

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76217

AT WELLINGTON

<u>Before:</u>	B L Burson (Member)
<u>Counsel for the Appellant:</u>	J Petris
<u>Appearing for Department of Labour:</u>	No Appearance
<u>Date of Hearing:</u>	30 & 31 July & 5 August 2008
<u>Date of Decision:</u>	24 September 2008

DECISION

INTRODUCTION

[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] He claims to have a well-founded fear of being persecuted in China because of his involvement with *Falun Gong* activities both in China and here in New Zealand.

[3] What follows is a summary of the evidence the appellant gave in support of his claim. It is assessed thereafter.

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THE APPELLANT'S CASE

Events in China

[4] The appellant was born in X City in Guangdong province, China. He lived there all his life prior to coming to New Zealand. Prior to his marriage in 2000, he lived with his parents in Y village which is part of X. After his marriage, the appellant and his wife moved to a different house in the same city but located near a different town. This property was owned by his mother-in-law.

[5] In 1996 the appellant was recruited by AA, the head of Y's village committee, to work for the ABC Company ("the company"). The company was controlled by the Y village committee, the head of which had overall responsibility and assumed overall accountability for its operation. The company supplied building materials to developers in the area. The appellant worked as a sales manager. He was responsible for negotiating the agreement with developers for the supply of building materials for their various projects. Part of the appellant's responsibilities at the company was to account monthly for any debts owing in respect of the building materials that had been supplied to developers. It was his responsibility to follow-up developers who had not paid in full for the building materials they had received. The appellant's employment had a monthly bonus scheme. If there were debts outstanding he would not be paid a bonus.

[6] During 1997, the appellant noticed that there were various groups of people practicing *Falun Gong* emerging in his area. He particularly noticed a large group of people practicing in a public park. Around the middle of 1997, a friend, BB, told the appellant that *Falun Gong* had been recommended to him and he had taken it up and found that it had been beneficial to him. He suggested to the appellant that by engaging in *Falun Gong* activities he too could improve his health and cure any illnesses that he had. Two days later, BB telephoned him and invited him to come to participate in the group session that was being held in the park. The appellant went along. After observing their practice in the park on two further occasions over the next few days the appellant decided that he would try it.

[7] Initially, the appellant attended public practice at the park three or four times per week. During this period, the appellant also went to other practitioners' houses once or twice per week in order to engage in study of *Falun Gong*. After

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three or four months, the appellant became busier with work. Although he continued to study and practice *Falun Gong*, the frequency with which he both practiced and studied decreased. From this time he attended group practice in the park and group study no more than once a week. He also undertook study by himself, in his own home, of the *Falun Dafa* book written by Li Hongzhi.

[8] In mid-1998, the appellant resigned his position with the company as AA had ceased to be head of the village committee. A new head of the village committee was appointed and assumed responsibility for the overall management of the company. This new person made a number of changes to the way the company was run and the appellant felt that he had no future there. He therefore decided to leave.

[9] When the appellant resigned, he was required to produce a final account of the financial situation under contracts that he had negotiated. This revealed that monies were owed to the company across a number of contracts. The amount owed totalled slightly over one million RMB.

[10] The newly appointed head of the village committee began placing pressure on the appellant to help them recover the sum of money. As the head of the village committee he was ultimately responsible for any debts owed to it. He pressured the appellant to approach some of the developers to pay some of the outstanding money.

[11] The appellant had taken up employment in a company belonging to AA. This new company operated in the decorating trade. The appellant discussed the pressure he was being placed under by AA who told the appellant that, although it was not his responsibility to chase these matters because he had resigned in mid-1998, he should try if he could to help the company recover the monies. The appellant therefore agreed and began approaching the developers. He was successful in obtaining part-payment of a debt from some of the developers although this was a small percentage of the total outstanding debt.

[12] The appellant continued with his *Falun Gong* routine while working at the new company until the middle of 1999 at which time the government announced a ban on *Falun Gong*. Once the ban was announced, the appellant ceased undertaking any group practice in the park. For a short time thereafter he continued to attend group study sessions at other practitioners' homes but they

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soon became scared that they would be discovered and this ceased.

[13] The appellant burnt what *Falun Gong* paraphernalia he had in his possession but could not bring himself to destroy his *Falun Dafa* book. He hid it instead. He knew that this was risky but he did not want to destroy the book because it was such an important book to him. It was what he fundamentally believed and if he destroyed it then he would never have access to it again. From time to time thereafter he continued to read the book and do *Falun Gong* exercises in the privacy of his own home.

[14] Following the ban, the appellant was questioned by his local village committee about his involvement in *Falun Gong*. From then on he was subjected to monitoring.

[15] Some one to two months after the ban the appellant had difficulty finding BB. He eventually went to visit BB's family who informed him that he had been arrested. His family did not say why but the appellant believes it would have been because of BB's *Falun Gong* activities. He was the person who was responsible for distributing *Falun Gong* material in their district and was well-known in the area.

[16] In approximately August or September 1999, the appellant was told by the head of the village committee that if he could not recover any more of the money owed to the company he would have to pay the balance owing himself. The appellant refused making it clear that it was not his responsibility and that he should not have to shoulder this loss. At this point, the head of the village committee told the appellant he was aware the appellant had been officially warned by the local village committee about his prior involvement in *Falun Gong*. He said that if the appellant did not assume responsibility for payment of the debt that he would report this matter to the higher authorities. Worried that this might result in him being sent to a re-education camp, the appellant signed a piece of paper agreeing to pay back the outstanding monies himself.

[17] The appellant again approached AA and explained what was happening. AA told him that he would have to make his own decisions relating to this matter and that there was nothing that he could do to help.

[18] The appellant went into hiding. Visits were then made to the appellant's parents and wife by the head of the village committee who told them that if the

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appellant did not begin to repay the money he would be put in prison and that their house would be demolished. The appellant began asking his friends and family if they could help him pay back some of the money. They gave him some money amounting to approximately half of the outstanding debt.

[19] In the beginning of 2000, the appellant received a notice from the X District People's Court. He went to the court and was taken into a small room. There he was handcuffed by an official who then talked to him about the debts owed to the company. The appellant explained that the debt was not his responsibility but he was told by the court official that he had signed the paper and therefore it was his responsibility. He was told to try and repay the debt as soon as possible or else he would be sent to a correction camp or detained. The appellant was required to sign another piece of paper regarding responsibility for the debt. After 20 minutes the man left the room and the appellant was left alone for the remainder of the day. That evening he was simply released. At no stage was he questioned about his *Falun Gong* activities.

[20] The following day he went and saw the head of the village committee and asked him what the purpose was of summoning him. The village head explained that it was necessary to do so in order for the people in the village to have some explanation as to what was happening.

[21] As part of his release, the appellant was required to re-attend the office in order to sign a paper regarding his responsibility for the debt. He signed again at the office of the village head in 2001. After doing so, later in 2001 he learnt from his father that he had been charged with offences but nothing was ever said or shown to him in relation to this. He was due to re-attend this office in 2002 and re-sign the piece of paper. By this time, the pressure had become too great and he had no more energy to deal with this matter and he decided to go into hiding.

[22] The appellant remained in hiding until he left China in mid-2003. He ceased working for the decorating company. He stayed with various friends in the area and in another city and occasionally helped them with their work. These friends occasionally gave him small amounts of money amounting to several hundred RMB from time to time. This was his only source of income. While in hiding the appellant would sometimes return to his parent's house. While there he would retrieve the *Falun Dafa* book from where he had hidden it and undertake practice.

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[23] He went and saw an agent who told him he could arrange a visitor's visa for New Zealand. The appellant supplied the agent with his genuine Chinese passport, bank book and title deeds to various properties. The agent took care of all of the dealings with (Immigration New Zealand) INZ. The appellant was subsequently told by this agent that his application had been declined. He was not given any reason. The agent then suggested there was another way that the appellant could go to New Zealand for payment of a fee. The appellant agreed and paid the agent a sum of money. The agent obtained for him a false certificate of identity for Hong Kong which was then used to obtain a Hong Kong passport in the appellant's name. The appellant was never entitled to this document as he had never lived in Hong Kong. The appellant's wife obtained a similar false Hong Kong passport via the same process. The couple's child, born in 2000, was left with the wife's parents.

[24] The appellant and his wife travelled to Hong Kong where they stayed for a few days before travelling to New Zealand via Indonesia. On arrival in New Zealand the appellant was given a three month visitor's visa which expired in September 2003.

Events in New Zealand

[25] In June 2003, approximately one month after they arrived, the appellant's wife indicated that she wanted to go to Canada to see an aunt. The appellant did not want to go and the wife went on her own. However, she was stopped while transiting via another country when the immigration authorities of that country discovered she was travelling on a false Hong Kong passport. She was returned to New Zealand where she was prosecuted for use of a false document and sentenced to a term of imprisonment. The appellant kept in contact with his wife during the imprisonment but after her release she was returned to China.

[26] By now, the appellant realised from reading Chinese language newspapers that it was possible to practice *Falun Gong* more freely in New Zealand than in China. He asked his family to retrieve the *Falun Gong* book from its hiding place and send it to him and they did so.

[27] Approximately a month after his wife left, the appellant noticed some *Falun Gong* practitioners practicing and distributing flyers in Queen Street in Auckland.

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He approached this group and told one of the persons involved that he thought *Falun Gong* was beneficial. He indicated he wanted to help them distribute their flyers. They agreed and he immediately began distributing their flyers. He was informed that the group organised studies in the evening from time to time and gave him the name and telephone number of the main person in Auckland. The appellant tried to contact this person but did not get to speak to him.

[28] Approximately a month and a half later the appellant attended a study class at someone's house. He then obtained employment which required him to work in the evenings and attended no further study. He continued to distribute flyers in Queen Street with this group on a further 8 to 10 occasions. On one occasion he asked them whether there was any other possibility of doing study and he was told that the study was on a Wednesday evening and that there were other activities on a Sunday such as gathering outside the consulate.

[29] After remaining in Auckland for several months, the appellant moved to Z. At around this time, he engaged an immigration agent to extend his visitor's visa but this application was not successful. While in Z the appellant noticed a group of people doing *Falun Gong*. He approached them and asked if he could join their group but they were not very forthcoming about where they practiced and simply said to leave his telephone number with them. He did so but he never heard from them. However, the appellant had his *Falun Dafa* book with him and continued to read it from time to time while in Z. He also continued to do exercises. In particular he did an exercise which required him sitting down in a particular position.

[30] In 2005, a Chinese person in Z introduced him to CC. This person suggested that they shared the same views about human rights and CC might be able to help him. [...].

[31] The appellant met CC when he travelled to Z approximately three or four weeks later. At their first meeting the appellant did not tell CC in great detail about his problems. He told CC that he had practiced *Falun Gong* in China and told him who had introduced him to *Falun Gong*. CC said that he knew people in Wellington who would involve him in *Falun Gong* and would introduce him to them.

[32] Thereafter the appellant maintained occasional telephone contact with CC. He next met him in late November 2005 when he attended [a] conference [...].

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The appellant's photograph was taken at this conference and published in [a] newspaper approximately one to two weeks later. The appellant told CC that he was concerned about his picture being published. However, CC told the appellant that it was an important event and good that the photograph had been published.

[33] The appellant was introduced to the leaders of *Falun Gong* organisations in Wellington. He also joined a group called Friends of Tibet.

[34] Since being introduced to the Wellington *Falun Gong* groups the appellant has travelled to Wellington on a number of occasions to undertake *Falun Gong* activities. In particular, beginning in July 2006, he has participated in public demonstrations on four or five occasions. These demonstrations vary in size from small demonstrations of no more than five or six people to – on one occasion at least – a demonstration involving two to three hundred people. During each of the demonstrations the appellant chanted slogans and held flags or banners with writing on them.

[35] The large demonstration in Parliament Square attended by over 200 people took place [...]. One attendee was Chen Yong Li, a former member of the Chinese Consulate in Sydney who had claimed asylum and publicly made aware the extent to which *Falun Gong* was being monitored in Australia and in New Zealand. During this demonstration the appellant and Mr Chen [associated]. [...].

[36] The appellant has continued to attend demonstrations since lodging his application. The last demonstrations he attended in Auckland were in April 2008. The appellant also travels annually from Z to Auckland to attend commemoration events on 4 June.

[37] In addition to his *Falun Gong* activities, in around December 2006, the appellant began attending public demonstrations for Friends of Tibet. He has undertaken four or five such demonstrations in Wellington. Some of these have been in the square in Queen Street and held before Parliament Buildings in Wellington. On one such occasion the appellant had his photograph taken in December 2006 holding a flag with a pro-Tibetan statement on it.

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Documents and submissions

[38] On the morning of the hearing of 30 July 2008, Mr Petris orally addressed the Authority. He submitted that there could be no doubt that the appellant had been involved in certain activities and that the Chinese authorities would know of them. Mr Petris submitted that the Authority's jurisprudence in which it distinguishes between the risk on return for people who are found to be genuine adherents to *Falun Gong* and those who are found not to be genuine adherents to *Falun Gong* could not be maintained in that it was ascribing to the Chinese authorities a rational and logical response when the clampdown on *Falun Gong* was entirely irrational and illogical.

[39] At the conclusion of the evidence Mr Petris again addressed the Authority by way of oral submissions. He submitted that the appellant should be found credible and that his core account was detailed and spontaneous. There was documentary evidence surrounding the failure of the appellant to register his actual address with the authorities which was consistent with his being in hiding.

[40] Mr Petris distinguished the appellant's case from other decisions of the Authority where it has rejected the credibility of a claim to be a genuine *Falun Gong* adherent on the basis that the post-arrival activities of this appellant were undertaken largely prior to his filing a refugee claim whereas in many other cases this had been done only after the lodging of the refugee claim. The fact that the appellant was building a public profile prior to the claim enhances its credibility.

[41] As to the well-foundedness of the appellant's claim Mr Petris submitted that the conclusions drawn in earlier jurisprudence to the effect that there was no evidence that the Chinese nationals who protest in New Zealand face consequences *at all* upon their return to China could not be maintained in light of evidence recorded in *Refugee Appeal No 76088* (6 November 2007) at paragraphs [86]-[94] which detailed evidence that some people who had protested overseas had in fact faced problems on return. Nevertheless, Mr Petris also submitted that *Refugee Appeal No 76088* should not be followed because no country information had been cited in that decision to support the assertion that thousands of people who had been practising *Falun Gong* had been returned.

[42] Mr Petris submitted that the appellant is genuine in the beliefs that he holds and faces a well-founded fear of being persecuted by reason of these beliefs and

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his activities in New Zealand. Mr Petris further submitted in the alternative that, even if the appellant was found not to be genuine in the holding of these beliefs the Chinese authorities would attribute to him a certain negative political profile based on the fact of his having undertaken these activities in China. In support of this Mr Petris referred the Authority to Professor Hathaway *The Law of Refugee Status* (Butterworths, 1993) at page 38. The critical issue for the Authority was not, he submitted, to assess the appellant's motivation in undertaking these activities but rather how they would be viewed on his return by the Chinese authorities. In this regard Mr Petris repeated his opening submission that it was wrong for the Authority to assume a rational response by the Chinese authorities and, in particular, that the Chinese authorities would accept and understand any explanation that such action was undertaken only to manipulate the system in New Zealand so as to obtain permanent residence here.

[43] Finally, Mr Petris identified three characteristics in particular which he says would add to the risks the appellant faces in this regard namely:

- (a) The fact that he exited China illegally by obtaining a false Hong Kong passport;
- (b) His association with high profile activists here;
- (c) His participation in high profile events such as the [...] conference in November 2005 and the demonstration in which [he associated] with Chen Yong Li.

THE ISSUES

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

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

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

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- (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

[46] The Authority does not accept the appellant's account of being a genuine *Falun Gong* practitioner for the following reasons.

Modest attempts to study Falun Gong in New Zealand

[47] The appellant told the Authority that he had become truly committed to *Falun Gong* and remained a person committed to it even after it was banned in 1999. The strength of his enduring commitment meant he refused to destroy his *Falun Dafa* book. Furthermore, according to the appellant, he continued to travel back to his parent's home from time to time to secretly practice *Falun Gong* and read the book. He did this even though, by this stage, he was in hiding precisely because the new head of the village committee was pressuring him because of his past involvement in *Falun Gong* and despite the appellant's fear of being sent to a re-education camp.

[48] He told the Authority that soon after arriving he became aware, from reading Chinese language newspapers, that it was free to practice and study *Falun Gong* and to have asked his family to send the book to him while he was in Auckland. Despite asking his family to send him the book he told the Authority that he did not read the book at all during the six or so months he was in Auckland. When asked to account for this surprising lack of interest, the appellant explained that he was "perhaps not in the kind of mood to read it" or because he had obtained a job already. These explanations are trite and fail to provide any compelling explanation for his failure to engage in even private study of the book, something which can be reasonably expected to have been done at least on an occasional basis if he were a genuine believer in *Falun Gong*.

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[49] He also has given inconsistent and vague evidence about his private study of *Falun Gong* in New Zealand. When asked in his RSB interview he said that he had not read his *Falun Dafa* book since coming to New Zealand. In contrast he told the Authority he read it “once in a while” after moving to Z. He had no compelling explanation for this discrepancy. Moreover, when asked by the Authority to explain what he meant by “once in a while”, he could not offer any more precise answer. If it were true that the *Falun Dafa* book was of such importance to the appellant because he was and is a person genuinely committed to *Falun Gong*, it is implausible that he would not be able to offer a more precise account of his private study. His vagueness further underscores the untrue nature of his claim to have been a genuine *Falun Gong* practitioner.

[50] Other aspects of the appellant’s evidence surrounding his study and practice of *Falun Gong* in the private sphere raise further doubts as to the genuineness of his claim to have been a *Falun Gong* practitioner in China.

[51] First, his failure to undertake any programme of group practice or study while in Auckland where he lived for approximately six months especially given his stated awareness of the benign environment for *Falun Gong* practitioners in New Zealand, is inconsistent with his claim to have continued with such a programme from time to time in the considerably more repressive environment in China after the clampdown. Asked to explain this, the appellant stated he “struggled for quite some time” before he began to distribute the leaflets because he thought that if he was photographed while distributing the leaflets it would not be the same as practising *Falun Gong*. Yet this explanation contradicts his earlier evidence that he had begun distributing the flyers immediately upon disclosing to the group in Auckland that he wanted to help.

[52] Second, the appellant could provide no compelling explanation as to why, if he was a genuine believer in *Falun Gong*, he did not mention this to the group in Auckland when he first met them. The appellant told the Authority that he did not mention that he was a *Falun Gong* practitioner on the first occasion he met the group because he thought they might think he was a spy. This explanation is rejected. He told the Authority that, on the first occasion he met them, a member of this group told him the name and telephone number of the person who was in charge of the group in Auckland – something hardly likely to have been done if there was any suspicion that he might be a spy for the Chinese government.

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[53] Finally, he could not convincingly explain why it took him one and a half months to attend his one and only session of group study. The appellant initially explained this was because his wife was still in prison at the time and because it just happened that that day he attended was the only day when he was not busy. However, the appellant told the Authority that he was only communicating with his wife by telephone and this fails to adequately explain why he waited so long. When the Authority sought further clarification as to why these two factors meant he could not go to group study sooner, the appellant changed his explanation and asserted that although he had been communicating with the group in Chinese they wrote the address for the group study session in English and it took him some time to find out where this building was located. The mobility in the appellant's evidence further points to its untruthfulness.

The uniquely public nature of his Falun Gong activities in New Zealand

[54] The particularly notable feature about the appellant's *Falun Gong* activities in New Zealand is that they are uniquely of a public nature. The appellant has placed himself at numerous public events, not only for *Falun Gong*, but also for Friends of Tibet. Given the lack of any credible explanation for his failure to engage in *Falun Gong* activities in the private sphere, the willingness for the appellant to undertake activities in the public sphere points to a degree of calculated manipulation of his circumstances in New Zealand.

[55] This impression is buttressed by his willingness to become involved in Friends of Tibet protests and to join Amnesty International. He did not claim to have been involved in any underground human rights activities in China. Given the repression of such activity in China, this in itself would not mean that a person could not genuinely become involved in such campaigning organisations once abroad. However the appellant presented his life in China as being quite apolitical claiming never to discuss political matters of this nature with his trusted friends or relatives. In this case his post-flight involvement in these activities is symptomatic of his desire to engineer the basis for remaining in New Zealand via the refugee status process. The Authority has no doubt that the appellant's involvement in these groups was motivated by a desire to engineer a public profile by attaching himself to causes to which he is, in reality, indifferent except to the extent they can assist him in remaining in New Zealand.

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Inconsistencies with documentary evidence

[56] The appellant claimed that he was in hiding for a period of time prior to coming to New Zealand and that he had to rely on the goodwill of friends who periodically gave him small amounts of money. However, the bank book submitted with his visitor's visa application shows a different story. It shows deposits and withdrawals of large sums of money from his account during the same period. The appellant explained that, although the bank book was genuine, these entries were fictitious, placed in there by the agent. This is not accepted. No credible explanation has been provided as to why this would be necessary. This further undermines his account to have been in trouble in China as he claims.

Rudimentary knowledge of Falun Gong

[57] The appellant's knowledge of *Falun Gong* was rudimentary. In this regard, the Authority notes that the appellant could not even correctly identify the exercise that he claimed to have been doing on and off for over 10 years in terms of its sequencing in the five *Falun Gong* exercises. He thought it was exercise number three when in fact it was exercise number five. While this in itself is not necessarily a cause for a negative credibility finding, in the particular circumstances of this case, the Authority has no doubt it is due to the fact that he is not a genuine *Falun Gong* practitioner.

[58] Moreover, he has given inconsistent evidence regarding a law wheel, an elemental component of the Falun Gong belief structure. He told the RSB that he did not have a law wheel but that you could buy one. Whereas he told the Authority that he did have a wheel and he could feel it spinning inside him. The appellant's explanation for this discrepancy that he was not asked in so much detail in the interview is rejected. The appellant was clearly asked by the RSB to explain the significance of "Falun".

The delay in claiming refugee status

[59] A significant feature of this case is the substantial delay that has surrounded his lodging of a claim for refugee status. The appellant arrived in New Zealand in May 2003 but no claim was lodged until October 2007 – over four years later. The appellant has failed to provide any compelling explanation for this

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remarkable delay particularly given that he told the Authority that at the time he entered New Zealand he was *already* concerned that he would be sent to a re-education camp because of his past involvement with *Falun Gong*.

[60] Upon arrival, a three-month permit was endorsed in his Hong Kong passport. The appellant then applied to have this extended. He told the Authority that the reason he applied for this visitor visa extension was because he was concerned about being left in New Zealand without a visa as this exposed him to a risk of removal back to China where he feared being arrested and sent to a re-education camp. He explained that, because of this concern, shortly prior to the expiry of the visitor's visa he contacted the agent who had obtained the Hong Kong passport for him and she explained that he should extend the visa.

[61] Surprisingly, at no time did he raise the issue of his problems with anybody in the *Falun Gong* group with whom he distributed material in Auckland. When asked to explain why he did not raise his fears with them, the appellant replied that he told them that he went through difficulties in leaving China and their response was simply that now he was in New Zealand things would be good. However, this fails to address the question as to why he did not specifically mention how he could remain in New Zealand given his claimed fear to be worried about being at risk of being removed from New Zealand upon the expiry of his visitor's visa. It must be remembered that the appellant maintained that, by this time, he understood that New Zealand had freer practice of *Falun Gong*. The appellant told the Authority that he had expected that some of the people in this group would have had problems of a similar or greater nature because of their *Falun Gong* practice in China.

[62] Similarly, despite being introduced to CC at the end of 2005 the appellant explained that he did not in his first meetings with CC seek any advice from him as to how he could obtain protection. By this time, the appellant on his own account would have been living in fear for almost two years of being removed from New Zealand and sent to a re-education camp. It is simply implausible that, if the appellant is a genuine *Falun Gong* believer and suffered the problems he claimed, that he would not have explored this with CC at an early opportunity given his evidence that he understood even prior to meeting CC that they shared the same views as to human rights in China and CC was a person who might help him.

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[63] The appellant's evidence was that he only found out about refugee status in approximately June or July 2007 from discussing it with a person who was in charge of *Falun Gong* activities in Wellington and with whom he had struck up a friendship. This is implausible. It is rejected. The appellant has had ample opportunity to raise his concerns about returning to China, with people he obviously had some relationship of trust, within a reasonably short period of time of arriving in New Zealand. The Authority has no doubt that the appellant has delayed making his application for refugee status simply to build up a public profile.

Conclusion on credibility

[64] When all the above matters are considered cumulatively, there is no doubt that the appellant's claim to have been genuinely involved in *Falun Gong* in China and to have been the subject of official interest is not true. The Authority has no credible evidence as to the actual reason why the appellant sought to come to New Zealand. Whatever it may be, the Authority is clear that it was not because he was a genuine believer in *Falun Gong* and had suffered the problems that he claimed.

[65] However, it is accepted that he has undertaken activities here in New Zealand, done with the aim of creating a profile with Chinese authorities in New Zealand in the hope this will assist him in not being returned. Whether he has a well-founded fear of being persecuted if returned because of these activities is the issue now to be addressed.

A well-founded fear of being persecuted

Mr Petris' submissions

[66] It is necessary to consider Mr Petris' alternative submission that even though the Authority disbelieves the appellant's claim to have undertaken these activities because of a genuine belief in *Falun Gong*, the appellant has a well-founded fear of being persecuted. There are two reasons for this.

[67] First, while there may be some merit in Mr Petris' submission that earlier decisions of the Authority suggesting there was no evidence *at all* of people being subjected to harm because of overseas activities may, to some extent, overstate

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the case given the material referred to in *Refugee Appeal No 76088*, it does not take matters very far. This is because what the Authority in *Refugee Appeal No 76088* decided was that, while *some* evidence exists, the evidence that does exist is so *scant* that it simply cannot be said that the risk of being persecuted on return for any person who has engaged in public protest abroad is anything other than a remote or speculative possibility. It does not rise to the real chance threshold.

[68] The jurisprudence of the Authority accepts that the activities of *Falun Gong* practitioners are something that is monitored by the authorities in New Zealand. The Authority accepts that there is a real chance the appellant's repeated placing of himself in public demonstrations will have brought him to the attention of the authorities here in New Zealand. Yet there is no evidence before the Authority to establish that the appellant faces a real chance of being persecuted as a result. Importantly, there is no credible evidence before the Authority that his activities in New Zealand have registered in China at all. This is unsurprising. His involvement in *Falun Gong* and Friends of Tibet in New Zealand has been at a low level. He has not organised anything for these groups. He does not engage in public speaking on their behalf. He merely periodically attends public demonstrations conceived, planned, financed and managed by others more senior in the ranks of these organisations.

[69] Mr Petris places some reliance on the fact the appellant [associated] with Chen Yong Li at a demonstration in [...]. Yet this was his only public contact with Chen Yong Li. He has had no other association or connection of any kind with Chen Yong Li such as might arouse the interest of the Chinese authorities here or in China itself. The single instance of a shared [activity] at one demonstration is an event of such an ephemeral nature as to not significantly alter the otherwise low profile that he has. It adds nothing to the substance of his claim to be at risk.

[70] Mr Petris argues that the systemic activity against *Falun Gong* adherents in China is irrational and that a rational response cannot therefore be expected at the border. Leaving aside questions as to what rationality means in this context, the difficulty with the submission is that the evidence is simply not there. No additional country information was provided by Mr Petris in support of the appellant's case. He rather requires that the Authority engage in a reinterpretation of the evidence presented in both *Refugee Appeal No 76088* and *Refugee Appeal No 76147*. Both decisions carefully dissected the country information that had been submitted

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in those cases as to the risk on return and found that the risk of persons like the appellant found not to be genuine adherents to Falun Gong being persecuted on return did not rise to the real chance level, even if they had undertaken some public protest in New Zealand.

[71] If the Chinese authorities were sufficiently concerned that, regardless of the motivation, engagement in public protest abroad creates a real risk of being persecuted then one would expect this to be reflected in the country information on returnees. It does not matter in this context whether the person claimed refugee status or not or where any such activity took place. If it is simply that, as Mr Petris' submission necessarily implies, public protest abroad by Chinese nationals is regarded as so egregious by the Chinese authorities that the mere fact of involvement irrespective of motive creates a real risk of persecution, then one can reasonably expect this to be reflected to a greater extent than appears from country information referred to in those decisions. No additional country information has been submitted to cast doubt on the conclusions reached in the previous decisions to which Mr Petris refers.

[72] Second, contrary to the thrust of Mr Petris' submissions, the Authority finds that the credibility finding surrounding the genuineness of belief is important in this context for the reason explained in *Refugee Appeal No 76088* at paragraph [81]. This line of reasoning was followed in *Refugee Appeal No 76147* (29 February 2008) at paragraph [86]. Put simply, because the appellant has never been a genuine believer in Falun Gong or undertaken any activity in China on the basis of such beliefs, if questioned at the airport, he will very quickly recant any association with *Falun Gong*. He will readily give all necessary assurances that he would not engage in any *Falun Gong* practice or activity in the future. His temporary opportunistic attachment to *Falun Gong* in New Zealand is therefore unlikely to arouse any interest in him such as might give rise to a real chance of his being persecuted.

Conclusion in relation to the appellant

[73] The Authority accepts that the appellant left China illegally by using a passport he was not entitled to. The question of illegal departure from China was considered in *Refugee Appeal No 75973* (9 March 2007). The Authority noted at paragraphs [83] and [84] country information establishing that illegal departure can

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attract up to a one year prison sentence but that only repeat offenders would face anywhere near this maximum. In this case, given the appellant's lack of commitment to *Falun Gong*, Friends of Tibet or any other cause he has momentarily attached himself to in New Zealand and in the absence of any country information establishing to the contrary, the risk that the appellant will face anything other than the usual low-level punishment as a first offender is entirely conjectural. In short, he only faces a real risk of prosecution for breach of the law of China regarding exit – not persecution.

CONCLUSION

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

"B L Burson"

B L Burson
Member