

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 71715/99

AT AUCKLAND

Before: M Robins (Member)

Counsel for Appellant: The appellant represented himself

Date of Hearing: 24 January 2000

Date of Decision: 08 June 2000

DECISION

[1] This is an appeal against a decision of the Refugee Status Branch of the New Zealand Immigration Service ("the RSB"), declining the grant of refugee status to the appellant, a citizen of the People's Republic of China.

INTRODUCTION

[2] The appellant, a 46 year-old male, arrived in New Zealand on 18 January 1997. He applied for refugee status in August 1997. In June 1999 the RSB (having advised the appellant's immigration consultant of the date of interview, and the appellant having failed to appear at that interview) declined the application.

[3] In September 1999, the appellant applied for an extension to his work permit. It was then that he learned of the decline decision. He immediately lodged a fresh application for refugee status and, a few days later, an appeal to this Authority against the decline decision.

[4] Because the appellant's appeal was out of time and because he would have appeal rights available should his fresh application fail, the registrar of this Authority, in October 1999, declined to grant the appellant an opportunity to seek

formal leave to appeal out of time.

[5] The appellant's first refugee application and statement in support was based on difficulties experienced by the appellant surrounding the events in Tiananmen Square in June 1989. The appellant's second application and statement was based on his membership of the Falun Gong.

[6] Because this was his second application for refugee status the RSB was obliged by Section 129J(1) of the Immigration Act 1987, to assess whether, since the determination of the first claim, circumstances in China had changed to such an extent that the further claim was based on significantly different grounds.

[7] The RSB officer decided, in October 1999, without interviewing the appellant or seeking from him further information, to decline the application. It is from this decision that the appellant appeals.

THE APPELLANT'S CASE

[8] The appellant is the third of four children. All of his siblings are married and, like their parents, live in S in China.

[9] The cultural revolution began while the appellant was a teenager at middle school. He had hoped, after graduation in 1970, to further his education. This opportunity was denied him because he, like all other students at this time, was sent after graduation to the remote countryside to do farming work.

[10] The appellant got married in 1980. Shortly after their marriage his wife became pregnant and returned to S where she lived with her mother.

[11] In 1982, after 12 years in the countryside, the appellant was allowed to return to S. He explained to the Authority that at the end of the cultural revolution and after the fall of the Gang of Four the government realised that their previous policy was wrong. They then had to repatriate the students from the villages and farms they had been assigned to. The appellant and his wife lived alternately with both sets of in-laws for the next eight years until they divorced in 1988.

[12] The appellant has no contact with his former wife and has only rare contact

with his daughter. His last contact with his daughter was when he phoned her at the Chinese New Year in January or February 1999. She was well and happy, living with her mother.

[13] On his return to S in 1982 the appellant was assigned to a factory which made gas canisters and concrete urns. In 1988 he sought and was granted a transfer to a different company much closer to his home. This was a multi-purpose enterprise involved in trading and processing such diverse items as food products, chemicals and building materials. The appellant joined this company as an office worker. In 1995 he was promoted to manager of general office affairs.

[14] In 1986 the appellant heard about a Qi Gong report. This report received widespread publicity in China. Tens of thousands of people attended stadiums nation-wide to learn more about it. The appellant told the Authority that Qi Gong is a blend of mind and body work. It strives to harness an energy called Qi.

[15] The appellant was looking for a new direction in his life. He was attracted by the claim in the report that Qi Gong could improve chronic sickness without medication or injections. He decided he wanted to learn more about Qi Gong.

[16] From 1986 onwards the appellant began to look for a master to teach him Qi Gong. He bought some books about the exercises and practised on his own in a large park in S. He did not like physical exercise very much so did only basic movements. In addition to these basic Qi Gong movements, he followed Shaolin teachings. Shaolin is a form of Buddhism.

[17] From 1986 to 1992 the appellant would usually go to the park every morning and some evenings to do basic exercises and manipulation of air movement. This would take about half an hour each session. The appellant learned to use physical exercise to carry out the spirit of Buddhism and Taoism. The critical point of this physical exercise according to the appellant was that it was "a kind of release to help human beings rise above the six ways of reincarnation". The appellant continued to train mostly on his own and to read books on the subject.

[18] In 1992 the appellant was still searching for a master who could help him get rid of his worries and rise above the cycle of reincarnation. There were many different types of Gongs and many different leaders.

[19] In 1992 the appellant heard about a Qi Gong variant called Shu Shu Gong. He travelled 1,000 miles by boat to visit the founder and leader of Shu Shu Gong. He stayed with this leader for two weeks accepting teachings from him before returning to S.

[20] Also in 1992 the appellant learned of Li Hongzhi. Master Li (as the appellant called him) was publicising a variant of Qi Gong, called Falun Gong. The appellant said the difference between Qi Gong and Falun Gong was one of degree.

[21] The Chinese government required each of these various Gongs to be registered with the Human Physical Science Association. The appellant said the Falun Gong was registered in 1992. The appellant had, since the 1980s belonged to the S. branch of this Association.

[22] During the next two years the appellant met many people who practised Falun Gong exercises in this large park in S. He exchanged learning and understanding with them. He read Buddhist books. Mostly he did daily exercise at home or in the courtyard outside his office. Although he was still himself learning about Falun Gong, the appellant passed on what he knew to two of his friends Mr L and Mr T. The three of them spent a lot of time together learning about Falun Gong.

[23] Also during 1992 to 1994 there were a number of voluntary public Falun Gong gatherings in the district in S where the appellant lived. The Falun Gong sought leaders to take followers through the exercises. These leaders were required by law to be members of the Human Physical Science Association. The appellant volunteered to become a leader and to help promote Falun Gong.

[24] From 1994 the appellant began leading people in Falun Gong exercises. He was allocated a venue in the park. The people who came were mainly senior citizens. On workdays the average attendance would be 30 to 50 people. On weekend days, especially Sunday, more people came.

[25] For those with weaker constitutions the appellant offered advice on improving their well being. He would stand in front to lead them. He took several different groups and estimated that in all he was a teacher and trainer for several

hundred people.

[26] The appellant also provided the attendees with audio cassettes and videotapes. He sold them on behalf of the Qi Gong association.

[27] Once the attendees became more familiar with the exercises they would help each other. If they did not like the way the appellant trained them they were free to attend sessions led by others.

[28] In October 1995 the appellant was baptised a Buddhist. He had read various Buddhist books and had studied and practised Buddhist teachings and exercises in preparation for his baptism.

[29] The appellant was anxious to distinguish Buddhism, which is a religion, from Falun Gong which has no religious rituals and is not regarded by its followers as a religion. He explained that the Falun Gong leader, Master Li, has assembled all the teachings of the other religions and sects and has summarised them into core and essential teachings namely truth, kindness and tolerance. The appellant demonstrated an indepth knowledge of Falun Gong - its history and its relationship to other Gongs. He also displayed a notable enthusiasm when he was explaining the principles of Falun Gong, and in particular, his reasons for choosing Li Hongzhi as his spiritual leader.

[30] The appellant continued to practise his Buddhist faith. He continued to lead Falun Gong followers at these daily gatherings in the park.

[31] Over the years, at his job, the appellant developed a good relationship with his boss, the "company leader". The company was considering entering a joint venture in the building industry with a Japanese company. The company leader had a contact in New Zealand. He was keen to travel to New Zealand to inspect and learn about the unique features of New Zealand residential building. The company leader asked the appellant to escort two architects to New Zealand and introduce them to the company leader's contact.

[32] The company arranged for the issue of the appellant's passport. The appellant packed a few clothes and set off for New Zealand with the two architects. He had no long term plans other than to follow the instructions of his company leader. Four days after his arrival in New Zealand in January 1997, he

sought and was granted an extension to his visitor's permit until 18 October 1997.

[33] A week after the appellant's arrival the company leader arrived. A week after that the company leader and the two architects had left New Zealand. The appellant remained behind. The appellant spent the next ten months travelling round the north island of New Zealand visiting places and generally making the most of his first journey to a foreign country. The company ceased paying the appellant's wages in March 1997.

[34] With his temporary permit due to expire in October 1997 the appellant approached an immigration consultant for advice about applying for permanent residence. The consultant advised that a refugee application was the one most likely to succeed. The appellant gave the consultant some personal details and some details about his activities in China in 1989. He did not however sight or sign either the application form or the statement which were filed on his behalf. Indeed his name was written by the consultant, with the first and family names reversed.

[35] This statement included the following sentences:

"As a positive participant [in the events of Tiananmen square in 1989] I had been called by the police to be investigated for several times. They questioned me about the details about whatever I knew about the movement and such investigation had not been stopped for several years. My day – to – day life had been largely disrupted by the authorities. Obviously, I was not welcomed in China."

[36] At the hearing before the Authority the appellant said the "translation" of this statement was "perhaps more serious" than what actually happened. He said that in 1989 he did take part in at least a dozen demonstrations in the two to three months before the events in Tiananmen Square on 4 June 1989. The appellant, like anybody suspected of participating in those demonstrations, was investigated and underwent re-education. This happened in July and August 1989. Life was quite difficult for him at that time. He did not however attract any further attention from the authorities after August 1989. He said that if he had had continuing problems in 1997 then he would not have been issued with a passport.

[37] After his refugee application was lodged in August 1997 the appellant was granted a work permit. He registered a limited liability company in November 1998 which employed one person, a Malay who spoke English and Mandarin. Through

this company the appellant provided and continues to provide a large range of services such as painting the interior and exterior of houses, renovations (some quite extensive) and, in conjunction with another company, such services as water-blasting.

[38] In the first half of 1999 the appellant was planning to return to China. He said he missed his parents who are both in their late seventies. In March 1999 he wanted to withdraw his refugee application. At the same time he explored, with his immigration consultant, whether there was any other method to obtain residence in New Zealand but was advised there was not.

[39] Then, in late April 1999, the appellant heard that the Chinese government had detained a number of Falun Gong members. He heard how on 25 April a crowd of more than 10,000 Falun Gong adherents had gathered outside the compound in Beijing where most of the country's top officials live and work. They were requesting the immediate release of fellow practitioners, the lifting of the ban on publishing and distributing the main book of Falun Gong and they sought legitimisation of the practice of Falun Gong. This news made the appellant very angry.

[40] In July 1999 the appellant made one of his infrequent calls to his parents. They told him that in June the police had gone to their house (where the appellant had lived before he left China), and had carried out a thorough search. The police found and seized a number of videotapes, audio cassettes, letters and photographs.

[41] Around the same time the appellant telephoned his two friends Mr L and Mr T. Mr L was aware of the seizure of various items from the appellant's family home. Mr L was afraid to say much on the telephone. Although he did not ask the appellant to cease further contact, the appellant decided not to make further contact because he believed there might be serious ramifications for Mr L and his family members, if he did so.

[42] Mr T was also aware of the search and seizure of the appellant's property. Although Mr T used to visit the appellant's home frequently, the appellant laughed at the Authority's question whether Mr T continued to visit after the June raid. The appellant was sure Mr T would not continue to visit because this would cause the appellant's elderly parents real problems. That is because Mr T (like Mr L) is still

involved with the Falun Gong.

[43] Subsequently the appellant also learned from his parents that an arrest warrant had been issued. The appellant presented a photocopy of this arrest warrant to the Authority. It stated his name and other personal details including a description of his height and build etc. The allegation against him was stated to be “promoting Falun Gong.” The “degree of involvement” was described as “serious.” A brief summary of facts was also given:

“During 1992 and 1996, he has been promoting Falun Gong frequently. Since 1997, he has escaped overseas, yet he still carries on promoting Falun Gong, anti-communism and anti-science activities.”

[44] The date of escaping was given as 17 January 1997 (the date the appellant left China). The direction of escape was “overseas.” The case was registered on 20 July 1999 and the warrant issued on 28 July 1999.

[45] The appellant also produced a photocopy of a list of items seized by the police. This document listed the following items as having been seized:

- “1. Falun Gong videotapes – 15
- .2 Falun Gong cassettes – 18
3. Letters concerning [the appellant] – 28 letters/17 sheets of notes.
4. Photographs concerning [the appellant] and his promotion of Falun Gong – 48 copies.”

[46] This list had the appellant’s father’s signature at the bottom.

[47] The appellant continued to work in his business here in New Zealand. He waited for notification of his RSB interview date. In September 1999 he learned that his application for refugee status had been declined and, as stated earlier in this decision, he lodged a new claim based on his Falun Gong activities. In his statement supporting this claim he set out all the major features of his claim to be a Falun Gong leader, and the claim that Falun Gong items had been seized during a raid on the family home. His immigration consultant advised him to obtain documents which would corroborate his case.

[48] The appellant produced a number of other documents in support of his claim:

- (a) Photographs taken of one of the appellant's Qi Gong teachers entering Tibet in the 1980's. He brought these photographs with him to New Zealand.
- (b) Photographs taken on the day the appellant was baptised as a Buddhist in S in October 1995.
- (c) His baptism certificate.
- (d) A certificate awarded to the appellant in February 1997 for his Buddhist activities in China. This certificate congratulated the appellant for truly and faithfully practising Taoism. It certified that he is truly a Buddhist practitioner.
- (e) Photographs of the appellant meditating in New Zealand.
- (f) Photographs of the appellant participating in a meditation group in an Auckland park.
- (g) The book written by Li Hongzhi the founder of Falun Gong. The appellant obtained this book from the Falun Gong office in New Zealand.
- (h) Newspapers published in New Zealand about the situation in China.

[49] The appellant said that if he returns to China he fears being arrested, interrogated and imprisoned. He pointed to a number of articles in the newspaper clippings. One article described how a Falun Gong practitioner in Wuhan was sentenced to 15 years imprisonment. He referred also to an article about a married couple who, the appellant thought, had the same level of involvement as he had. They were each sentenced to four years imprisonment.

[50] The appellant said that although he regarded himself as only a teacher and a trainer, the police appear to have magnified his importance and have deemed him to be a Falun Gong leader. He did not, when he was in China, consider himself to be of such importance.

[51] He said that when he was in China he was interested only in promoting personal well being and health. Since his arrival in New Zealand the Falun Gong movement has become a serious political issue. He has never been involved in politics before.

[52] Since his arrival in New Zealand the appellant has mostly practised his Falun Gong exercises on his own. He attended two Falun Gong meetings in a park in Auckland in 1998 but found that what they were practising was too basic for him. He also has a heavy work schedule which has prevented him from attending more often.

[53] At the hearing, the appellant said his father had the original list of items taken by the police. He said he could obtain this original document within two weeks. Subsequently the appellant wrote to the Authority, stating that he was unable to provide any original documents:-

“... because the acquisition of these documents concerns a lot of people and these people may lose their job or even become prosecuted for providing me the documents from China.”

Country Information

[54] The Falun Gong is a movement which combines elements from the meditative traditions of Buddhism and Taoism with the breathing techniques and shadow – boxing routines of traditional Chinese martial-arts disciplines. It was created in 1992 by Mr Li Hongzhi, who now lives in the United States. The Economist: *Why the Exercisers Exercise China's Party*; 31 July 1999, page 21.

[55] The Falun Gong was tolerated officially as long as it agreed to function under a government umbrella organisation for popular health and sports movements. It came under criticism when it withdrew from the organisation in 1996, The Guardian Weekly, *Ban on Sect Leaves Trail of Confusion*, 29 July to 4 August 1999, page 3.

[56] Human Rights Watch New York 2000,: *Human Rights Watch: China*, December 1999, page 181 reports:

“Restrains on religion and belief increased significantly during the year. On April 25, ten thousand members of Falun Gong (also known as Falun Dafa), surrounded Zhongnanhai, the Beijing compound housing China's top leaders. The peaceful, silent demonstration was to protest a newspaper article disparaging Falun Gong, a

quasi – religious meditation society whose beliefs were loosely based on Buddhist and Daoist tradition. The size of the demonstration clearly shocked the government, and while authorities took no immediate action, they began a systematic crackdown three months later. On July 22, the Ministry of Civil Affairs labelled Falun Gong an illegal organisation and accused it of spreading “superstition” and “endangering social stability”. It banned public and private practice and distribution of the organisation’s literature. Police detained thousands of practitioners for reeducation and began to confiscate and destroy over one million books. A week later, the government issued an arrest warrant for Li Hongzhi, the group’s leader, who had been living in U.S. The government put the number of practitioners at two million; other estimates run as high as seventy million. Alarmed at the number of party members involved, the party leadership mounted a full-scale internal “rectification,” using the opportunity to emphasise the value of Marxism and reinvigorate President Jiang’s “three stresses” campaign to strengthen theoretical study, political awareness and good conduct among Party members. As of mid-October, the first set of trials of Falun Gong leaders was underway in southern China.”

[57] Human Rights Watch. New York, *China Uses “Rule of Law” to Justify Falun Gong Crackdown*, 9 November 1999:

“The Chinese leadership’s attempt to contain Falun Gong is part of a broader government effort to try to control all organisations, religious, civil, social or economic. The number of members, their ability to organise and their use of modern tools of communication have made the Falun Gong especially threatening. Concerns about social instability, fed by large-scale unemployment, a stagnant rural economy, and the demoralising effects of pervasive unemployment, add to the leadership’s need to ensure that the Chinese people’s first loyalties remain with the Chinese Communist Party The authorities, in carrying out the crackdown, seem to be carefully distinguishing between organisers and ordinary Falun Gong followers. In a November 5 circular, the People’s Supreme Court, admonished the courts to make a sharp distinction between “criminal elements” and cult leaders who should be treated harshly, and common Falun Gong practitioners who should be extracted from cults, educated, then reintegrated into the social fabric.”

[58] The distinction between leaders and ordinary followers of Falun Gong is also made in the Economist Article referred to above “Why the Exercisers Exercise China’s Party” pp 21 and 22:

“Though the more ardent practitioners of Falun Gong say they will keep their faith and not be cowed by the ban, the government’s crackdown appears in these early days to be succeeding. Members of the sect have been taken to schools and football stadiums for brief stints of “ideological education”, while those regarded as leaders are being held in jail for possible prosecution. The sect’s teaching materials, books, posters, audio cassettes and video tapes, have been destroyed. Followers no longer dare to practise publicly at dawn in the parks of Beijing. Sit-in demonstrations, which in the days leading up to the ban had involved tens of thousands of followers in dozens of cities, have subsided. Everyone in China has been put on notice that they face a choice: abandon Falun Gong or face the wrath of the party and the law.”

[59] Amnesty International – Report-ASA 17/54/99 *China: People’s Republic of China. Report on Torture and Ill-treatment of Followers of the Falun Gong*, 22

October 1999 states:

“Amnesty International is deeply concerned by reports that detained followers of the Falun Gong have been tortured or ill-treated in various places of detention in China. In early October 1999, one member of the group, a 42 year-old woman, was reportedly beaten to death in police custody in Shandong Province. Many followers of the group remain in detention across China and it is feared that they may be at risk of torture or ill-treatment. Many Falun Gong practitioners are middle-aged or elderly people, with a large proportion of women among them.

The Falun Gong – a movement which combines teaching of meditation and exercises as a method to improve health and moral standards, was banned by the Chinese government in July 1999. The government, apparently concerned by the large number of followers in all sectors of society – including government departments, declared it was “cult” and a “threat to stability” and launched a nationwide propaganda campaign against it. The campaign was described as an important “political struggle”. Thousands of Falun Gong followers who attempted to protest peacefully against the ban or who continued to practise exercises, were arbitrarily detained across China in the days and weeks which followed the ban. Many were reportedly beaten by police in the process. At least hundreds are believed to remain in detention. Some are now being brought to trial on politically motivated charges. They are likely to be sentenced to long prison terms after unfair trials.

The following are some of the reports of torture and ill-treatment of Falun Gong practitioners received by Amnesty International. Some are accounts of police brutality against people arrested in the immediate aftermath of the ban on the Falun Gong in July 1999. Many other cases have been reported. While in the current climate of repression it is difficult to verify these reports, they contain specific and often detailed information about the places and circumstances in which torture is reported to have occurred, including the names and details of many of the alleged victims, and in some cases their photograph. Most of these reports subscribe patterns of torture which are known to be common in China. They contain serious allegations which should be impartially investigated. Under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which China ratified in 1988, China has the obligation to investigate all reports and complaints of torture, bring those responsible for torture to justice and compensate the victims.”

[60] The above report then goes on to document numerous cases of Falun Gong followers who have been arrested and tortured simply for practising Falun Gong exercises.

[61] New Zealand Herald, *Falun Gong ‘cult’*, 29 October 1999, B3, reported:

“China officially branded the outlawed Falun Gong movement a cult for the first time yesterday, setting the stage for an even harsher crackdown and raising the prospect of a wider backlash by members.

Cults are banned under Chinese law which allows only religious organisations sponsored by the Government.”

[62] Amnesty International Report-ASA 17/11/00 *China: People's Republic of China. the Crackdown on Falun Gong and Other So-Called "Heretical Organisations"* 23 March 2000 reported:

"[Since the ban in July 1999], tens of thousands of Falun Gong practitioners have been arbitrarily detained by police, some of them repeatedly for short periods, and put under pressure to renounce their beliefs. Many of them are reported to have been tortured or ill-treated in detention. []. Some practitioners have been detained in psychiatric hospitals. Those who have spoken out publicly about the persecution of practitioners since the ban have suffered harsh reprisals.

While it is difficult to estimate accurately the number of Falun Gong practitioners currently detained or imprisoned – notably due to the continuous succession of arrests and releases – the information available indicates that the number is likely to be in the thousands. Some have been charged with crimes and tried, while others have been sent to labour camps without trial. According to Chinese official sources, by late November 1999, at least 150 people, officially described as "key" members of the Falun Gong, had been charged with crimes. The number of those by now charged or prosecuted under the Criminal Law is believed to be much higher. By early February 2000, at least 40 of those charged under the Criminal Law had been tried and sentenced to prison terms after unfair trials. In addition, hundreds, possibly thousands of other practitioners have been assigned, without charge or trial, to serve terms of "administrative" detention, in forced labour camps for up to three years. Unfair trials have continued and arrests and detentions of practitioners continue to be reported every day." (1. Introduction)

At a Press Conference on 2 December 1999, Quian Ziaoqian, Director General of the State Council Information Office, quoted police data referring to Falun Gong practitioners, according to which between 20 July and 30 October 1999, 35,792 people "had tried to attend illegal gatherings in public places in Beijing and were told to leave or were taken away from the scene". He subsequently insisted that "those people were not and are not detained", despite information from numerous sources indicating that many of those attending such gatherings were detained at least for short periods. Since then, thousands of other people have been detained across the country for peacefully protesting against the crackdown. Many have been sent to labour camps without charge or trial for periods of up to three years' detention for "re-education through labour". Others have been detained repeatedly by police, and fined, threatened or dismissed from their jobs. Many of them detained subsequently reported being held in poor and unsanitary conditions, and being beaten or otherwise ill-treated in detention." (2.1. The Government's Campaign and Accusations against the Falun Gong).

[63] Bureau of Democracy, Human Rights and Labor U.S Department of State *1999 Country Reports on Human Rights Practices: China*, February 25, 2000 and reports, in relation to the situation which pertained in late 1999:

"Although the vast majority of ordinary Falun Gong practitioners who were detained later were released, authorities acted more forcefully against practitioners it identified as leaders. On October 25, the official media reported that at least 13 Falun Gong leaders had been charged with stealing and leaking state secrets. On October 31, a new anti-cult law was passed, which specifies prison terms of 3 to 7 years for cult members who "disrupt public order" or distribute publications. Under the new law, cult leaders and recruiters can be sentenced to 7 years or more in prison. On November 3, the authorities used the new law to charge six Falun

Gong leaders, some of whom, it is believed, were arrested in July. Also, on November 8, the Government confirmed that 111 Falun Gong practitioners had been charged with serious crimes including, among others, disturbing social order and stealing state secrets." (Section c. Freedom of Religion)

[64] The New Zealand Herald, on Friday April 14, 2000 B3 reported:

"Chinese police used kicks and punches to break up carefully planned protests by scores of members of the banned spiritual group Falun Gong in Tiananmen Square yesterday.

Six groups of Falun Gong followers simultaneously raised red and yellow flags with slogans in different parts of the vast Beijing square.

The action caused mayhem as uniformed and plainclothes police sprinted around punching, kicking and shoving protestors into lines of police vans....

Five vans were filled with protestors, many of them middle aged women, and police could be seen arresting as many as one hundred people around the square."

[65] Arrests appear to have continued to the present time. The International Herald Tribune, Wednesday April 26, 2000 on page 4, reported that the Chinese police detained more than one hundred members of the Falun Gong movement on Tuesday 25 April.

[66] It appears that this forceful crackdown is having the effect desired by the government. The International Herald Tribune: *China: Authorities Arrest at least 100 Falun Gong Devotees*, 26 April 2000 at p14 reported:-

"Faced with the government's furious warnings and threats, most of the millions of Chinese who once practised Falun Gong in China's parks each morning have now moved on to other forms of recreation, although sometimes with considerable bitterness.

But the few who continue to practise, mostly in private, seemed unfazed and uncowed – reflecting their fierce devotion to the programme and the increasing willingness of the Chinese to defy their government when they believe they have been wronged."

[67] A possible back lash by the Falun Gong is the subject of an article, Far Eastern Economic Review, *Faith and Fear*, Susan V Lawrence, 20 April 2000 at p16:

"Unsettling signs are coming from the Falun Gong. Under China's crackdown, the sect is undergoing a dark evolution. The group's charismatic leader, Li Hongzhi, has vanished, apparently unseen since last July. Followers talk of a preparedness to face martyrdom. For China's leaders the movement has become an increasingly unpredictable challenge.

.....

It is China's ban that has brought Hannah Lee and many other overseas practitioners back to China. In a development Beijing clearly did not anticipate, a hard core of practitioners, encouraged by returnees from abroad, appears to see in the likelihood of arrest a hard-to-pass-up opportunity to martyr themselves. Rank-and-file Falun Gong followers who defy the official ban are generally detained for 15-day stretches. Recent detainees say many have experienced multiple stints in detention. (p17).

The Chinese government has frequently proclaimed the crackdown a success. A massive propaganda campaign, heavy prison sentences for Falun Gong leaders, and tens of thousands of short detentions for ordinary practitioners, have cut into Falun Gong's ranks in China, which once numbered in the millions. David Kelley, a China expert at Australia's University of New South Wales, describes what has happened in sociological terms. Falun Gong is, he says, "a charismatic movement" which, as a result of the ban is "going heavily into persecuted – minority mode". "People will by and large not flow in massive numbers to the movement when it is in this mode "because now" to become a true believer is a greater act of faith.

But Beijing cannot yet write the sect off. The ban has left Li with a core of committed followers and a powerful PR machine. Much depends on Li. Either he will emerge from the mountains with claimed new powers or "a new truth" and begin to draw new followers in China, or says Kelley, he will "fizzle". (P18)

JURISDICTION OF THE AUTHORITY TO HEAR THE APPEAL

[68] Pursuant to Section 129O(1) of the Immigration Act 1987 (which came into force from 1 October 1999), it is provided:

"Section 129O(1)

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."

[69] This provision, now incorporated in the Act, is similar in content to the provisions of the Authority's Rules, which applied prior to that date.

[70] It is also relevant to note that, pursuant to Section 129P(1) of the Act:

"1. It is the responsibility of the appellant to establish the claim, and the appellant must ensure that all information, evidence and submissions that the appellant wishes to have considered in support of the appeal, are provided to the Authority before it makes the decision on the appeal."

[71] The question of whether there is jurisdiction, in any particular case, to entertain a second refugee claim was considered many times under the previous

Rules and Terms of Reference of the Authority which, as stated, were similar in content to the provisions of s.1290(1) in relation to subsequent claims. A leading decision in that regard was *Refugee Appeal No. 2245/94* (28 October 1994) pages 16-22. In that decision, the Authority ruled that the question of jurisdiction is one of mixed fact and law. Thus, in most cases, it is necessary to first hear the application so as to establish findings of credibility and fact before a final determination can be made.

[73] In the appellant's first application, he claimed that because he had participated in a number of protests in 1989, he had suffered years of harassment from the Chinese authorities, continuing until he left China in January 1997.

[74] The appellant's second claim is based on the perception by the Chinese authorities that the appellant held a leadership role in the Falun Gong and that he continues to promote "Falun Gong, anti-communism and anti-science" overseas. When the appellant made his first application for refugee status, the Falun Gong was a legal, registered organisation. It did not attract the adverse attention of the Chinese authorities. In 1999 the Falun Gong was banned and its followers have been the victims of a harsh and determined government crackdown.

[75] It is self-evident that circumstances in China have changed to such an extent that the appellant's second claim is based on significantly different grounds to his first claim.

[76] For the sake of completeness, the Authority records that at the appeal hearing, the appellant admitted that he had not suffered any repercussions from his political activities in 1989, after August 1989. He said he no longer holds any fear of returning to China, on the basis of the events in 1989.

THE ISSUES

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

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

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

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

ASSESSMENT OF THE APPELLANT'S CASE

Credibility

[79] Before proceeding to determine the above issues, it is first necessary to make an assessment of the appellant's credibility.

[80] The Authority accepts that the appellant is a truthful witness. He presented as a very spiritual man who had spent many years searching for spiritual guidance.

[81] He had an extensive knowledge of the Falun Gong – its defining characteristics and its history. He spoke at length about his membership of the Human Physical Science Association and his activities in that association (which is responsible for registering various Gongs). He spoke about the journey he made across China to see the founder of Shu Shu Gong, his years of reading and contemplation and his study and preparation for his Baptism as a Buddhist in 1995. The appellant spoke eloquently and passionately about the reasons he chose Li Hongzhi as his spiritual leader.

[82] The appellant was unrepresented at the appeal hearing. His written statement, prepared by himself, was brief, but covered all the main aspects of his claim. His account, as presented at the hearing, had a “ring of truth” about it.

[83] The photographs and certificates he presented to the Authority corroborated significant parts of his claim. In regard to the photographs taken in an Auckland park, the appellant candidly volunteered that a Gong practitioner looking at the group meditation photographs, would not be able to say with

certainty whether those meditating were practising Falun Gong or some other kind of Gong. His tendency to point out possible weaknesses in his evidence tended to strengthen the Authority's view that he was striving to tell the truth.

[84] The arrest warrant and attached list of seized items, were copy documents only. This did cause the Authority some concern. In the light however of the appellant's compelling evidence and the other documentary evidence he presented, the Authority is unable to say with certainty that these two documents are not genuine. The appellant is given the benefit of any doubt in regard to these two very important documents and the Authority concludes overall that the appellant is a credible witness.

[85] The Authority now turns to the first of the two issues posed:

OBJECTIVELY, ON THE FACTS AS FOUND, IS THERE A REAL CHANCE OF THE APPELLANT BEING PERSECUTED IF RETURNED TO THE COUNTRY OF NATIONALITY?

[86] The Authority finds that there is a real chance of this appellant being persecuted if he is returned to China.

[87] The reasons for this conclusion are as follows.

[88] The arrest warrant describes the appellant's "degree of involvement [in Falun Gong]" as "serious". This suggests that the Chinese authorities regard him as a leader rather than an ordinary practitioner. The "brief summary of facts" in the arrest warrant describes the appellant's activities as "promoting Falun Gong, anti-communism and anti-science" during 1992 and 1996 in China, and since 1997 overseas. The large volume of items seized by the police in June 1999 from the appellant's parents house, would corroborate their initial view that this appellant was a leader rather than a follower of Falun Gong. The appellant explained that the fifteen cases of video tapes and the 18 cases of cassettes were in fact 15 video cassettes and 18 audio cassettes. Even so, such a quantity of material (in addition to various letters and photographs all connected with his Falun Gong activities) might indicate that this appellant was no ordinary follower.

[89] The appellant had a long association with Falun Gong – from 1992, the year of its inception. From 1994, when allocated a venue in the park, until January 1997 when he left China he estimated that he was a teacher and trainer for

several hundred people. This kind of exposure, leading so many groups and so many people, on a daily basis over a significant period of time, also puts the appellant into the category of leader rather than ordinary follower, where the level of risk would be remote and not real.

[90] The country information indicates that Falun Gong leaders can expect harsh treatment, ranging from brief periods of imprisonment or re-education for ordinary followers, to lengthy terms of imprisonment after interrogation and torture for those regarded as leaders. This appellant appears to have been identified by the Chinese authorities as a Falun Gong leader. The authorities have in their possession, ample evidence upon which to “prosecute” him.

[91] The Authority concludes, on the facts as presented in this appeal, that there is a real chance of this appellant being persecuted if returned to China.

Is there a Convention Reason for that Persecution?

[92] Although Falun Gong practitioners do not regard Falun Gong as a religion, it is clear that the Chinese authorities consider it to be in the nature of a religious cult. Additionally, the trials of Falun Gong leaders have included political charges.

[93] Amnesty International-ASA 17/11/00, *China: People’s Republic of China: the Crackdown on Falun Gong and Other So-Called “Heretical Organisations”*, 23 March 2000 states:

“4. Politically Motivated Charges:

The charges brought against most members of Falun Gong who have been prosecuted under the Criminal Law, are essentially political in nature. They include “disturbing social order”, “assembling to disrupt public order”, “stealing or leaking state secrets” and “using a heretical organisation to undermine organisation to undermine the implementation of the law”. This later charge is in fact catch-all-phrase for a variety of other accusations which range from organising demonstrations to using the Internet to disseminate information about Falun Gong. Some people have also been charged with “taking part in illegal businesses” or “illegal trading” because they printed, published or sold Falun Gong publications, videos or cassettes – in most cases this referred to publishing or selling such publications before the group was banned when such activities were not illegal.”

[94] The Authority considers that the harm feared by the appellant is by reason of a political opinion, imputed to him.

CONCLUSION

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

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M L Robins
Member