asked whether she considered it was highly coincidental that her daughter would be detained some four to five days after the decline of the first appeal to this Authority, the appellant stated that there was no way of knowing and it was the Chinese authorities who decided. She confirmed that the additional information, that her daughter had been detained, apart from the website, were the letter from ZZ and later a letter that her ex-husband had sent to her son.

[52] She was asked whether she had any other evidence from any other independent source. She explained that her last contact with ZZ had been when she received the letter and she did not want to contact her further as it might get ZZ into trouble. She explained that there were two websites operated by *Falun Gong* and she thought these were operated out of the United States of America. The two websites were Ming Hui and another one, "Da Ji Yuan". News such as that relating to the disappearance of her daughter was only contained on the Ming

Hui website which could only be accessed by *Falun Gong* members. The other website was in English and published wider news about *Falun Gong*. She considered that the news contained on the Ming Hui website must have been conveyed to America and those operating the website, if they thought it was credible, then published it on the website. She had no idea of the detail. When it was put to the appellant that anyone could merely send the information to Ming Hui in the US and then they may or may not put the information online, she replied that she was not exactly clear how it worked. She stated that she considered the information totally credible and that *Falun Gong* supporters like her would go to this information every day to get their news. When it was put to her that it was hard to see why it would be reliable when the sourcing was so unclear, she stated that she considered that it was reliable, that all things on the websites were reliable and that there was nothing fake in them.

[53] It was again put to the appellant that the Authority should only rely on objective, independently sourced material and that there could be problems with relying on *Falun Gong* sources which did not appear to have the necessary level of independence. She was unable to give any reliable, independent source, beyond *Falun Gong* material.

[54] The appellant was also asked whether she had tried to check through independent sources or a lawyer as to details of her daughter's detention, but stated that she could not do this.

[55] When asked what information she had about her ex-husband, she replied that she was now divorced, although she had no copy of the divorce certification and the procedure had gone through without her signing anything. She stated that she had left her husband in 2006 when she came to New Zealand. She did try to ring him but his telephone did not answer. However, she was sure that her husband had gone to investigate the detention of their daughter. Ultimately, her son had received a letter from his father, which she had seen and brought to the attention of the RSB and the Authority. Again, that letter had been translated by the son and was not of a high standard. Thus, the Authority again arranged for it to be translated with the help of the interpreter, while the son was giving his evidence.

[56] In relation to the pictures she submitted, the appellant explained that these had been taken over the period since she arrived in New Zealand but most of them were in the period since April 2008. They all showed the appellant partaking

in *Falun Gong* related activities, protests and events, as well as the appellant handing out *Falun Gong* related leaflets.

[57] It was put to the appellant that the letter from ZZ stated that ZZ's telephone was tapped and it seemed remarkable that a young person with no political or other profile would be under such surveillance in a population of 1.3 billion people. The appellant stated that because ZZ was a young person who had been associated with her daughter, she would have come under surveillance. The Authority asked how the police would be aware of this when, according to the letter, they had to go through a process of identifying XX herself. Accordingly, they simply would not have known the name of ZZ, let alone her telephone number. The appellant stated that the police may not have known the names, but with modern science and all overseas calls being monitored, young people are very nervous and extremely scared.

[58] In her final statement, she said that she would not leave *Falun Gong* even though it appeared to be the primary source of her problems. It now ruled her life and she would not give it up. She claimed the original decision of the Authority was incorrect and therefore she had lodged her second claim. In addition to her risk of being persecuted in China, she considered she was being followed in New Zealand and that her vehicle had been damaged as a result of this. She considered that on return, she would be taken off the plane, sent to a concentration camp and would be at risk of having her organs harvested. She stated that she carried a knife and would use it if necessary.

The son's evidence

[59] The son provided a short statement, dated 26 October 2008. He confirmed that his appeal had been declined along with his mother's at the end of March 2008. He is about 18 years old and currently in New Zealand on a student visa. He is a Year 12 student at an Auckland college. His fees were paid by his mother from some form of benefit she received in New Zealand.

[60] It was explained that the Authority could only take into account credible evidence relating to events that had taken place in China since the end of March 2008. Noting this, the Authority asked him to comment on his statement that he and his mother had been tracked by a "CCP spy" who had taken their photograph and smashed his mother's car. He stated that this had happened one Saturday evening after they had been practising *Falun Gong*. He could not recall the exact

date but thought it was about two or three months ago. The CCP spy hoped to get information from them and send it back to China and this would be used to arrest his sister unlawfully and to search his home and confiscate property.

[61] He explained that his elder sister, XX, was 10 years older than him and she lived in Beijing and owned a little business renovating cars. He said he had had no contact with her over the last six to nine months. In the last contact, they had discussed their family situation and he asked her to procure for him a “translation computer”. She had got this and sent it to him.

[62] Her current situation, as he understood it, was that she had been taken away by the Chinese authorities on 2 April 2008 when celebrating a birthday party with classmates. He knew this as he had seen it on the Ming Hui website on 11 April 2008. He said that the information on the website often comes from within China or is based on teachings from “our master”. He knew of no other source for the material.

[63] In respect of his father, he stated that he was still alive and also in Beijing and was a driver in the logistics department of the public prosecutor’s office. He thought his father still worked there but was not sure whether his rank had been cut to a lower one than it had been before and that he may be suspended. He thought his father was 54 years of age. The last contact he had with his father was when he received a letter on 20 June 2008 that had been sent to him. He said he had never talked to his father since he had been in New Zealand as his father’s telephone was under surveillance and it was too much trouble for him, even as his father’s only son. When it was suggested that his father could readily use another telephone and ring him, he stated that his father would not know his telephone number and he did not want to give it to him as it could cause him problems.

[64] He stated that, in the past, he had a very good relationship with his father and that his father had not been cross with him when he came to New Zealand as “one had to stay alive”. He did not consider that his father understood the situation very well and therefore had no contact with him, apart from the one letter. He thought he had received that letter approximately five or six days after 20 June 2008 and he had carried out a rough translation himself. He agreed to go through the letter with the interpreter to provide a more reliable, independent translation.

[65] The content of the letter, in a somewhat summarised form, was as follows:

“My son HX

You called Uncle Liu and he told me. I know about her circumstances. On the phone you said I did not show concern for your sister. You are wrong. I am not in a good situation also. I have been everywhere trying to pull strings in your sister’s matter. The Olympic Games are approaching and she is held in a different jurisdiction. So people capturing falun gong are coming from other localities to arrest them. There are a lot of transferred people around because of favouritism that was being shown. This is different to the past. In 2000 that thing happened to your mother. It was in our own district and my sphere [jurisdiction of the prosecutor’s office] therefore I could pull strings, take people out to dinner. But your sister is in HH [in northwest Beijing]. There is no way I can get to know anyone in that area. All things are really tense no matter who you are. If you have family overseas you could be investigated. My circumstances are not good either. No post in my work organisation therefore I am shunned by others all because of your mother being stubborn in her beliefs. She has turned the family into a distressing situation. I have divorced mother otherwise they would not let me work. My mobile has been intercepted and I had to turn it off. You said your mother is in a bad way mentally and is forgetful and her hair has gone white. I do not know what has happened to you but tell you mother is not a very courageous person. She was arrested in 2002 and has changed a lot since. She has had a bad fate and suffered from it. I had wanted [or hoped] for a better life with me. Who would have thought it would come like this. Look after your mother, depend on each other. You have responsibility and must complete your studies. I have never stopped thinking about you. You have stayed alive. You must not come back, even as beggars you are free. There is no freedom in China. It is a single party dictatorship with no freedom and no right of free speech. Police searched our house on 20 May 2008. They ransacked it like vandals. I spent half my life building up a home look what it has become. I have sent some photos to you in the letter. You can see what the situation is now. Do not inform your mother about this as it might upset her further. Things are not good for your father either therefore do not hold that against me. I am not able to do much myself. Take good care of your mother and do not let her go anywhere as she does not speak English. Don’t let her get upset. You need to enlighten her.”

[66] There is no apparent signature or other statement at the foot.

[67] The son stated that he showed the letter to his mother as soon as he received it. He had not made any follow-up with his father after the letter. He said he did try to ring his father after his sister had been taken away but could not get through therefore he rang his father’s friend, Mr Liu, and asked Mr Liu if he knew about the situation of his sister. Mr Liu said he was not clear about her. He then asked Mr Liu about his father and whether he knew anything about his sister and was told that the father’s mobile telephone was turned off. He told Mr Liu that he thought his father was not being responsible and did not care about his sister or him and his mother in New Zealand. He explained that it was not an optimistic situation for them in New Zealand and could Mr Liu tell his father about this. He said he had rung Mr Liu after 11 April when he saw the news on the website. His mother had become very disturbed so he thought he had better try and call him.

[68] The Authority, noting that Mr Liu did not know the situation of the sister, XX,

asked how his father would know anything about her either. He replied that the father was the only relative and they were both in Beijing. He agreed that Mr Liu was unaware of his sister's problems and he did not want to tell Mr Liu about them to cause any problems. The Authority then asked why he had actually rung Mr Liu and the reply was that he wanted to find out about his father. He then confirmed to the Authority that the only information he had relied on had been that placed on the Ming Hui website but that his mother had also received a letter from a friend of his sister.

[69] When asked how information was put on the Ming Hui website, he explained that if anything happens in China, then *Falun Gong* have the information loaded on to the website. He thought the website was based in the USA but was uncertain. He regularly visited the website himself.

[70] When asked what happened when he and his mother received the decline of the first appeal in late March 2008, he said they did nothing and they just went to a lawyer and had some discussions. When asked if he had gone on the website and posted the story about his sister being missing himself, he said he had not done so.

[71] When asked whether he had checked reliable, independent sources for information about his sister or people like her, and whether they were detained or not in China, he stated that his mother had contacted the *Falun Gong* people in New Zealand and everyone knew about the situation. She had been in touch with the head of the "Buddha Association" and he had then arranged for the situation of the appellant and the daughter to be "announced" and that the good wishes of *Falun Gong* supporters should be given to them and that they should ring people in China and find out about the situation of his sister.

[72] He confirmed he had no independent confirmation of his sister's situation in Beijing or the predicament of relatives of *Falun Gong* practitioners overseas who are still in China.

[73] He considered that his mother's activities within *Falun Gong* were those of a real, true practitioner and that everybody knew this. He thought that there may be some other relatives of *Falun Gong* practitioners in New Zealand who were detained in China. During a march earlier this year urging people to withdraw from the CCP, a man gave him information about his own daughter in this regard. HX thought that people were being detained because the CCP were afraid relatives

overseas would tell them life is much better than under “the evil CCP” and thus relatives at home will start taking part in anti-Communist activities. He considered his mother would not give up her *Falun Gong* activities as “the master” helped to take away diseases and enhanced their functions and if they stopped, evil things would happen.

Evidence of the sister, LL

[74] The appellant’s elder sister, LL, had provided a statement, dated 26 October 2008, which she adopted. The Authority explained that the content of that statement set out only confirmation of the appellant’s ongoing and unwavering support of *Falun Gong* and that the jurisdiction of the Authority was first to consider whether there had been significant changes in China since the appellant’s first appeal was declined at the end of March 2008.

[75] At the outset, LL endeavoured to make a general statement about *Falun Gong* principles. However, when asked by the Authority whether she wished to give evidence in support of her sister and to answer specific questions, she then agreed.

[76] She stated that she had seen the Ming Hui website which stated that the appellant’s daughter had been taken away. She believed this was a major change in the appellant’s situation. In addition, the website said that her sister’s home had been searched. Also, she stated that the appellant’s husband had divorced her and he was now without work because of the activities of the appellant in New Zealand. She stated she got the information about XX from the website and her sister, the appellant, had told her about the search of her home in China.

[77] When asked whether she was able to supply any independently sourced information to confirm that the appellant’s daughter had been detained, or that people in similar situations who were family members of *Falun Gong* practitioners overseas had been detained, she stated that a huge number of *Falun Gong* had been arrested in the run-up to the Olympic Games so that the CCP could put on a good show. This had been done secretly but she had seen the information on the *Falun Gong* website. The only independent information, she said, came from her brother-in-law in the letter sent to her nephew. In addition, a fellow practitioner in New Zealand had told her of a whole family that had been taken away and not released. She considered that the information on the website was 100% authentic because it was only open to *Falun Gong* practitioners.

[78] When it was put to her that it would be relatively easy to put the information on the website, she stated that all *Falun Gong* people knew how to access the website, and that everything on the website was true and that *Falun Gong* people never lie. She considered that all information on the website had factual evidence behind it.

[79] In relation to the divorce from the appellant's husband, she considered this had taken place because if people wish to practise *Falun Gong* in China, their family become implicated. She then volunteered that her own husband had been pushed to divorce her because she had insisted on practising *Falun Gong* and had left China to live in New Zealand.

COUNTRY INFORMATION

[80] Counsel submitted that in addition to the *Falun Gong* sourced websites, there was evidence in the UK Home Office Border Agency "Country of Origin - China report - 1 June 2008" (COIR) that showed that relatives of *Falun Gong* practitioners have been pressured by the Chinese authorities to isolate practitioners and sometimes harass family members. The Authority was referred to extracts from the COIR June report, paragraphs 21.36-21.38, in particular.

[81] The Authority has taken into account other country information, including the latest United States Department of State *Country Reports on Human Rights Practices 2007: China*, Amnesty International material and other reports that were submitted to the RSB.

[82] The appellant was granted a period of 14 days to provide a letter from a leader of the *Falun Gong* movement in Auckland she stated she wished to submit.

[83] On 18 November 2008 the Authority received additional material from the appellant's counsel. These were:

- (a) a letter of support from the President of the Falun Dafa Association of New Zealand;
- (b) a letter from a *Falun Gong* practitioner certifying the authenticity of *Falun Gong* websites;
- (c) photographs showing the appellant's participation in a demonstration; and

- (d) relevant country information in the form of two articles - firstly, from the UNHCR website "Refworld", accessed 14 November 2008, an article titled: "*China: Treatment of Children of Falun Gong Practitioners; Whether Children of Falun Gong Practitioners are Subject to Sanctions, Including Reduced Access to Education and to Health Care*". The publisher of this article is the Immigration and Refugee Board of Canada (26 June 2008). The second article has come directly from the Canadian IRB website www.irb-cirs.gc.ca. It is dated 11 July 2007 and was apparently sourced on 15 November 2008.

THE JURISDICTION QUESTION

[84] Initially, the Authority must conclude, noting the provisions of ss129J and 129O of the Act, whether it has jurisdiction to determine this second refugee appeal by the appellant. If so, the Authority must then assess the appellant's second claim, the well-foundedness of that claim and then if there is a Refugee Convention reason for the persecution being claimed. If not, the matter is then at an end.

[85] This preliminary issue must now be addressed. This involves the comparison of the accepted facts as found in the first refugee claim (including items from the RSB assessment and the first decision of the Authority, as relevant), with the claim now made by the appellant. The two claims are compared to establish whether the Authority is satisfied, since the first appeal decision was decided, that circumstances in the appellant's home country have changed to such an extent that the further claim is based on significantly different grounds from the first refugee claim.

[86] The Authority is satisfied the appellant's second claim does not assert circumstances which could be described as 'significantly different' to the first claim. The claimed arrest of the daughter and searches of the home are noted, but, when weighted against the first claim, in which the appellant claimed years of personal harassment by the Chinese authorities, including her own detention (from which she claimed to have escaped) and her claim that the Chinese authorities knew of her *Falun Gong* activities in New Zealand and had intimidated the daughter by smashing her windscreen, the ongoing harassment which is now asserted - the

detention of the daughter and searches of the home - merely continues the underlying nature of the first claim. The second claim is not significantly different.

[87] It follows that the Authority does not have jurisdiction to consider the second claim. For that reason, the second appeal must fail. For the sake of completeness, however, and because the first Authority reached firm findings as to the lack of credibility of the first claim, it is appropriate to comment on the credibility of the second claim. From the assessment below, the Authority also found a serious lack of credibility in the second claim that is consistent with the findings on the first claim.

THE APPELLANT'S SECOND CLAIM

CREDIBILITY ASSESSMENT

[88] At the outset the Authority notes the provisions of s129P(9) of the Act which states:

“In any appeal involving a subsequent claim, the claimant may not challenge any finding of credibility or fact made by the Authority in relation to a previous claim, and the Authority may rely on any such finding.”

[89] In assessing the second claim the Authority elects to rely on the findings of fact made in the first claim as cogent and persuasive evidence.

[90] For the reasons that follow, the Authority does not accept the credibility of the appellant and the two witnesses on the core issue of changed circumstances in her home country made in the second claim. There are inconsistencies and significant implausibilities arising from their evidence. In respect of the appellant herself, it is to be recalled that in her first appeal her evidence was found, by the first Authority, as “extremely unreliable”. All that was accepted was that the appellant had attended *Falun Gong* events in New Zealand since she had arrived. That was not found, on the evidence and country information, to indicate a basis for a real chance of being persecuted on return.

[91] The truthfulness of the appellant in her first appeal was not accepted on most of the core elements of her claim, including a failure to disclose her sister in New Zealand, the remarkable coincidence of the refugee claims by the appellant and her sister, inconsistent evidence about her sister, highly inconsistent evidence between the appellant and her sister relating to their parents, flawed evidence in

relation to practising *Falun Gong* in secret between 2000 and 2006, inconsistent and flawed evidence relating to the appellant's second arrest, detention and escape and her return home after two months in hiding and also inconsistent evidence in relation to the daughter's car grooming business and the windscreen of her car being smashed.

[92] The appellant's history of giving unreliable evidence is a significant factor that the Authority is entitled to take into account as a backdrop to the assessment of the truthfulness of the evidence presented with this second appeal. The Authority does not agree with the submissions made by counsel (paragraph 15-17) that it is neither logically tenable nor legally correct to use a past decision or decisions based on "old or unknown evidence" to reach a conclusion about the circumstances surrounding the appellant in China. Indeed, by s129P(a), the appellant is expressly prohibited from challenging the findings made in the first appeal.

[93] Whilst the Authority and the RSB are required to assess the evidence presented in support of the second appeal in a fair and correct manner, clearly a proven history of lying in the past is a relevant factor in the assessment of the current appeal. It would be nonsensical to ignore such a history and state that such an appellant comes to the second appeal with perfectly clean record on credibility. That is not, of course, to say that "*sur place*" evidence should not be assessed under the correct rules of fairness and objectivity. The Authority has therefore noted in this appeal that the appellant has a history of lying.

[94] The Authority considers that the whole story of the daughter, XX, being captured and the searching and ransacking of the home are fabrications constructed in an endeavour to present a claim of significantly changed circumstances in China. In reaching this conclusion, the Authority starts with the recognition, set out at [54] of *Refugee Appeal No 76065*, which states:

"The two cases, when looked at side by side, have all the hallmarks of a well thought out plan, going back at least to late 2003 when the two of them applied for their passports within weeks of each other. We conclude that, consequent upon the appellant's sister being granted refugee status in January 2005, the appellant deliberately set out to repeat her sister's methodology."

[95] This indicates this appellant, and possibly her sister as well, are not new to creating carefully crafted plans to suit their own needs.

[96] Next, the Authority notes the amazing coincidence in timing wherein, merely four days after the first appeal was declined by the first Authority, the daughter, XX, was allegedly captured and detained by the Chinese PSB. The first report, however, of this detention did not come to light until 11 April 2008 when it was seen for the first time on the Ming Hui website by HX, and later that same day by the appellant herself. This contradicts the son's evidence that he viewed the website virtually every day. Given this, it is surprising, to say the least, that the announcement on the website was not spotted earlier.

[97] The Ming Hui website is clearly a *Falun Gong* sponsored website. It is stated to be only available to *Falun Gong* adherents. All three witnesses stated that information was put onto it by *Falun Gong* supporters and it was based somewhere in the United States. It relied on information provided from *Falun Gong* supporters in China and, no doubt, elsewhere. It was stated that some (unquantified) check was done and then the material was posted onto the website. From the evidence, all of this is done without any independent, valid certification that provides even the remotest element of objectivity to information contained on that website.

[98] On the totality of the evidence presented, the Authority is satisfied that between the appellant, her son and possibly other *Falun Gong* supporters, the initial and later entries on the website have been fabricated by them to give an aura of credibility to an otherwise groundless claim. Placing the information on the website does not make the information credible as the appellant, her son and her sister claimed. If the initial information provided is untrue, the whole story emanating from it is likewise flawed.

[99] The Authority was directed by counsel to the UK COIR of June 2008, with the submission that this showed independent sourcing of accounts of maltreatment of *Falun Gong* practitioners' relatives in China. The Authority has checked the COIR and sources behind it. Paragraphs 21.36-21.38 of the COIR state:

"Treatment of Falun Gong practitioners' relatives

21.36 On 25 February 2004 the US Citizenship and Immigration Services noted:

"According to outside observers, Chinese authorities at times have pressured family and relatives of Falun Gong practitioners to isolate the practitioners from other adherents, sometimes harassing family members who refuse to comply. At the same time, these sources tend to have little independent information on the extent to which Chinese officials resort to this tactic as they seek to repress the spiritual movement, which formally became state policy in 2001."

21.37

“The only specific reports of harassment of family members come mainly from the Falun Gong movement itself. The Falun Gong web site provides accounts of family members allegedly being arrested in order to pressure adherents who are wanted by authorities into surrendering, or otherwise punished for the adherents’ Falun Gong activities. To the extent that these accounts are accurate, however, it is unclear whether they are part of a systemic national practice or are the work of zealous local officials.”

21.38

“A Canada-based professor who has studied the Falun Gong movement, but who lacks independent evidence of harassment of family members, said that the reports publicized by the movement appear to be credible. Still, the professor suggested that most harassment of family members of adherents is probably relatively subtle. ‘My impression is that the harassment of relatives consists less of torture and physical threats, and more of discrimination and threats to livelihood,’ the professor said in an email to the RIC (Professor 20 Feb 2004).”

[100] The Authority then sourced the US Citizenship and Immigration Services Report at <http://www.uscis.gov/portal/site> (on 5 November 2008) where the above quotes are correctly recorded. However, the USCIS report goes on to state:

“A China researcher for Amnesty International told the Research Information Centre (RIC) in a telephone interview that Falun Gong sources and Amnesty’s own research suggest that family members of practitioners are at times pressured and harassed by local officials. The researcher noted that collectively punishment is at times used by the Chinese authorities to put pressure on political and religious dissidents. She said, however, that Amnesty International lacks independent accounts of specific cases of harassment of family or relatives of Falun Gong practitioners (AI 14 November 2003).”

[101] The report goes on to state that the RIC found only three independent accounts of family members allegedly being harassed because of activities of *Falun Gong* practitioners. (That was in 2003.)

[102] The Authority has also taken into account the material that was submitted by the appellant’s counsel after the date of hearing and set out in detail above. Turning firstly to the letter of support from the President of the Falun Dafa Association of New Zealand, the Authority notes that this refers to the appellant being involved in *Falun Dafa* activities since she arrived in New Zealand in 2006 and sets out some detail of these. It then reports unsourced claims that there are 3,194 *Falun Gong* practitioners who were persecuted to death, of which two percent were co-ordinators, the existence of a blacklist demonstrated by an incident in Iceland in 2002 and two incidents allegedly relating to New Zealand *Falun Gong* practitioners, the first in 2001 and the second in 2002. The letter also enclosed a copy of a report (also from a *Falun Gong* source) relating to the alleged harvesting of organs of *Falun Gong* practitioners (also referred to in other reports).

The President of the Association concluded his letter by stating that he was unable to attend the appellant's hearing in person.

[103] The appellant's *Falun Gong* activities in New Zealand are of course not part of the issue before the Authority at this time as they were covered in the first appeal. None of the other comments appear to refer to changes in the circumstances relating to the treatment of *Falun Gong* practitioners in China after the publication of the decision in the appellant's first appeal *Refugee Appeal No 76065* (27 March 2008). This letter therefore adds little to the appellant's case.

[104] The letter from a *Falun Gong* practitioner about the Ming Hui website states that it is created and maintained by *Falun Dafa* practitioners and is designed to serve both fellow practitioners and the general public with daily articles and to provide insights into *Falun Dafa* practice, expose the harsh persecution in China, and report on the news of *Dafa* activities around the world. The article also says that another website, www.clearwisdom.net, is a direct translation of the Ming Hui website. The letter then goes on to state that the Ming Hui website is regarded by the writer as the most reliable information source "for me to know what happens in China on the *Falun Dafa*" and that he or she believes the contents on Ming Hui and clearwisdom.net are true. Again, this information appears to add nothing to the assertion of significantly changed circumstances, apart from a statement that there is a "clearwisdom" website which is a translation of the Ming Hui website.

[105] Turning now to the additional country information supplied, the first article, originally sourced from the IRB in Canada on the treatment of children of *Falun Gong* practitioners, has been noted by the Authority. The latest material referred to in that article is:

- (a) the *Epoch Times* (in Chinese) dated 23 September 2007 "Renowned Chinese Attorney Urges US Congress to Address China's Human Rights" accessed on 16 June 2008; and
- (b) an article from "Falun Gong Human Rights Working Group" which appears to have been accessed on 16 June 2008 from a *Falun Gong* website. That article does not refer to the dates of any incidents in particular. All other references pre-date the publication of the appellant's first decision on 27 March 2008.

[106] Going through the IRB article in depth, the Authority notes that virtually all of the sources quoted are from *Falun Gong*-sympathetic publications, such as the *Epoch Times*. The only references that give possible independent sourcing are a reference to an open letter to the US Senate and Congress dated September 2007 from a Chinese Human Rights lawyer, Gao Zhisheng, where he spoke of the persecution of *Falun Gong* members in China including the mistreatment of children. According to Gao a large number of children in China have been expelled from school because their parents are *Falun Gong* practitioners and that many children are left unattended, sometimes homeless, following the arrest of their parents. Again, the provenance of this material is not given. However, even taken at its highest it does not relate to any change in circumstances since the decision in the appellant's first appeal.

[107] The other item mentioned is a report from November 2005 to the United Nations Committee on the Rights of the Child which notes concerns at "reports that children and families practising their religion, notably *Falun Gong*, are subject to harassment, threats and other negative actions, including re-education through labour". Again, that material, like the comments from Gao Zhisheng, clearly pre-dates the publication of the first decision.

[108] The second report sourced from the Canadian IRB (11 July 2007) (see [83d] above) is again on the treatment of family members of *Falun Gong* practitioners. The latest sourced material in that article is from February and March 2007. The report itself quotes all the material as coming from *Falun Gong* sources in Canada, USA and Australia. Interestingly it states:

"Corroborating information from non-*Falun Gong* sources could not be found among the sources consulted by the Research Directorate within the time constraints of this response."

[109] Again, the Authority is left in the situation where, as the IRB also noted, there are no non-*Falun Gong* sources for such material and in many cases the apparently independent sources originally find their origins, in virtually all circumstances with *Falun Gong* sources.

[110] Virtually all of the above information predates the decision of the first Authority. The information sourced since the decision of the first Authority is solely sourced from a *Falun Gong* website which has undoubtedly uploaded it at the instigation of the appellant or possibly a fellow *Falun Gong* practitioner

sympathetic to the appellant's predicament. It is unreliable and the reasoning below confirms that.

[111] In addition, all three witnesses admitted to being familiar with the two *Falun Gong* websites and their use. They admitted using them on a regular basis. The appellant's son even stated he had discussed the situation with the head of "Buddha Association" here in New Zealand (apparently this is a reference to the most senior *Falun Gong* practitioner or leader). HX said that the head of the association had arranged for details of the situation of the appellant and her daughter to be placed on the website so that "good thoughts" could be sent to the appellant and that people could ring a specified number in China to find out about the situation of his sister.

[112] The Authority considers this is a "house of cards". By a very simple construct of passing information to the private *Falun Gong* website "Ming Hui", the first "card" in the fabrication was put in place. Unfortunately, when that first card is found, by analysis, to be a piece of self-serving information, the whole house collapses.

[113] The other evidence upon which the appellant, her son and, to a limited extent, her sister relied in giving their evidence, were the two letters that have been received from China. The first of these was the letter from ZZ. The Authority considers this letter has been contrived. In the appellant's evidence, she stated she had, in fact, telephoned ZZ five or six times before she received a letter from her. In the letter ZZ states that the appellant would be wondering how she (ZZ) obtained the address of the appellant. ZZ then goes on to state she had been with XX on one occasion when she was sending something to her brother in New Zealand and, at that time, had obtained the address. The reasoning given by ZZ as to how she obtained the address is facile. The ability, when with a friend who was posting a letter, to remember the whole of the address in a foreign country, in a foreign language, is quite clearly fanciful in the extreme and undermines the total authenticity of the letter.

[114] In addition, ZZ speaks in the letter of her telephone being tapped. The Authority considers that this also, on the profile given by the appellant of ZZ, is implausible. Whilst country evidence would indicate that there is surveillance of telephone calls in China, particularly to and from overseas, ZZ appears to have no political profile and no involvement with *Falun Gong*. Beyond that, as the policeman who allegedly came into the restaurant could not recognise XX herself,

the likelihood of the PSB authorities knowing the name, then obtaining the mobile telephone number of ZZ and then monitoring that telephone, is again utterly fanciful.

[115] The copies of the Ming Hui website screen shots of 11 April 2008 and 30 June 2008, provided by the appellant, both show the name of the appellant. Accordingly, it is illogical for the letter from ZZ to state:

“At first we were afraid you will know this so did not write her name [ie XX]. But after you also come to know this and you made endless phone calls to us.”

[116] Obviously, putting either the appellant’s name, or that of her daughter, on the website, brought the alleged detention of XX to the attention of the appellant. It is nonsensical to say this somehow avoided this appellant becoming aware XX had been detained.

[117] The Authority is therefore satisfied that this letter has been contrived and is self-serving. The Authority attaches no weight to it at all.

[118] The letter sent allegedly by the appellant’s ex-husband to the son, HX, the Authority similarly finds to be a fabricated document and places no reliance on it.

[119] The son stated that he had contacted “Uncle Liu” after trying to contact his father without success. HX stated that he had merely asked Uncle Liu if he knew about his sister, but had not described the full situation. He reported that Uncle Liu was not clear about his sister and had not been in contact with the father. From the evidence given by HX, he said he had not informed Uncle Liu that his sister had been detained. In that situation, it is illogical the telephone call was actually made at all if there was a desperate desire to find out information relating to the detention of his sister. One would expect the detention would need to be directly asked about if “Uncle Liu” was being requested to follow up and investigate her whereabouts and possibly inform the father.

[120] Secondly, even if, somehow, the father had received knowledge, via the *Falun Gong* website, that his daughter had been detained, the claim that he was not able to do anything about it as she had, apparently, been detained in another district, is not evidence that XX was, in fact, detained. Equally likely and, in the Authority’s view, on the totality of the evidence, a far more likely explanation is that she was not detained at all and thus it was impossible to find details of a person who is not actually detained.

[121] The terms of the letter also do not disclose any linkage between the police search of the home, which allegedly took place on 20 May 2008, and the possible detention of the appellant's daughter. In the circumstances, the Authority does not consider that this letter adds any form of authentication to either event. The Authority is satisfied that the letter, which appears to have been sent without any enthusiasm or warmth, gives no assistance to the appellant's claim at all and, at most, is simply another part of the fabricated claim.

[122] Firstly, on the issue of jurisdiction the Authority finds it does not have the required jurisdiction to the second claim and accordingly the second appeal must fail. The Authority did, however, carry out for the sake of completeness, an assessment of the credibility of the appellant's second claim. This has led both on a number of individual findings and emphatically on the totality of the evidence to find that the credibility of the appellant and her witnesses is extremely unreliable. This second claim is therefore a contrived and fabricated claim. Shorn of the fabricated second claim the Authority is left with a claim that this appellant would be at risk for reasons of her involvement in *Falun Gong* activities in New Zealand. That is the same claim that was presented in the first application and appeal. Even were jurisdiction assumed, on the facts as found, adopting substantially the same reasoning as the first Authority, the appeal would have to be dismissed.

CONCLUSION

[123] For the reasons set out above, the Authority does not find it has jurisdiction to consider this subsequent appeal within the provisions contained in the Immigration Act. In this situation, the appellant is not found to be a refugee within the meaning of Article 1A(2) of the Refugee Convention.

[124] Refugee status is declined. The appeal is dismissed.

"A R Mackey"
A R Mackey
Chairman