

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76030

AT AUCKLAND

Before: J Baddeley (Member)
Counsel for the Appellant: H Hylan
Appearing for the Department of Labour: No Appearance
Date of Hearing: 16 May 2007
Date of Decision: 13 August 2007

DECISION

[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 citizen of the People's Republic of China.

INTRODUCTION

[2] The appellant, his wife and son arrived in New Zealand on work visas on 11 August 2005. He applied for refugee status on 1 November 2006. After being interviewed by the DOL on 12 December 2006, his application was declined in a decision dated 27 February 2007 leading to his appeal to this Authority.

[3] The appellant claims to be at risk of being persecuted in China because of his involvement with and activities on behalf of the *Falun Gong* movement both in this country and in China and because he has published on a website the announcement that he has left the Chinese Communist Party.

THE APPELLANT'S CASE

[4] The appellant has lived all his life in T city in China. He is 48 years old,

married with an adult son who is now in China. The appellant completed his education in 1976 and immediately began working as a printer at a daily paper (T Press). His employment was interrupted by four years' military service from 1978 to 1982. While serving in the army, he joined the Chinese Communist Party (CCP) because he believed that the party worked for the best interests of the Chinese people. He married in 1982 and his son was born in 1984.

[5] After completing military service, the appellant returned to his job with T Press. While working full-time, he attended night classes and, in 1993, was promoted to the position of supervisor responsible for 90 workers and three assistants.

[6] In 1998, his elderly neighbour, AA, gave him a copy of *Zhuan Falun* by Li Hongzhi. AA practised *Falun Gong* in order to improve her health. She was convinced of the benefits of *Falun Gong*. After reading *Zhuan Falun*, the appellant came to the view that *Falun Gong* was a worthwhile practice which helped people to become good members of society.

[7] In April 1999, an article which was highly critical of *Falun Gong* was published by T Education Institute. Shortly afterwards, *Falun Gong* practitioners gathered outside T Education Institute which was near the appellant's workplace. They protested silently about the publication of this article. The appellant watched this protest which was peaceful and orderly. On 23 April 1999, the police forcibly broke up the demonstration.

[8] On 25 April 1999, more than 10,000 *Falun Gong* practitioners assembled outside the Zhongnanhai in Beijing to protest about the article and the authorities' reaction to the *Falun Gong* protests. In July 1999, the Chinese government officially banned the practise of *Falun Gong* and declared its publications to be illegal. Members of the Public Security Bureau (PSB) and the local neighbourhood committee began asking the appellant about his neighbour, AA.

[9] In August 1999, *Falun Gong* was discussed at one of the regular meetings held by the members of the CCP employed by T Press. About 20 T Press employees were members of the CCP which owned the daily paper, T Daily, published at T Press. At the meeting, CCP members were asked their views of *Falun Gong*. The appellant was the only one present who expressed support for *Falun Gong* and criticised the government's suppression of it. As a result, he was

directed to write a report concerning his opinions about *Falun Gong*.

[10] He had to continue submitting reports each week. He continued to express his view that *Falun Gong* was a worthwhile organisation. Although he himself was not a *Falun Gong* practitioner he believed that *Falun Gong* had a beneficial influence on people's lives and was not a threat to Chinese society. Privately, other members of the CCP at T Press agreed with him but they were too scared of the CCP to voice their views openly. He was criticised by other members during the meetings. At that time, the appellant did not try to find out any more about *Falun Gong* because it was dangerous to make such enquiries.

[11] Because of his unwavering stance, the appellant was demoted from supervisor to the position of an ordinary worker. His salary was reduced and his bonuses abolished. The pressure on him to change his views continued. He was once interviewed by two PSB officers and his work locker searched for *Falun Gong* material. None was found.

[12] The appellant had become increasingly disillusioned with the CCP. His early enthusiasm evaporated in the face of the government's continued suppression of *Falun Gong* and its stifling of free speech. He began to look for ways of leaving China.

[13] In 2005, the appellant travelled to New Zealand as part of a group excursion organised by a travel agent. He obtained a visa by subterfuge because he was unable to obtain permission to leave the country from his employer. The appellant, his wife and son arrived here on 11 August 2005 on visitor's visas.

[14] Initially they lived above a takeaway bar where his son obtained casual work. All of the family remained in New Zealand after their permits had expired. His son was discovered by the immigration authorities at his place of employment and removed from New Zealand on 25 October 2005. The appellant has supported himself and his wife by casual jobs mostly in the restaurant trade. His wife does not work.

[15] The appellant made some initial enquiries with Chinese-speaking lawyers concerning the possibility of regularising his immigration status in New Zealand. He was told that because he was an overstayer he would have to return to China. He did not pursue this any further. He had heard that lawyers sometimes cheated their clients who sought help in order to obtain permits to remain in New Zealand.

[16] The appellant avoided discussing his immigration status with any of his workmates or anyone else and if anyone asked about this, he replied he was in New Zealand under the Investor category.

[17] In January 2006, the appellant read an article in the *Epoch Times*, a local Chinese language newspaper, which gave him information about *Falun Gong* and displayed a timetable of *Falun Gong* practices. Until that time, he did not know whether *Falun Gong* was permitted in New Zealand and had not thought to enquire. He had not thought about practising *Falun Gong* until then. In February or March 2006, he went to a demonstration in a square in Auckland and was given some *Falun Gong* flyers and a *Falun Gong* publication: "The Nine Commentaries on the Chinese Communist Party".

[18] The *Falun Gong* practitioners there were all from Fujian and spoke a different dialect from the appellant which he found difficult to understand. He did not feel confident about learning the practice of *Falun Gong* with them and was scared that they might discover that he was in New Zealand illegally. After reading "The Nine Commentaries on the Chinese Communist Party", he became completely convinced about the corruption in the CCP.

[19] In May or June 2006, he began again making casual enquiries of his friends about how to regularise his immigration status, pretending that his enquiries were on behalf of another. He was advised to be careful and to seek help from a lawyer. Although before he left China he had heard about Chinese nationals obtaining refugee status, he did not consider this possibility until May or June 2006 after he had read "The Nine Commentaries on the Chinese Communist Party". He did not pursue these enquiries because he had not found anyone whom he could trust to help him.

[20] In July, he noticed a sign outside a house advertising *Falun Gong* lessons. He met the occupant, XX, and they discussed *Falun Gong*. He began weekly lessons with XX. He felt that she was a genuine person. He disclosed to her his predicament and she offered him help. The appellant trusted her. She encouraged him to see a lawyer and, with that lawyer's help, on 1 November 2005 he applied for refugee status.

[21] The appellant has continued his study and practice of *Falun Gong*. He practises the exercises at home for two hours every evening. He also studies

Falun Gong teachings with XX. Several times a week he practises at regular practice sessions with six or seven others in a public park. In October 2006, he attended a large-scale public *Falun Gong* demonstration with XX and many other practitioners. He was photographed there doing *Falun Gong* exercises by two friends of his who work for a newspaper. The photographs which were produced to the Authority have not been published.

[22] In June 2006, the appellant was taken by a friend to a meeting of the Chinese Pro-democracy Movement in Auckland. The appellant had become increasingly convinced that he should leave the CCP. He was aware of a campaign organised by a local newspaper which is part of a world-wide initiative which enables people to post notices on the paper's website publicly proclaiming that they had renounced the CCP and left the party. He was helped by another to post his "notice to quit the CCP" on the website. This notice gave particulars which identify him: his name, his work unit in China, his military unit number and his reasons for leaving the CCP. A copy of this notification was provided to the Authority. It was posted on the website on 26 October 2006.

[23] Although frequently these notices are posted in false names, the appellant did not consider doing this because he believed one should sign anything one wrote. At the time he realised that this was a dangerous thing to do because the CCP might view his criticism of the party and the fact of his withdrawal as a betrayal. He posted the notice so that people and the New Zealand Government would know that he had suffered persecution by the CCP in China because of his support for *Falun Gong*.

[24] Two days later he signed his Confirmation of Claim form with his lawyer's help.

[25] On 4 November 2006, the appellant attended a parade celebrating the withdrawal of 15 million members of the CCP. In December, he attended the annual human rights awards of the Asia Pacific Human Rights Charitable Trust at the Auckland Town Hall where people who had been detained by the CCP were given prizes.

[26] The appellant is in regular telephone contact with his son in China. The son telephones the appellant on his mobile and the appellant then calls his son at a landline number the son provides. The appellant does not telephone his son at

the family home in case the telephone is tapped. Around 11 November 2006, his son told him that PSB officials had visited him at the family home asking why the appellant had not returned to China. The officials directed his son to tell the appellant to return to China because they had learnt that he had joined an organisation which was opposed to the CCP. The appellant thinks this might be either *Falun Gong* or the Pro-democracy Movement. His son has reiterated this warning during subsequent conversations with the appellant.

[27] In recent times, his son has been experiencing difficulty in getting employment, having been dismissed without reason from three jobs since he completed a tourism course in 2006. The appellant believes that his son's employment problems are due to the CCP's hostile attitude to the appellant. He states that if he were to return to China, he would be persecuted by the Chinese authorities because he is a *Falun Gong* practitioner and because he has publicly denounced the CCP and left the party.

Documents received

[28] The Authority has received opening and closing submissions from counsel and a number of articles concerning the Chinese government's treatment of *Falun Gong* practitioners. The Authority has taken this material into account, together with all the items of country information on the DOL file. At the conclusion of the hearing, counsel was invited to supply to the Authority a full translation of the appellant's *hukou* (which confirms his place of employment) and a translation of a website page containing the appellant's notice to quit the Chinese Communist Party. These have been received and are also taken into account in this decision.

THE ISSUES

[29] 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."

[30] 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

[31] Before determining the above framed issues, it is necessary to make an assessment of the appellant's credibility. The appellant impressed as a credible witness. His account was consistent with his initial statements and the evidence he gave to the DOL. His answers to the Authority's questions were given in a frank and forthright fashion. However, the Authority does have some concerns which are discussed below, relating to the timing of the appellant's publication of his leaving the Chinese Communist Party.

Departure from China

[32] The Authority accepts that the appellant has supported the right of *Falun Gong* to freedom of speech and practice which resulted in criticism from his local CCP group at the T Press. However, it does not accept that he left China to escape imminent serious harm (beyond demotion, financial deprivation and harassment) at the hands of the authorities because of his support for *Falun Gong* or for any other reason.

[33] He made no attempt to apply for refugee status and thus gain the protection of New Zealand until he had been in the country for a year. His son had been deported shortly after their arrival. The appellant was well aware that he could have been returned to China at any time. However, he knew that, had he returned to China at that time, he would not have experienced serious harm for reason of his fraudulently procured exit visa, or for any other reason. It was this knowledge which made it unnecessary for him to attempt to gain asylum in New Zealand at the time of his arrival.

The appellant's political opinion

[34] The Authority was provided with a printout of the appellant's notice to quit

the Chinese Communist Party and the accompanying statement published on the website of the *Epoch Times* newspaper which promotes an international campaign of public denunciation and resignations from the CCP. The appellant's identity and his reasons for leaving the CCP are clearly stated on this website entry. This final denunciation of the CCP occurred after he had become aware of the grave human rights abuses perpetrated by the Chinese government against the *Falun Gong* and other perceived political dissidents. Before that, he had been unaware of the extreme means used by the Chinese government to suppress the *Falun Gong* and any other perceived opposition to it. Although not a *Falun Gong* member himself, he had protested as a matter of principle against the way the government denied *Falun Gong* members freedom to express and practise their beliefs which, from what he had read and heard, were beneficial rather than harmful. The Authority accepts his accounts of the criticism he received from his CCP group and the consequent demotion he suffered at his place of employment and the surveillance by the PSB.

[35] The extent of official corruption and the violence, repression, incarceration and torture of *Falun Gong* practitioners was not widely publicised in China. The appellant became aware of it only in New Zealand, in particular after he had read "The Nine Commentaries", a report published in nine editions of the *Epoch Times* concerning the history of the CCP and revealing the extent of its corrupt practices and its violent suppression of perceived political opponents, including *Falun Gong* practitioners.

[36] To the Authority, the appellant appeared genuine in his criticism and denunciation of the CCP. He joined the ranks of many who, having read "The Nine Commentaries", decided to publicly denounce and resign from the CCP. It is reported in the 10th *European Country of Origin Seminar: China* ACCORD HHC and UNHCR 17 March 2006, that:

"In November 2004, the Falun Gong newspaper, "Epoch Times", had a report on the Chinese Communist Party (CCP), on its history and on its aims, in nine sections. The so-called 'Nine Commentaries on the CCP' (see <http://ninecommentaries.com/>). A few months after this was published, it was reported that many Communist Party leaders read those Nine Commentaries and felt ashamed of their own party, which is not only corrupt, it is a party of a dictatorship, a very brutal party, the party is lying all the time, is forcing the people and so on. Every bad manner a party could have, could also be found in this party. And so they created a movement called "Quit the party" ("Tui dang"). There is a website where people can declare they want to quit. According to Falun Gong, there are over five million people who quit the party. It can not be proven whether this number is true or not but certainly many did quit the party."

[37] It is most unlikely that the appellant would have voiced his opposition to the regime in such a public way in China. He is not a political activist, but has taken advantage of the freedom available to him in New Zealand in order to publicise his political views. However, the timing of the publication of his notice to quit the CCP was conveniently close to the filing of his claim to refugee status. The Authority has given consideration as to whether the publication of this notice to quit is a deliberate strategy to manufacture a *sur place* claim to refugee status. The timing of this publication may well have been intended to assist his refugee claim. In view of our findings below, however, it is not necessary for a determination to be made as to the appellant's motivation for publicising his political views when he did.

The appellant's experience of *Falun Gong*

[38] The appellant advised the Authority that in China he had not wanted to study or practise *Falun Gong*. He read his copy of *Zhuan Falun* once only and did not attempt any further study of *Falun Gong*. He also stated that he was discouraged by the likelihood of being reported to the authorities if discovered practising *Falun Gong*. He was prepared to suffer demotion, ostracism from members of his CCP group and undergo the discipline of writing regular reports which he knew could worsen his situation in order to defend the freedom of *Falun Gong* practitioners' right to follow the practices and teachings of *Falun Gong*. But beyond this, he was quite candid in claiming that he had no further participation in *Falun Gong*.

[39] Similarly, on arrival in New Zealand, he did not know whether it was legal to practise *Falun Gong* in this country. Initially, his time was occupied with supporting himself and his wife and avoiding detection by New Zealand immigration authorities, particularly after the deportation of his son. He was very suspicious of other Chinese and avoided revealing to them his illegal status here. He attended a *Falun Gong* demonstration in a square in Auckland in January 2006. From here he obtained "The Nine Commentaries" which revealed to him, for the first time, the full extent of the CCP suppression of *Falun Gong*. However, he still did not follow up or make any further enquiries with the demonstrators as to facilities or opportunities for the study and practice of *Falun Gong* in New Zealand because the people he observed at the demonstration were from Fujian province. He could not easily understand them and did not trust them. In particular, he did

not want to reveal his illegal status in New Zealand.

[40] However, when he met XX, he liked and trusted her. He was able to speak freely to her in their mutually intelligible dialect and was impressed with her as a person. He became interested in *Falun Gong* teachings as described by her and began to attend regular practice classes of *Falun Gong* held by XX. He also attended a *Falun Gong* demonstration in October 2006 in a public square in the city. He continues regular classes of instruction with XX.

[41] The appellant now practises *Falun Gong* every evening for an hour or so. In addition, he practises three or four times a week in a park with other *Falun Gong* practitioners. He says that the practice of *Falun Gong* has greatly improved his health and mental outlook. He has now become a dedicated follower of *Falun Gong*.

[42] He was able to demonstrate readily the *Falun Gong* exercises and when questioned about *Falun Gong* teachings regarding matters such as eating meat, medical treatment, alcohol, smoking and the killing of animals, he readily answered and explained *Falun Gong* teachings on these and other matters.

[43] The appellant candidly admitted that, should he return to China, he would confine his practice of *Falun Gong* to his own home in order to avoid detection. But he would also talk to people about the benefits of *Falun Gong*. *Falun Gong* is now a part of his life essential to his physical and emotional wellbeing.

Country information

[44] Since the Chinese government banned *Falun Gong* in 1999, designating it an evil cult, there has been no softening in its treatment of *Falun Gong* practitioners. The Human Rights Watch report *Dangerous Meditation: China and the Campaign against Falun Gong* (January 2002) describes in detail the treatment of apprehended practitioners as consisting of lengthy administrative detentions, re-education in labour camps and torture. Since the publication of that detailed report, the predicament of *Falun Gong* practitioners has remained unchanged; Canadian Immigration and Refugee Board, Research Directorate report, *China: Situation of Falun Gong Practitioners and Treatment by State Authorities 2001-2005* (31 October 2005). According to this report, the distribution of *Falun Gong* material and public practice meet with the harshest penalties, but

even:

“Practising *Falun Gong* in the privacy of one’s own home may be possible but, according to Human Rights Watch, it could become dangerous if officials or the police became aware of it.”

[45] Individuals who have failed to renounce *Falun Gong* may still undergo criminal, administrative or extra-judicial punishments. In addition to re-education through labour, *Falun Gong* practitioners have reportedly been incarcerated in psychiatric institutions; (refer DIRB report *supra*). In 1999, the Chinese government established the 610 Office which has headquarters in Beijing and branches in every province. Its sole function is to suppress the practice of *Falun Gong*. The Human Rights Watch report, *Dangerous Meditation: China’s Campaign Against Falun Gong* (*supra*) reports that pursuant to a plan devised by President Jiang, the 610 Office was established:

“The plan called for the immediate formation of local “anti-cult taskforces” and similar units in universities [...] and social organisations to augment the 610 Office (named for the date of its founding), which reportedly had been directing the crackdown since June 10, 1999 and the Propaganda Work Office which was in charge of the media campaign. It ordered local officials to detain active practitioners and to make certain that families and employers guaranteed the isolation of those unwilling to formally recant.”

[46] The continued suppression of *Falun Gong* is reported in the UK Home Office *2006 Operational Guidance Note: China* (21 November 2006):

“The arrest, detention and imprisonment of *Falun Gong* practitioners continued during 2005, and there have been credible reports of deaths due to torture and abuse. There have also been reports that practitioners who refuse to recant their beliefs are sometimes subjected to harsh treatment in prisons, extra-judicial re-education through labour camps and legal education centres. Due to the strength of the government’s campaign against *Falun Gong*, there is very few public activities from *Falun Gong* activists within China during 2005. ...

There is widespread repression of *Falun Gong* by the Chinese authorities and *Falun Gong* practitioners/activists may face ill-treatment in China as they come to the attention of the Chinese authorities.”

Conclusions as to well-foundedness

[47] The Authority finds that the appellant came to New Zealand in an attempt to escape the restrictions of life in China. However, the Authority is of the view that he is now genuinely committed to *Falun Gong*. His account is of a gradually evolving disillusionment with the Chinese Communist Party and, in particular, with its treatment of *Falun Gong* and other political dissidents. The catalyst for his involvement in *Falun Gong* was his meeting with XX. He was impressed by her teachings and the evident sincerity of her belief. The practice of *Falun Gong* and

the study of *Falun Gong* teachings have become a regular and frequent part of his life. He spoke convincingly about the effect that *Falun Gong* has had on his physical and mental well-being and evidenced a significant degree of understanding about the teachings of *Falun Gong*.

[48] Given the pervasive nature of surveillance by local neighbourhood committees, work units and the police, there is a real chance that his *Falun Gong* practice and sympathies would come to the attention of the authorities, particularly in view of his previously expressed support of *Falun Gong* and the occasional surveillance he experienced prior to his departure.

[49] After considering the country information above, we are satisfied that the discovery of his *Falun Gong* practice would result in his being persecuted.

[50] The Authority concludes that, on his return to China, the appellant faces a well-founded fear of being persecuted for being a follower of the *Falun Gong* movement, viewed by the Chinese authorities as a serious political adversary (an “evil cult”).

[51] The Authority finds that the first framed issue is answered in the affirmative, the relevant Convention ground being political opinion.

CONCLUSION

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

“J Baddeley”

J Baddeley
Member