

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

**REFUGEE APPEAL NO 76147**

**AT AUCKLAND**

<b><u>Before:</u></b>	B Burson (Member)
<b><u>Counsel for the Appellant:</u></b>	R Chambers & K Gore
<b><u>Appearing for the Department of Labour:</u></b>	No Appearance
<b><u>Date of Hearing:</u></b>	12 & 13 December 2007
<b><u>Date of Decision:</u></b>	29 February 2008

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**DECISION**

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[1] This is an appeal against the decision of a refugee status officer of the Department of Labour (DOL) declining the grant of refugee status to the appellant, a national of the People's Republic of China (hereinafter "China").

**INTRODUCTION**

[2] The appellant claims to have a well-founded fear of being persecuted in China on the basis that he is a Falun Gong (FG) practitioner who cannot freely practise FG in China and that he has undertaken public demonstrations here in New Zealand regarding the treatment of FG practitioners by the Chinese government, activities which he believes have come to the attention of the Chinese authorities here in New Zealand.

[3] What follows is a summary of the evidence presented on behalf of the appellant. An assessment follows thereafter.

## **THE APPELLANT'S CASE**

### The appellant's evidence

[4] The appellant was born in 1941 in X city. Prior to travelling to New Zealand he had lived in X all his life. The appellant is the eldest of seven siblings. He has two younger brother and five younger sisters. The brothers do not relevantly feature in his claim. The sisters, on the other hand, do feature in his claim and they will be referred to as S1 to S5 respectively according to their age. S1 is thus the eldest of the appellant's sisters.

[5] In 1997, the appellant was immobilised in bed for a substantial period of time as a result of a problem with his back. He had been to see his doctor who had prescribed him a range of treatments and medicines to try and alleviate his problem but to no avail. Towards the end of 1997 the appellant was visited by S3 who suggested to him that he take up the practice of FG. S3 told the appellant that it had improved her mental and physical health. At the time he had this conversation with S3 the appellant was aware that each of his sisters had taken up the practice of FG. Although he could not now recollect with the passage of time exactly when he learnt of their respective practice of FG this came about in conversations that he had with each of his sisters from time to time. Although the siblings were not particularly close to each other and did not regularly socialise, they did maintain contact with each other and would telephone and meet with each other as family business required. It was during the course of conversations he had with his sisters in this context that he learnt of their practice of FG.

[6] As he was immobilised, S3 showed him a static exercise that he could do in his bed. She then had the appellant try this exercise with her. The appellant did so but with great difficulty. S3 then showed him a number of other exercises. S3 returned the following day and gave the appellant a book called "Zhuan Falun" to read. This book introduced the reader to the principles of FG and it taught how to cultivate their practice of FG.

[7] The appellant continued to practise the FG exercises on a daily basis thereafter. Initially his movement was quite restricted and his attempts to do the exercises were accompanied by great pain. However, with persistence he found that gradually he could complete more and more of the exercises and with less pain. Some three months after S3 had initially introduced him to FG the appellant had progressed to a state where he was able to move about. After a further three

months he gained his full mobility as a result of practising FG. He also continued to read the book during this period but most of his practice at this stage was devoted to the physical exercises in order to regain his mobility.

[8] Having been able to regain his mobility through the practice of FG the appellant decided to look for an exercise group in his local area. He was aware that there were a large number of small groups of people practising FG in public places in X at around this time and he wanted to join one. He asked some of his neighbours who directed him towards a local temple. The appellant went to the temple and joined an exercise group of around 10 people led by ZZ. After joining the group the appellant practised with the group every morning between 6am-7am. This group was his main form of practice although he did occasionally continue to undertake further practice of FG exercises in his own home. Also, from this time onwards the appellant attended group study sessions at ZZ's house each Saturday night. In these sessions the group would study the Zhuan Falun book. After reading the relevant text, there would sometimes be questions which would be answered by ZZ followed by a group discussion. This did not happen all the time and if no questions were asked the group simply disbanded without any discussion whatsoever.

[9] In 1998, the appellant also accompanied ZZ to villages on the outskirts of X city where the exercise group conducted public demonstrations of FG exercises. He also attended a mass gathering of FG exercise groups in a sports hall in X city in 1998. He estimates there were 7,000 to 8,000 FG practitioners in the sports hall undertaking group exercise.

[10] In 1998, the appellant also attended a seminar held by a leading FG practitioner attended by 1,000 practitioners. After the seminar, the group returned to ZZ's house where they discussed the contents of the seminar.

[11] The appellant continued with his usual practice of FG until July 1999 when the government announced a crackdown on the practice of FG in China. After hearing of the crackdown the appellant went to the temple where he ordinarily practised. He noticed that there was no exercise taking place but there were some people he had not seen before at the temple which made him suspicious.

[12] After the crackdown was announced, the appellant began practising more at home. However, he took the precautions of closing his front door and only practising in the evenings. Approximately a year later, in 2000, the appellant

stopped practising FG altogether. It was too dangerous. He abandoned all contact with ZZ or any other members of his exercise group.

[13] In 2002, the appellant came to New Zealand for the first time. His daughter had come to New Zealand for the purposes of study and the appellant wanted to see her. The appellant stayed for three months. He mostly stayed with his daughter but spent the last week or so staying with S3 who had come to New Zealand in 1999 and taken up residence. While staying at S3's house the appellant practised FG with her and other practitioners who came to her house.

[14] After returning to China three months later the appellant went to see ZZ. He had been struck by the fact that it was possible to freely practise FG in New Zealand. Whilst in New Zealand on that occasion he had also been shown some material about how the government was persecuting FG practitioners in China. He wanted to share this information with others. Apart from ZZ the appellant spoke to three other people who were either friends or relatives, including one who had been a member of his FG exercise group prior to the clampdown. .

[15] In mid-2006, the appellant received a telephone call from S3. She told him that he should come to New Zealand so that he could practise Falun Gong. The appellant agreed. He told his employers that he was resigning and travelled to New Zealand in late 2006. Although he was only issued with a visitor's visa it was his intention to stay permanently. His wife was to join him in New Zealand later although he had not discussed with her his intention to stay in New Zealand permanently. The appellant stayed with S3. However, approximately a week or so after being in New Zealand the appellant received a telephone call from his employers in China. They urged him to return to China to help them with a machine which had broken down causing all production at the factory to cease. As the appellant was the only one who knew how to fix the machine he agreed to return to China to repair the machine and to train apprentices in how to fix it in the future.

[16] The appellant returned to China where he remained until the end of January 2007. At this time, having completed what he had been asked to do by his former employers, the appellant returned to New Zealand for a third time. Again, he stayed with S3 at her house and resumed the practice of FG with her and other practitioners. Shortly after arriving the appellant became involved in the FG band. He had some musical training and saw a need for the band to acquire an additional player of a particular instrument. The appellant took on this role.

[17] Apart from undertaking FG exercises on a daily basis and attending study groups the appellant has undertaken a number of public demonstrations here in New Zealand. He began attending demonstrations outside the Chinese Consulate in Auckland on Sunday mornings soon after he arrived. By March or April 2007 he was attending these demonstrations each week between Monday to Friday as well. At these demonstrations the appellant participates in physical exercises but also has the job of holding a banner for passers-by to see.

[18] The appellant has also travelled to Wellington with the band on a number of occasions where they have taken part in Chinese festivals and other parades. During one of these festivals a man approached the appellant and took his photograph. He overheard another band member remarking that this person was from the Chinese Embassy in Wellington. On another occasion shortly after completing their performance the appellant was photographed with another band member by a journalist from a Chinese newspaper in Wellington.

[19] Apart from playing in the band on these occasions the appellant has also undertaken various other activities in Auckland. These have comprised:

- (a) Attending specific events outside the consulate in respect of historical events related to the practice of FG in China and the crackdown on FG practitioners.
- (b) Attendance outside the consulate to commemorate the founding of FG.
- (c) Various attendances at events in a public square including an event designed to encourage Chinese nationals to quit the Chinese Communist Party (CCP).
- (d) Attendances at various FG meetings.
- (e) The distribution of flyers and pamphlets of FG material.
- (f) Distributing FG newspapers.

[20] In addition to these activities the appellant has continued to practise FG daily at his home. This typically involves an hour long meditation in the evening together with such other physical exercises as he is able to undertake during the

day. The appellant also has read a number of books and articles relating to FG at home.

[21] Although unsure, the appellant believes that his activities would be known to the Chinese authorities in New Zealand. His photograph was taken at one such rally by a person who he was told was an employee of the Embassy in Wellington. Furthermore, another of his sisters, S4, had visited New Zealand in 2004 and stayed with S3. While with S3, S4 had undertaken private practice of FG but had also attended group exercises on two occasions.

[22] Following her return to China on the expiry of her visitor's visa, S4 had been detained by local security officials and questioned about her FG activities in New Zealand. The appellant was not made aware of this until after he arrived in New Zealand for the third time. He was told by S3 that his sister, S4, had been detained for a period of time in custody and then had to remain at home for about a year. She had to seek permission whenever she wanted to go out. This causes the appellant to believe that if he went back to China the authorities would know of his activities here in New Zealand.

### The evidence of S3

[23] The Authority heard evidence from S3. S3 confirmed that she had come to New Zealand in the late 1990s and obtained residence on marriage grounds. She told the Authority that she had taken up the practice of FG towards the end of 1996 because she suffered from a number of ailments which included a similar ailment to the appellant. She confirmed that she told all of her family members, including her parents, about the benefits of taking up the practice of FG as a result of its effect on her. She confirmed to the Authority that towards the end of 1997 she visited the appellant in order to inform him that she was to leave for New Zealand. Upon visiting him she noticed that he was bedridden. She told him to begin practising FG and briefly showed him some of the exercises. She confirmed that she returned several days later and gave the appellant a book to read about FG called "Zhuan Falun".

[24] S3 told the Authority that although she introduced all of her sisters and the appellant to FG she did not generally discuss with each of her siblings the fact that other siblings had taken it up. Contact with each other was of an occasional nature and the issue of which of the siblings had taken up FG was not a matter

which generally arose in discussion amongst them. S3 has no recollection of ever informing any of her sisters that the appellant had taken up the practice of FG.

[25] S3 told the Authority that she had been visited by three of her siblings since she had been in New Zealand namely S4, S5 and the appellant. The first was the appellant who arrived in 2002. Although he stayed for three months in New Zealand, he spent most of this time with his daughter in another New Zealand city. However, he spent the final week of his stay in New Zealand with her and during that time she raised the issue of FG with him. The appellant indicated to her that he had stopped practising FG some years beforehand. Nevertheless together they did some FG exercises in her house. Although unsure, she believes he also may have read some FG books and other materials relating to the persecution of FG practitioners in China which were accessible and at her house.

[26] The next person to visit was S4 who arrived in the middle of 2004. S4 also spent a brief period of time with S3 and undertook private practice of FG at S3's house. S4 also did study while with her. Additionally, S4 went to a couple of public group exercises whilst with S3. S3 raised the issue of whether S4 would like to stay in New Zealand and continue to practise group exercises. S3 by this time had become aware from colleagues who were practising FG that it was possible to obtain refugee status if a person was a genuine believer and had undertaken group exercises. However, she would not raise this with anybody until she was sure they were genuinely committed to the undertaking of group exercises in public. However, S4 did not wish to pursue this option. Her husband had a good job in China and was awaiting her return. She decided to leave.

[27] The next to arrive was S5. S5 also undertook individual practice and study and group exercises. Unlike S4, S5 did continue with FG practice in New Zealand and at the suggestion of S3 lodged a claim for refugee status. S5 was ultimately recognised as a refugee by the Refugee Status Branch.

[28] In 2006, S3 read a lecture that had been given by the founder of FG in America. This article, when combined with articles she had read previously, caused her to believe that in order to truly practise her FG she must try and persuade people that she knew who had practised FG previously, but who had since given it up, to resume the FG practice. She therefore set about ringing friends and colleagues in China and persuading them to come to New Zealand to practise FG. A couple of persons did so and these people have also been recognised as refugees. As part of this process S3 also rang the appellant.

[29] S3 spoke to the appellant's wife and was informed that the appellant's health had deteriorated and he was often ill-tempered. She spoke to the appellant and discussed the possibility of him coming to New Zealand. The appellant said that he would very much like to resume his FG practice and, in late 2007, arrived in New Zealand. S3 and S5 began practising FG at her home but shortly after his arrival he was called back to China by his previous employers who needed him to fix a machine that had broken down.

[30] Upon his return in late January 2007, S3 and the appellant resumed his individual practise of FG and his study at her home. Additionally, shortly after joining her in New Zealand on this occasion he began attending protests outside the Chinese Consulate in New Zealand and he also joined the FG band here in New Zealand. This persuaded S3 that the appellant was a person who was genuinely committed to the public group exercise and she mentioned to him that he should lodge a claim for refugee status.

[31] She then set about trying to find a lawyer for the appellant and preparing his statement.

[32] S3 confirmed that the appellant has undertaken a number of public exercises in New Zealand.

[33] S3 also told the Authority that they had not told any of the relatives in China about what had happened to S4. She had found out from S5 who had told her that when she went to tell S4 that she (S5) was leaving for New Zealand in late 2004, S4's husband had informed her of what had happened. She was instructed that she was in no circumstances to mention it to any of their relatives or this would have a negative impact on S4. It was only when she arrived in New Zealand that she told S3 and they agreed that they would not inform any of the family members in China.

#### The evidence of S5

[34] The Authority also heard from S5. S5 confirmed that she arrived in New Zealand in late 2004 and had been encouraged to apply for refugee status by S3. She confirmed that she had been granted refugee status by the Refugee Status Branch in the middle of 2005.



[35] She confirmed that she had learned of S4's problems with the authorities for participating in FG activities in New Zealand when she went to inform her of her own travel to New Zealand. She told the Authority that it was agreed they would not tell the family members in China because S4's husband had warned her not to say anything.

[36] S5 told the Authority that whilst she was in China she had been introduced to FG by S3. She lived in a city which was some distance from X and only very occasionally went to X. When she did go to X she only visited her parents' home. On some occasions, whilst at her parents' home, she also met S2 and S4 who at that time lived nearby. She told the Authority that whilst she was aware they practised FG and had in fact practised FG together at their parents' house she had no idea that the appellant had also taken up the practise of FG. He is the eldest member of the family and is 14 or 15 years older than her. As a teenager she had left home to get married and has lived in another city ever since and, as such, had very little to do with him as an adult and had not seen him for some years.

#### The evidence of Mr YY

[37] The Authority heard from Mr YY who is the president of the Falun Dafa Association of New Zealand. Mr YY confirmed that the appellant had been participating in the demonstration events as he had claimed and had been regularly attending study sessions held in Auckland. Mr YY told the Authority that the association was concerned that people who were not genuine believers of FG were using this as a route to obtain refugee status. However, he had no doubt the appellant was a genuine FG practitioner and was at the upper end of the level of activity that practitioners generally undertake. Mr YY told the Authority that the Chinese authorities here in New Zealand keep an eye on the activities of the association and normally employ overseas students to take photographs of practitioners.

#### The evidence of Mr CC

[38] The Authority also heard from Mr CC. Mr CC is a member of the FG band and confirmed that the appellant has been attending study sessions with him as well as attending demonstrations outside the Chinese Consulate. Mr CC told the Authority that he was with the appellant in Wellington when a photographer from a Chinese newspaper came and took their photograph.

### Documents and submissions

[39] On 10 September 2007, the Authority received from counsel a memorandum containing submissions together with a copy of the report by D Matas and D Kilgour entitled "*Bloody Harvest: Revised Report into Allegations of Organ Harvesting of Falun Gong Practitioners in China*" (31 January 2007).

[40] Attached to counsel's submissions was a bundle of country information together with a copy of the Authority's decision in *Refugee Appeal Nos 76056, 76057, 76058 and 76059* (31 August 2007).

[41] In the course of the hearing the Authority served upon counsel copies of the Authority's decisions in *Refugee Appeal No 76088* (6 November 2007) and *Refugee Appeal No 76145* (10 December 2007). Leave was given to counsel to file submissions in reply and such further evidence as deemed appropriate, by 25 January 2008. On 29 January 2008 the Authority received counsel's submissions together with a substantial bundle of country information relating to the practice of FG, the monitoring of overseas activities of FG members by embassy and consular officials as well as decisions relating to FG from courts and tribunals of overseas jurisdictions. This material has all been considered by the Authority in reaching this decision.

### **THE ISSUES**

[42] 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."

[43] 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**

[44] A number of minor discrepancies arose in the hearing between what the appellant told the Authority and what he mentioned to the Refugee Status Branch as it related to FG in China. However, these discrepancies were of a minor nature and can be reasonably explained by the appellant's age (he is in his late 60s) and the passage of time that has elapsed.

[45] The Authority is troubled by the fact that S5 failed to mention the appellant's practice of FG in her own refugee claim and that the appellant waited a number of months before lodging his claim following his arrival in New Zealand. However, having seen and heard the appellant, and having questioned him, S5 and S3 at length about this matter, and having seen and heard from the other witnesses, the Authority is satisfied that the appellant's account in respect of this omission is a truthful one. Weighing everything in the round, the Authority finds the appellant credible and accepts the evidence that has been presented to it as to his previous practice of FG in China and current activities here in New Zealand.

### **Well-founded fear of being persecuted**

#### The Authority's recent jurisprudence

[46] The Authority has considered the situation for persons who have undertaken public protest in support of FG on a number of occasions recently. They are the subject of substantial submissions by counsel and some detailing of them is required.

#### *Refugee Appeal No 75536*

[47] In *Refugee Appeal No 75536* (25 May 2006), the Authority allowed the appeal of a FG practitioner who had undertaken public activity in New Zealand. The material facts are recorded at paragraph [61] of that decision as follows:

"The Authority notes that the appellant has appeared on national television, participating in Falun Gong protests. Since moving to Auckland in 2005, she has regularly attended the Falun Gong practices and protest sessions in front of security cameras outside the Chinese consulate. She has appeared in a number of newspaper articles and on national television, participating in protests about the treatment of Falun Gong practitioners in China."

[48] The Authority concluded in relation to this appellant:

“[63] Given the nature of the appellant’s activities, particularly her participation in repeated, publicised protests about the repression and torture of Falun Gong practitioners in China, it is accepted that she will come under scrutiny on her return to China. She may then be subjected to sanctions because of her activities and/or because of her adherence to Falun Gong about which she has been given the benefit of the doubt.”

[49] The Authority considered country information in relation to the treatment of FG practitioners and concluded that the country information before it indicated that those detained for FG related offences are assigned to re-education through labour, which involves lengthy periods of detention without trial and may also entail physical ill-treatment – see paragraph [73]. The Authority held that this treatment met the standard of a sustained or systemic denial of basic or core human rights demonstrative of a failure of state protection which the Authority has long adopted as the appropriate standard for measuring persecution – see *Refugee Appeal No 2039* (12 February 1996).

*Refugee Appeal No 76030*

[50] In *Refugee Appeal No 76030* (13 August 2007) the Authority allowed the appeal of a person who had become a follower of FG only after he arrived in New Zealand and whose practice of Falun Gong, apart from attending a demonstration in October 2006, was confined to the attendance at regular practice classes and private practice in his own home. This appellant had stated that, if returned to China, he would confine his practice to his own home in order to avoid detection but that he would like to talk to people about the benefits of FG – see paragraph [43].

[51] The Authority allowed his appeal. The Authority again, at paragraphs [44]-[46] reviewed country information relating to the suppression of FG by the CCP. Critical to the success of this appeal was the fact that prior to coming to New Zealand the appellant, who had been exposed to FG teachings prior to the crackdown on FG in 1999, had openly voiced his belief that the FG was a worthwhile organisation. As a result, he had to write reports explaining his belief. He was subsequently demoted and suffered a reduction in his salary and abolition of bonuses. The crux of the Authority’s reasoning appears at paragraph [48]. The Authority held that, given the occasional surveillance he experienced prior to his departure, together with the pervasive nature of surveillance by local

neighbourhood committees, work units and the police, meant there existed a real chance that his private FG practice would come to the attention of the authorities.

*Refugee Appeal No 76088*

[52] In *Refugee Appeal No 76088* (6 November 2007), the Authority found that while the appellant in that case had attended public meetings and undertaken other activity, the purpose of this was simply to manufacture an untrue claim to be a genuine follower of FG for the purposes of securing immigration status in New Zealand. The Authority held that should he be returned to China his New Zealand activities would be explained and recanted – see paragraphs [66] and [81]. The Authority distinguished the appellant before it from the appellant in *Refugee Appeal No 76030* noting that the latter’s successful appeal had been based heavily on his previously expressed support of FG and his prior experience of occasional surveillance. The Authority also distinguished *Refugee Appeal No 75536* on the basis that the Authority there had found the appellant to be a genuine adherent to FG.

[53] However, the Authority went on to consider the position for persons who have undertaken public protest in support of FG more generally. It stated that:

“[82] In this situation, whilst the general treatment of Falun Gong practitioners, as the Authority has recorded, is highly relevant in the assessment of risk, so also is the profile of the appellant concerned. Thus, as part of the assessment of overall risk, the Authority should also try and ascertain from objective country of origin information whether a returned failed asylum seeker, with some Falun Gong profile, is at a real chance of being persecuted on return. The Authority now turns to that issue.”

[54] The Authority observed, at paragraph [83], that limited country information was available to it. After reviewing that information which was before it the Authority concluded:

“[96] As can be seen from these reports, evidence of problems or persecution of failed asylum seekers who have previously had a Falun Gong association or been involved in protests overseas appears to be very scant. The same return from Germany appears to be reported several times. None appear to fall into a similar profile to the appellant. They are either quite dated, going back six or seven years or, as with the Australian report, refer to an activist who has been involved in anti-Chinese government activities going back to Tiananmen Square.

[97] The Authority’s conclusion, based this country information and the very few examples available, is that a failed asylum seeker who may have practised Falun Gong while overseas and has been returned to China, is not at a real risk of being mistreated unless there are significant additional aspects to the profile of the claimant. The Authority reaches this conclusion given that there are reports of hundreds of thousands of practitioners and that considerable numbers of these practitioners have no doubt moved in and out of China over the past six to seven

years. That conclusion is supported by noting the considerable number of asylum cases, many of which fail, which have been presented around the world, in Europe, Canada, USA, Australia and this country. Beyond this, it is, of course, incumbent on the appellant to establish his own case and certainly, even if this Authority was to attach some credibility to the appellant's claim that he would be returning to China as a genuine Falun Gong practitioner from New Zealand who had been identified through his blatant activities in this country, the objective country of origin information the Authority has noted does not show a real risk of him being persecuted for those reasons on return to China."

[55] In relation to *Refugee Appeal No 75536*, the Authority observed that there was no analysis undertaken of the risk on return for failed asylum seekers:

"... but rather there is a general acceptance (at [73]) the Falun Gong activities of the appellant, in that case in New Zealand will be known to the Chinese authorities and will result in sanctions being taken against her, should she return to China."

The Authority concluded that the information before it did not establish that an appellant with his profile would be persecuted.

#### *Refugee Appeal No 76145*

[56] In *Refugee Appeal No 74615* (10 December 2007) the Authority accepted that the appellant in this case had taken part in a protest in Wellington outside the Chinese Embassy. The appellant played the part of a torture victim who was hung by her wrists and whipped by another protester who was acting the part of a Public Security Bureau (PSB) officer. She had also regularly attended Sunday morning practice sessions outside the Chinese consulate but otherwise had no meaningful links to the FG community in New Zealand – see paragraph [45]. The Authority noted the Authority's decision in *Refugee Appeal No 76088* and concluded that the appellant's limited involvement with FG and her limited activity would not create such a profile that would bring her to the attention of the Chinese authorities that would create any risk that she would be mistreated on her return to China – see paragraph [46].

#### Counsel's submissions on the Authority's jurisprudence

[57] In his submissions of 23 August 2007, counsel attacks the findings in *Refugee Appeal No 76088* and *Refugee Appeal No 76145* and the approach taken in these cases on a wide-ranging basis. It is submitted:

- (a) The finding in *Refugee Appeal No 76088* that "ordinary" FG practitioners in China do not face a well-founded fear of being persecuted is inconsistent with country information and

misunderstands what the practice of FG actually requires of its adherents;

- (b) Knowledge of the Chinese authorities here in New Zealand of the appellant's activities will be made known to the authorities in China;
- (c) It is an error of law to require discretion or the secret practise of human rights in order to avoid being persecuted and the appellant cannot be expected to renounce his beliefs to avoid being persecuted.

These are now addressed in turn.

#### Submissions relating to country information

[58] Counsel's submissions are lengthy but, in essence, can be reduced to the following propositions. Counsel submits given there exists a systematic campaign against FG in China, the requirements of practice of FG means there is a real chance "ordinary" members will become targeted regardless of "profile". It is argued that the centrality of music and recitation to the practise of FG combined with the length of time it takes to perform the FG exercises make it more likely that the private practice would become known. Also, the Authority's approach to FG does not take into account that in addition to private exercise, FG requires its adherence to "clarify the truth" which involves alerting the world to the plight of practitioners in China. Counsel refers to *Refugee Appeal Nos 76056, 76057, 76058, 76059* (31 August 2007) at paragraph [67] where this is acknowledged. Counsel submits that country information supports the contention that as a result of these factors practitioners are not freely able to practise at home without risk of discovery by the Chinese authorities.

[59] In considering this submission, it is important to note that once credibility has been accepted, the inquiry under the Refugee Convention is essentially objective in nature. That is to say, the appellant must point to a sufficient body of evidence to establish that conditions in China do raise a real chance that "ordinary" adherents of FG face a well-founded fear of being persecuted; conjecture or surmise is insufficient – see *Refugee Appeal No 72668/01* (5 April 2002) at paragraphs [132]-[151] and cases cited therein.

[60] To support his argument, counsel refers to a report by a non-governmental organisation, Forum 18, *China: How the Public Security System Controls Religious Affairs*: (29 September 2004) which states, at page 1:

“Meanwhile, public security agents throughout China maintain active surveillance over Falun Gong practitioners, punctuated by periodic crackdowns.”

[61] Counsel also relies on the testimony by Mr Chen Yonglin, a former Consul for Political Affairs in the Chinese Consulate in Sydney, where he was in charge of FG affairs between April 2001 and May 2005. In the written record of a joint hearing before the United States Sub-Committee on Africa, Global Human Rights and International Operations and the Sub-Committee on Oversight and Investigations of the Committee on International Relations of the United States House of Representatives, First Session 21 July 2005 (serial number 109-62, at page 34) Mr Chen’s evidence is recorded as being:

“The CCP’s persecution is a systematic campaign with all authorities involved.”

[62] Counsel points to the definition of systematic in the Concise Oxford Dictionary which is defined as:

“1. Methodical done or conceived according to a plan or system 2. Regular or deliberate.”

Counsel submits that the fact that crackdowns on FG are periodic evidences that they are regular and therefore ‘systematic’ – see paragraph 2.4.

[63] Insofar as the Authority in *Refugee Appeal No 76088* placed reliance on a UNHCR letter of 1 January 2005, counsel takes particular aim at the following passage from that document:

“As indicated above, that (*sic*) exists is no evidence known to UNHCR to suggest that all Falun Gong members are being systematically targeted by the Chinese authorities (especially in view of the large numbers involved).”

Counsel criticises this passage (see paragraph 2.2 of his submissions) on the basis of brevity and lack of supporting citations. Counsel also complains that the UNHCR’s statement is not supported by country information

[64] It appears to the Authority that counsel’s concern as to the accuracy of the UNHCR’s statement is derived, at least in part, through a looseness of language and, in particular, the unfortunate conflation of systematic with systemic. On the one hand, the UNHCR report refers to the systematic (as in methodical or regular) targeting of all FG members. It states that, if for nothing else, because of the large numbers involved, there is no evidence that such regular or methodical targeting is



taking place such as would give rise to a valid claim for refugee status. Rather, those with a prominent role in certain overt activities such as proselytising, or organising demonstrations which brought their membership of FG to the attention of the Chinese authorities, may give rise to a claim to refugee status.

[65] On the other hand, both Forum 18 and Mr Chen seem to be making the point that the repression and control of FG in China is systemic in nature; systemic here meaning “of the system”. In other words, it is a function of the relevant organs of state as part of the domestic Chinese political system to control the activities of FG. The meaning of “systemic”, as it appears in the jurisprudence of the Authority, was considered by the High Court in *K v RSAA (No2)* [2005] NZAR 441 where Glendall J stated:

[14] Counsel says there was an error of law because the Authority defined the persecution in terms of "systemic violation of basic or core human rights". Systemic, in the sense used in the decision (and on other occasions in refugee jurisdiction) means no more than a connected system of an established political or social order, not dependent upon or confined to one particular part. The reference about which objection is taken is one which has been used on many occasions and not just by the Authority. It is derived from Hathaway, *The Law of Refugee Status* (1991) 104 to 108 having been used and referred to other decisions of the Authority and was quoted or adopted with approval by the Supreme Court of Canada in *Canada (Attorney-General) v Ward* [1993] 2 SCR 689, 773, and the House of Lords in *Horvath v Secretary of State for the Home Department* [2000] 3 All ER 577,581. Hathaway defines "persecution" as:

"Persecution may be defined as the sustained or systemic violating of basic human rights demonstrative of a failure of state protection."

And further at p108:

"Refugee law ought to concern itself with actions which deny human dignity in any key way, and that a sustained or systemic denial of core human rights is the appropriate standard."

[15] That view has been adopted in New Zealand in *DG v Refugee Status Appeals Authority and Chief Executive Department of Labour* (CP213/00, High Court, Wellington, 5 June 2001, Chisholm J), and the Authority has adopted it in a number of appeals for example, *Refugee Appeal No. 103/93, Re HBS and LBY* (13 February 1995); *Refugee Appeal No. 2039/93* (12 February 1996); and indeed in the appeal decision involving other family members of Mr K namely *Refugee Appeal No. 73939-73942/2002*."

[66] It is clear to the Authority that both the Forum 18 report and Mr Chen are simply making the point that the various organs of the Chinese state-security apparatus are being deployed to control FG. For example, the Forum 18 article is headed:

“China: How the public security *system* Controls Religious Affairs.” (emphasis added)

The report goes on to detail, at great length, the structure of the public security system in China. It is described as a “massive bureaucracy” that extends from the Ministry of Public Security – led by a member of the powerful Communist Party Politburo Bureau – in the central government in Beijing down to police stations in the townships and villages of the hinterland. Like other government agencies, a public security organ functions at each level of government.

[67] Similarly, although Mr Chen uses the word “systematic” in his testimony, in reality, he is talking about the systemic nature of the state campaign against FG. That this is the case emerges from his written evidence which states:

“All the authorities especially of public security, state security and Foreign Affairs are involved in the persecution. Since the CCP declared a war against Falun Gong practitioners in June 1999, the Ministry of Foreign Affairs (MFA) of China set up an office called “The Office of the Falun Gong Issue” operating under the General Office of the MFA as a part of “The Central 610 Office” system. The Office of Falun Gong Issue of the MFA changed its name to “The Department of External Security Affairs” in July 2004 whose function also includes dealing with the Eastern Turkistan groups and other “non-traditional security affairs.” Other ministries of the Central Government, Provincial and various levels of government and state-run institutions and companies established their own 610 offices as well, though the office may be called a slightly different name.”

He makes the point again in response to questioning from the committee members – see page 73.

[68] The point is not one of linguistic interest. This is because it is entirely possible for there to be a systemic (that is, of the system) operation, directed by policy considerations, to control the functions of FG, and yet for this to result only in the systematic (that is, regular or repeated) targeting of some members of the FG movement. This, in essence, is what the UNHCR was saying and what *Refugee Appeal No 76088* decided. Neither Forum 18 or Mr Chen Yoing Li were suggesting that all FG members were being “systematically” targeted because of their ordinary practice of FG in contradiction to the UNHCR’s position paper as relied on in *Refugee Appeal No 76088*.

[69] Counsel also relies on reports of searches of the homes of FG practitioners by the Chinese authorities which result in confiscations of FG material and the practitioners’ subsequent detention – see country materials at tab 7 of counsel’s bundle of documents. He argues this undermines reference in the United Kingdom material relied on by the Authority at para [85] that FG members are not “sought out” by the Chinese authorities. Counsel further submits that such reports seriously undermine the proposition that practitioners are able to freely practise

their beliefs at their home in accordance with the tenets of Falun Gong. Counsel's submission is correct but only up to a point. The material he cites does point to the arrests of specific individuals from their homes in various provinces throughout China as well as the mass arrests of FG practitioners – see, for example, additional persecution news from China – 11 September 2007 (14 reports) [www.clearwisdom.net/emh/articles/2007/9/18/89661t.htm](http://www.clearwisdom.net/emh/articles/2007/9/18/89661t.htm)).

[70] However, the difficulty with his argument is that, in many cases, the reasons why the person has been arrested is not specified in the report. All that is asserted is that the person had been arrested from home and that their home had been searched with some reports referring to these persons then being subjected to various forms of mistreatment. Typical accounts from the reports submitted by counsel comprise as follow:

1. **“5. [Beijing] Practitioner Xiong Xiaohua Arrested**  
In July 2007, Ms. Xiong Xiaohua from Beijing was arrested from her home. Her whereabouts are still unknown.”
2. **“12. [Hong’an County, Hubei Province] Practitioners Ma Yumei and Yu Yonghua Arrested**  
On August 23, 2007, the police from Hong’an County broke into Ms. Ma Yumei and Ms. Yu Yonghua’s home and arrested them. Both are now detained at the Hong’an Detention Center.”
3. “On the morning of February 22, 2007, Public Security Section Chief Gao Lei and Chinese Community Party Secretary Zhao Mou of Xinwen Mining Group Huaheng Mining Corporation (formerly Xinwen Mining Bureau Wennan Coal Mine) brought more than ten people with them, broke into Falun Dafa practitioner Ms. Liu Qin’s home and arrested her. They took three Falun Dafa books that belonged to her. Then they broke into Falun Dafa practitioner Niu Rongtian’s home, confiscated all her Falun Dafa materials and arrested her. In the afternoon, they broke into Falun Dafa practitioner Ren Zhizhen’s home, searched her house, confiscated all the Falun Dafa materials and arrested her. The next day, they broke into Ren Zhizhen’s home again and arrested her husband Zhao Wenshu (who is about 50 years old and recently started to learn Falun Dafa).”

4. **“12. [Harbin City, Heilongjiang Province] Personnel from the Wanggang Town Police Station Harass Ms. Feng Yongqian**  
Officers Wang Zhuang and Song Chengzhe from the Wanggang Town Police Station in the Nangang District, Harbin City, harassed Ms. Ma Yongqian at her home at 3:00 p.m. one afternoon in October 2007. The Wanggang Town Police Station deputy chief harassed Ms. Ma again at 6:00 p.m. on December 18, 2007.”
5. On the evening of December 14, 2007, policemen from the State Security Group of Liangyuan District in Shangqiu City, led by Xu Chao, went to teacher Ms. Li Ping’s home and claimed that they were there to meet her child. Upon the door being opened, the police arrested Dafa practitioner Ms. Li Ping and took her to Lijing Hotel in Shangqiu City. The police tortured and interrogated Li Ping in a hotel room which they forced Li Ping’s family to pay for.” (counsel’s emphasis)

[71] There is nothing in these reports to indicate the reason for the person’s arrest. It is a matter of conjecture and surmise that these persons were arrested in their homes simply for practising FG, as it is required to be practised, in the private sphere as opposed to their being arrested at home having undertaken FG activities in the public sphere or for having assumed key or senior organisational roles. Reading the passage from the UK material to which the Authority, in *Refugee Appeal No 76088*, has regard at paragraph [85], the point being made is not that persons are never sought out at home, but rather there is no evidence of known or suspected FG practitioners being “sought out” because they have been practising FG at home. The UK material acknowledges that even lower-level adherents may well face longer term detention if they have engaged in public practise.

[72] As to this, the material provided by counsel contains a number of reports of people being arrested from their home for having undertaken “clarifying the truth” exercises. This would seem to account for at least some of the arrests. Thus, for example, the arrest of Ms Liu Qin, referred to above, occurred against a background of a prior arrest on 13 June 2006 for “putting up some Falun Dafa truth clarifying materials at Wennan township Xintai city” – see police from Xinwen Mining Group (Shandong province) arrest four Falun Dafa practitioners – [www.clearwisdom.net/emh/articles/2007/3/1683581p.html](http://www.clearwisdom.net/emh/articles/2007/3/1683581p.html). Counsel acknowledges in his submissions that many of the cases of arrest relate to the person carrying out “truth clarification exercises” – see paragraph 2.6 at page 6 of submissions.

[73] Counsel further submits *Refugee Appeal No 76088* fails to take into account country information relating to reports of organ harvesting of FG practitioners – see paragraph 4 of the submissions. Counsel submits that two well known reports into organ harvesting dated 6 July 2005 and 31 January 2007 by Matas and

Kilgour are of “great and obvious relevance to the treatment of FG practitioners”. If by this counsel means that having one’s organs harvested can amount to being persecuted for the purposes of the Convention, of this there can be little doubt. But it is less obvious how these reports assist in determining the extent to which all FG practitioners are at risk of being persecuted through their undertaking the required FG practices at home. Counsel also criticises *Refugee Appeal No 76088* on the basis it has over-estimated the number of adherents. Again, this point adds little, if anything, to the issue of identifying the extent to which all FG practitioners face a real chance of being persecuted simply by reason of their practise of it.

[74] In summary, the Authority finds that the country information before it does not establish the proposition that FG practitioners face a well-founded fear of being persecuted simply by undertaking the daily practise of FG in the private sphere.

#### Chinese Government’s knowledge of the appellant’s practice of FG in New Zealand

[75] Counsel submits that the Chinese authorities in New Zealand will be aware of the appellant’s activities. He cites in support of his argument the testimony of Mr Chen to the Joint US committee where he stated:

“In each Chinese mission overseas, there must be at least one official in charge of the Falun Gong affairs, and the head and the deputy head of the mission will be responsible for the Falun Gong affairs. I am aware there are over 1000 Chinese secret agents and informants in Australia, who have played a role in persecuting the Falun Gong, and the number in the United States should be higher.”

[76] In his oral testimony to the chair of the committee in support of his written testimony, Mr Chen went on to say that as part of his function as the consular official in charge of FG affairs at the consulate in Sydney he had:

“Met two Deputy Director-General of the Central 610 Office in Sydney when they toured Australia and New Zealand to inspect our job on persecuting the Falun Gong.”

[77] The reference to the Central 610 Office is a reference to the office charged with controlling FG activities generally. What was implied is that there is some policy in place whereby activities of FG in New Zealand are of interest to the 610 central office in China.

[78] In light of this information, the Authority accepts that there is likely to be some surveillance of FG activities in New Zealand. The Authority also accepts that having regard to this appellant’s:

- (a) repeated participation in demonstrations outside the consulate and embassy;
- (b) engagement in a range of other 'truth clarification' activities , judged by the leader of the Falun Dafa Association of New Zealand to be at the upper end of the scale; and
- (c) general involvement in the FG community in New Zealand;

there is a real chance that the appellant's belief in FG and his various activities will have come to the attention of the relevant Chinese officials in New Zealand and that this information would have been made known to the relevant authorities in China.

[79] Counsel submits that this would expose the appellant to a risk of being persecuted on return. He refers to some reports of the arrests, detention and torture of FG practitioners who have either been deported back to China or returned there to visit families. It is submitted that these persons are "ordinary" FG practitioners with no prominent role or profile overseas. A close examination of these cases reveals that while this description of their level of involvement may be strictly true, it is not the case that they have been arrested or detained because the Chinese authorities have been aware that they have practised FG while overseas. Rather, where details of their circumstances are given, other factors have been present. Thus:

- (a) Liu Feng and Yang Fang (Tab 16 counsel's bundle) – both were arrested after returning to China from Ireland where they were enrolled as students with the intention to publicly defend FG and to demand an end to human rights abuses against practitioners. It is not clear if they actually engaged in these activities but the implication is that, at the very least, these intentions were admitted to or became known to the authorities;
- (b) Professor Zhang Kunlun (Tab 17 counsel's bundle) – returned to China from Canada and was arrested and tortured. When asked why he was arrested, he stated that he had informed others that a FG broadcasting station was due to begin broadcasting;
- (c) Ying Zhu (Tab 18 counsel's bundle) – returned to China for a visit and was found to be in possession of FG material when her luggage

was searched. She attempted to destroy an address book in her possession at the time of the search so as to prevent the authorities from having access to its contents;

- (d) Zhao Ming (Tab 18 counsel's bundle) – arrested after returning from Ireland in December 1999 and placed under house arrest. It is not clear why this took place. He subsequently escaped from house arrest and attended a rally in Tiananmen Square before going into hiding. He was subsequently captured;
- (e) Mo Zhengfang and husband (Tab 18 counsel's bundle) – arrested after returning from Scotland in December 1999 to show solidarity with FG. Again, it is not clear if they actually engaged in these activities but the implication is that, at the very least, these intentions were admitted to or became known to the authorities;
- (f) Charles Li (Tab 18 counsel's bundle) – returned to China from the United States in 2002 with the intention of revealing the truth about the persecution of FG by tapping into the state run cable television system. He was arrested but subsequently escaped. He returned in January 2003 but was arrested when his plane landed;
- (g) Nancy Chan (Tab 18 counsel's bundle) – detained when returned to China from Australia. No details are given;
- (h) Ma Hui (Tab 18 counsel's bundle) – Deported to China from Russia while seeking refugee status. Taken into custody. No further details of activity are given
- (i) Leejun Ivie (Tab 18 counsel's bundle) – returned to China from America for a family visit. Had been “active in FG in the United States and had sent material about FG to persons in China.

[80] In none of these cases can it be said that the reason for the arrest was simply due to the fact they had practised FG overseas. Rather, in those cases where details have been given, it appears that something has taken place to trigger official interest in them.

[81] Country information evidences that once official interest in their practice of FG is triggered, the treatment meted out to known FG practitioners varies

according to their particular profile. The Human Rights Watch Report *Dangerous Meditations: China's Campaign against FG* (January 2002) notes, at Chapter V, that despite difficulties in confirming the accuracy of both Chinese government and FG reports, some tentative conclusions can be drawn, namely, core FG leaders and large scale publishers and distributors are prosecuted and sentenced to prison, in some cases for up to 18 years. For the overwhelming majority, they are sent to re-education camps. The report notes claims of torture and other forms of ill-treatment for those detained.

[82] At this point it is necessary to have regard to counsel's next submission.

The discretion/secret practise submission

[83] Counsel further submits it is wrong in law to require a FG practitioner to avoid persecution by confining the practise of FG to their own home. This amounts to a breach of the appellant's right to freely practice FG by manifesting his beliefs in public. In support of this submission, Mr Chambers relies heavily on the decision of the Canadian Federal Court in *Fosu v Canada (Minister of Employment and Immigration)* [2004] 27 Imm LR (2d) 95, 90 FTR 182 where, at para 5, Denault J held that persecution on the grounds of religion can extend to the prohibition of public acts or worship and practice. The decision has been followed in a number of cases before the Federal Courts in Canada, including cases concerning Roman Catholic practitioners in China – see *Qiu v Canada (Minister of Citizenship and Immigration) and Anors* [2000] 3 Imm LR (3d) 263, 182 FTR 47 and Shiite Muslims from Iraq during the regime of Saddam Hussein – see *Husseini v Canada (Minister of Citizenship and Immigration)* [2002] FCT 177. In both cases the Court held, following the reasoning in *Fosu*, that it was incumbent on decision makers to analyse why a particular claimant has not manifested their beliefs.

[84] Counsel also refers to United States authorities. He cites *Muhur v Ashcroft* 355 F 3d 958, (2004), a decision of the 7<sup>th</sup> circuit of the United States Federal Court of Appeals, where it was held that refugee status cannot lawfully be denied on the basis one can escape the notice of the agent of persecution by concealing one's religion. This decision was followed and applied in relation to FG practitioners in *lao v Gonzales* 400 F 3.d 630 (2005) and *Zhang v Ashcroft* 388 F 3.d 713.



[85] Counsel need not have looked to such exotic authority for support for his proposition. In *Refugee Appeal No 75665* (7 July 2004) the Authority explained at great length why it is a misdirection in law for decision makers to decline claims for refugee status on the basis that an appellant could avoid the harm by being discrete. The matter was put thus:

[114] Understanding the predicament of “being persecuted” as the sustained or systemic violation of basic human rights demonstrative of a failure of state protection means that the refugee definition is to be approached not from the perspective of what the refugee claimant can do to avoid being persecuted, but from the perspective of the fundamental human right in jeopardy and the resulting harm. If the right proposed to be exercised by the refugee claimant in the country of origin is at the core of the relevant entitlement and serious harm is threatened, it would be contrary to the language context, object and purpose of the Refugee Convention to require the refugee claimant to forfeit or forego that right and to be denied refugee status on the basis that he or she could engage in self-denial or discretion on return to the country of origin; or, to borrow the words of Sachs J in *National Coalition for Gay and Lesbian Equality* at [130], to exist in a state of induced self-oppression. By requiring the refugee applicant to abandon a core right the refugee decision-maker is requiring of the refugee claimant the same submissive and compliant behaviour, the same denial of a fundamental human right, which the agent of persecution in the country of origin seeks to achieve by persecutory conduct. The potential complicity of the refugee decision-maker in the refugee claimant’s predicament of “being persecuted” in the country of origin must be confronted. The issue cannot be evaded by dressing the problem in the language of well-foundedness, that is, by asserting that the claim is not a well-founded one because the risk can or will be avoided.”

#### Conclusion on well-foundedness

[86] The Authority finds that there is a valid distinction to be drawn between persons whose claims to be genuine followers of FG and to have undertaken public protests on this basis are found to be not credible and those whose claims are found to be credible. As explained in *Refugee Appeal No 76088*, for the former, the public protests which may have brought themselves to the attention of the Chinese authorities were undertaken for the sole purpose of manipulating the refugee status determination system in the receiving state. As such, they are unlikely to be punished for having a belief they do not, in fact, hold – see also in this context *Refugee Appeal No 72857/01* (16 May 2002) where a similar conclusion was reached.

[87] This is a far cry from the position where it is accepted that the risk of return has to be assessed on the basis of a genuine adherence to FG. The Authority does not understand the concerns raised at paragraphs [103]-[105] of *Refugee Appeal No 76088* as indicating that in no circumstances could any FG practitioner,

having participated in public protests in a receiving state, face a well-founded fear of being persecuted, *inter alia*, because of those activities.

[88] In this case, it is likely that the appellant's public activity in support of FG in New Zealand will have been made known to the Chinese authorities as part of the sophisticated systemic campaign against FG. This means that it is likely that upon return he would be detained at the airport and questioned about his activities. Background checks will be made. Given the extensive security and intelligence apparatus being employed in the fight against FG, there is a real chance that the house arrest of his sister for undertaking public protests here in New Zealand will also be known to the authorities. This is likely to aggravate the negative view of the appellant and increase the pressure he would face to recant his support for FG.

[89] The issue that arises in this case is whether the appellant should be required to hide or renounce his genuine belief in FG at the airport, in order to avoid being exposed to serious harm. The Authority finds he cannot be so required. Once renounced, he would no doubt be subjected to periodic checks to ensure that he had, in fact, abandoned his beliefs. This strikes at the core of his right to freedom of belief in terms of Article 18(1) of the 1966 International Covenant on Civil and Political Rights (ICCPR).

[90] As to the treatment the appellant might encounter if he failed to renounce his belief in FG, in this case, an obvious comparator is S4 who has been placed under home detention for approximately one year and had her freedom of movement curtailed. Without knowing further details of the restriction on her movement it is impossible to reach a firm conclusion about her predicament but it appears at the margins. Yet there are important differences between S4 and the appellant. The appellant lives in a city different from S4 where a different attitude may prevail. Significantly, his level of involvement in FG generally and the extent of his public protest in New Zealand has been substantially greater than that of S4. Also, the fact he has undertaken his activity in New Zealand knowing full well that his sister had already been punished for doing a lesser amount of activity will likely cause the authorities to view his activities as exhibiting a higher level of disobedience. After weighing these matters and noting that country information does refer to the torture and ill-treatment of some FG practitioners, the Authority is persuaded, albeit by a narrow margin, that the appellant faces a real chance of being persecuted on return, should he fail to renounce his belief in FG.

[91] In light of the forgoing, the Authority answers the first principle issue in the affirmative.

[92] Having regard to the finding made as to risk on arrival, it is not, therefore, necessary to address the wider submission made by counsel and determine whether, in any event, FG actually requires or sanctions as part of its belief structure that the appellant as a genuine practitioner, meet with other FG practitioners to practise or to engage in the public manifestation of their beliefs such that denial of this amounts to their being persecuted as the term is explained in *Refugee Appeal No 74665*. However, the Authority notes in this regard that while Li Hongzhi appears to place a *requirement* of truth telling at the centre of FG belief structure, the *form* of truth telling is a matter for the individual concerned and need not necessarily take a public form – see Li Hongzhi *Fa-Lecture at the Conference in Florida, U.S.A* (29 December 2001) [www.falundafa.org](http://www.falundafa.org) at page 7. In other words, there appears nothing to prevent an adherent fulfilling their obligation to clarify the truth by talking in a private setting if that is what they are predisposed to do as a matter of personal choice having regard to their own personal characteristics.

[93] Moreover, from country information provided it does not appear that there is any absolute requirement that they practice in a group. The report by D Matsas and D Kilgour *Bloody Harvest: Revised Report into Allegations of Organ Harvesting of Falun Gong Practitioners in China* (31 January 2007) notes features of FG which distinguish it from traditional conceptions of a cult. They observe (at p27):

“There is no penalty for leaving the Falun Gong, since there is nothing to leave. Practitioners are free to practice Falun Gong as little or as much as they see fit. They can start or stop at any time. They can engage in their exercises in groups or singly.” (emphasis added)

[94] To put this within the human rights framework of Article 18 ICCPR, it appears that the mere holding of a belief in FG is not determinative of the extent of manifestation of that belief. Rather, the level of manifestation is a matter which is to be determined on a case by case basis always bearing in mind the point so cogently articulated in *Refugee Appeal No 74665* at para [114] – see paragraph [85] above. It is not, however, on the fact of this case necessary to reach a final conclusion on the point.

Nexus and Convention ground

[95] The appellant's predicament is being contributed to by his belief in FG which can be classified as a religion for the purposes of the Refugee Convention – as to which see discussion in *Yang v Canada (Minister of Citizenship and Immigration)* 2001 FCT 1052.

**CONCLUSION**

[96] 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. The appeal is allowed.

"B Burson"

B Burson  
Member