

REFUGEE STATUS APPEALS
AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76088

AT AUCKLAND

<u>Before:</u>	A R Mackey (Chairman) S L Murphy (Member)
<u>Counsel for the Appellant:</u>	H Hylan
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Dates of Hearing:</u>	26 & 27 September 2007
<u>Date of Decision:</u>	6 November 2007

DECISION

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

INTRODUCTION

[2] The appellant arrived in New Zealand on 20 November 2001 on a limited purposes visa. The visa expired on 5 February 2002 and he remained illegally in New Zealand until he lodged an application for refugee status some four and a half years later on 27 September 2006. He was interviewed by the RSB on 1 and 2 November 2006 and a decision declining his application was delivered on 26 June 2007. It is from that decision that he has appealed to this Authority.

[3] The appellant's claim is primarily based around *Falun Gong* activities undertaken in China and New Zealand. The key issues are the credibility of the

appellant's account and risks on return to China based on the assessment the Authority is required to make of his case.

[4] Counsel provided written opening submissions on 18 September 2007 and written closing submissions on 27 and 3 October 2007. These have been taken into account in this decision.

THE APPELLANT'S CASE

[5] The appellant is from AB City in China and is of Chinese ethnicity.

[6] He was introduced to *Falun Gong* in early 1999 by a friend, BC, who gave him a copy of the Zhang Falun book. After reading the book, he became a *Falun Gong* practitioner, practising once or twice per day.

[7] Prior to the Chinese government crackdown on *Falun Gong* in July 1999, the appellant would practise outside in the back garden of his house alone or in the playground of a primary school with a group of seven or eight fellow practitioners. BC acted as a tutor to the group.

[8] After the crackdown, BC's house was raided and he was arrested and sentenced to three months of forced labour. The appellant's activities did not, however, come to the attention of the authorities. He continued to practise inside his home, at times with others in the group. He would also practise at the home of other practitioners on occasion.

[9] The appellant married in early 2000. The couple had a child in 2001. Shortly after this, his family advised him to leave China on account of the risk to him arising from his *Falun Gong* activities. He was issued a passport in June 2000. He obtained the associated security clearance without difficulty.

[10] Prior to leaving China, the appellant buried his *Falun Gong* materials on his property.

[11] He left China without difficulties in November 2001, after obtaining a limited purposes visa to enter New Zealand.

[12] After arriving in New Zealand, the appellant stopped practising *Falun Gong* for two weeks “for some reasons or circumstances I can’t say now”, after which time he practised daily until the date of the hearing.

[13] For the first two years in New Zealand, he did not attempt to make contact with any other practitioners, instead practising alone at home. In 2003, he saw a *Falun Gong* sign board outside a house. He went into the house and met a woman practitioner, whom he called “Auntie”. She introduced him to the *Falun Gong* community in New Zealand.

[14] After this meeting, the appellant undertook group *Falun Gong* activities in the form of Saturday study sessions in Ellerslie and Sunday exercise sessions outside the Chinese Consulate. Both activities he did nearly every week until the date of the hearing.

[15] In 2003, the appellant met DE, the leader of the Chinese Democratic Party (“CDP”) in New Zealand when working on a construction site. The appellant then became a supporter of the CDP and became involved in some of their activities. He did not become a member of the party. He attends forums that are convened periodically when persons involved in the Chinese democracy movement come to New Zealand, such as the 2007 visit of Dan Wong, the leader of the Students Democratic Movement in China.

[16] The appellant claimed that in January 2006, he was appointed to be a trustee for the “A” Trust. The Trust has a focus on the Democracy movement in China. (The document from the Companies Office provided to the Authority in this regard shows the appellant’s date of appointment as 2 May 2007.)

[17] The appellant started attending demonstrations from about early May 2006. The first was a *Falun Gong* demonstration in May 2006 celebrating 10 million people withdrawing from the Communist Party. He attended the demonstration at this time because he realised after reading books that he was obliged to participate in such activities and “disclose the truth”. The day after this demonstration, photographs of it were posted on the *Epoch Times* website, including one which shows him in the background holding a banner. The second protest he was involved in was a commemoration of the Tiananmen massacre on 4 June 2006. More recently he was involved in many demonstrations and public practice of *Falun Gong* in both Auckland and Wellington. He has also distributed *Falun Gong* pamphlets in both cities.

[18] In May 2006, the appellant's wife telephoned the appellant and advised him that she had been approached by the Chinese authorities and told that if her husband goes back to China, he must report to them. She telephoned the appellant again in September 2006 to say that she had again been approached by the Chinese authorities and told that her husband was involved in some activities overseas that were "not good to the Chinese authorities".

[19] In June 2007, the appellant's wife tried to enrol her child into primary school but the application was unsuccessful. The school authorities advised her that this was because of the appellant's *Falun Gong* activities. She was subsequently able to secure the enrolment after paying 10,000 yuan.

DOCUMENTS

[20] All documents provided by the appellant's counsel have been considered by the Authority. These included:

- a. a printout from website http://wqkb.net/Article_View.asp?id=2512 including photographs of the appellant in *Falun Gong* protest activities;
- b. photographs from *Epoch Times* website including a photograph of the appellant at a *Falun Gong* protest in April 2006;
- c. 59 photographs of the appellant attending various *Falun Gong* demonstrations from April 2006;
- d. a statement from P, the leader of the Chinese Democratic Movement in New Zealand, dated 18 September 2007. (The Authority enquired whether P would be giving evidence and was advised that unfortunately he would not as he was out of New Zealand.)
- e. a Companies Office printout on the "A" Trust;
- f. a receipt from the "A" Trust;
- g. a letter from C of *New Times*, dated 29 September 2007;
- h. a letter from Z and J, dated 1 October 2007;
- i. a letter from *Epoch Times* New Zealand branch managing director, undated;

- j. a letter, dated 30 September 2007, from the co-ordinator “New Zealand Quit the Chinese Communist Party Service Centre Inc”, stating the appellant had attended various activities in New Zealand; and
- k. *Epoch Times* (New Zealand) article, dated 23 July 2007, “*Falun Gong* mark eight years of persecution at Chinese Embassy” and copy of a website report, dated 28 July 2005, from www.clearwisdom.net/mighui.ca correspondent.

THE ISSUES

[21] 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.”

[22] 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

[23] The appellant's evidence was extremely unreliable, both as to general matters relating to his background and in relation to his practice of *Falun Gong*. The Authority accepts the appellant's credibility only in so far as his attendance and involvement at *Falun Gong*/democracy activities in New Zealand since April/May 2006.

GENERAL UNRELIABILITY OF EVIDENCE

[24] The appellant has given three divergent work histories relating to his time in China and a variety of unconvincing and contradictory explanations for the discrepancies. Similarly, he has given an array of differing details as to where and with whom he has lived in New Zealand and several unsatisfactory explanations for this including, to the Authority, that earlier untrue address details had been caused by an "evil power controlling" him.

[25] Moreover, and of particular concern, potential questions have arisen as to the appellant's nationality. The man whom the appellant claims to be his brother, a New Zealand citizen and financial supporter of the appellant's trip to New Zealand, goes by both a Chinese name (the surname of which he shares with the appellant) and a Vietnamese sounding name. When asked to explain why his brother had the alternative Vietnamese sounding name, the appellant explained that it was in fact his brother's Chinese name in Cantonese dialect. He further maintained that all family members, including his brother, were born in China. However, the Authority had access to a copy of the front page of the brother's passport, which was in his Vietnamese sounding name and described his place of birth as being Vietnam. The Authority's disclosure to the appellant of the passport page (the photograph of which the appellant confirmed to be his brother), resulted in a barrage of conflicting, vague and evasive evidence, during which the appellant both denied any family connections with Vietnam and in turn conceded and denied his brother had connections with Vietnam; at one point he said that he had in fact spent time in a Vietnamese refugee camp in Korea prior to coming to New Zealand. One possible explanation for this curious evidence is that the background details the appellant has given are false and the family originates from Vietnam. However, that question need not be determined in this context. The appellant asserts a refugee claim as against China, from where he apparently

arrived and for which he had an operative passport. For the reasons articulated below, that claim fails.

FALUN GONG PRACTICE PRIOR TO 2006

[26] We do not believe, considered in the round, the appellant's evidence that he practised *Falun Gong* in China and departed China for fear of its discovery. His evidence about this was implausible and inconsistent.

[27] Firstly, were the appellant so committed to *Falun Gong* as to leave his new wife and young child to pursue it and so committed to group practice that he would risk doing it after the 1999 crackdown, one would have expected him to take up every opportunity to be involved with the movement after arriving in New Zealand. However his evidence was to the contrary. He stated he stopped practising *Falun Gong* entirely for two weeks upon arrival in New Zealand and subsequently states he practised alone at home for the next two years, making no effort to garner any *Falun Gong* contacts or be involved in any group practice or other *Falun Gong* community activities. His explanations for this were contradictory. He first claimed that he practised at home for two years because he feared his activities would be made public. He then said "For quite some time I couldn't find anyone who is related to *Falun Gong*." Contradicting himself further, he subsequently said that he had made no attempts at finding anyone related to *Falun Gong*.

[28] Moreover, in spite of supposedly departing China for fear of the consequences of his *Falun Gong* activities, the appellant did not apply for refugee status for some four and a half years after arriving in New Zealand. Neither of his two explanations for this were satisfactory. One explanation, that he did not want to lose his Chinese citizenship because his wife and child were in China, is disbelieved as he had earlier said that his intention upon leaving China, on the advice of his agent, was to bring his wife and child to New Zealand under family reunification policies, once he had secured a right to remain in New Zealand. His other explanation, that he "still hoped that the Chinese government might stop persecuting *Falun Gong* practitioners" was unconvincing. The appellant was illegally in New Zealand for over four and a half years prior to his application for refugee status. If he was so frightened as to the consequences of his *Falun Gong* activities in China that he would leave his new wife and young child, it is implausible that he would make no attempts to secure his status in New Zealand and risk, for such a protracted period, deportation back to China. This is

particularly so when he had been sponsored to and had lived in New Zealand, with his brother, who had been here some years and was stated to be a refugee.

[29] The appellant later claimed that he decided to apply for refugee status at the time he did because he had learned from a report written by two Canadians that the organs of *Falun Gong* practitioners were being harvested. The Authority does not find this convincing. Since the crackdown on *Falun Gong* in July 1999, there has been ongoing evidence of the arbitrary imprisonment and torture of practitioners, and his own evidence is that the mistreatment of practitioners caused his departure from China. In the context of the country information as to the ongoing serious mistreatment of practitioners, it is implausible that the appellant would only feel the need for refugee protection after revelation of organ harvesting.

[30] In addition to the implausibility of the evidence as to his involvement in *Falun Gong* in China, the Authority also notes that the appellant gave inconsistent evidence relating to his practice at this time. He told the RSB that he had given the DOL wrong details about his work when applying for a visa because

“If [he] had provided a letter from [his] true employer, the Public Security Bureau (“PSB”) which processes the passport, would have been able to detect his FG involvement.”

[31] However, he told the Authority that his workplace were not aware of his *Falun Gong* practice. When this discrepancy was drawn to his attention, he endeavoured to explain away the excerpt from the interview report as resulting from “discrepancies in interpretation”.

[32] He also told the RSB that the house of his fellow practitioner, BC, was raided after the crackdown. After describing the incident, he was asked by the RSB if anything else happened, to which he responded that he was “not clear”. However, he told the Authority unhesitatingly that BC had been arrested and sentenced to three months of forced labour in the course of the incident. When the Authority asked the appellant why he had told the RSB that he was not clear whether anything else had happened during the raid, when in fact BC had been arrested, his response was “because I just want to tell the truth”. When subsequently asked why he had not wanted to tell the RSB the truth he responded “When I was asked the question I just gave the answer.”

[33] In addition to rejecting the appellant’s claimed *Falun Gong* involvement in China, the Authority disbelieves his evidence of involvement in *Falun Gong* in New

Zealand prior to 2006. In spite of a claimed close involvement in the *Falun Gong* movement from 2003 (after his chance encounter with “Auntie”), the appellant presented no witness or other evidence to corroborate this, in contrast to his extensive photographic evidence of his activities since 2006. Moreover, the appellant’s evidence about his early involvement in the *Falun Gong* community in New Zealand was contradictory. He told the RSB (in his November 2006 interview) that he “recently” studied Falun Dafa on Saturday mornings with other practitioners, in spite of his claim to the Authority to have been doing this weekly since meeting “Auntie” in 2003. When the Authority drew to his attention to this discrepancy, he said “I can’t recall whether I said that in that interview” but conceded that if he had indeed described these activities commencing three years earlier as having started “recently”, that would have been wrong. He also was recorded by the RSB in its interview report as having met “Auntie” in 2006 rather than 2003. His counsel, in his written response to the RSB interview report, accepted that part of the chronology as correct. The appellant’s explanation for the discrepancy (“It could be a typographical error or it could be reason that I overlooked at this point”) is not convincing. His meeting with “Auntie” is a key part of his account as it heralds his involvement into the *Falun Gong* community in New Zealand. It is thus unlikely that the appellant would fail to notice in the interview report that the event was wrongly recorded as occurring three years after it actually did.

[34] A further feature of the account which causes the Authority to disbelieve his claimed *Falun Gong* involvement from 2003 was his failure to mention in any evidence, prior to the hearing before the Authority, his sustained pattern of near weekly protests outside the Chinese Consulate from 2003. His written statement simply said “I took part in protests against persecution of Falungong Practitioners in front of the Chinese Embassy” and he said in his RSB interview that he took part in protests outside the Chinese Embassy “sometimes”. His explanation for failing to mention his three years of protests in his RSB interview, that he was not sure if the question was asked, does not explain the omission. If the appellant had indeed had such an extensive history of repeated protests outside the Chinese Embassy, one would expect that, in the event that this evidence did not emerge as a result of the RSB’s questioning, his counsel would have made certain it was elicited in re-examination. In the unlikely event that counsel had somehow failed to obtain this evidence in re-examination, the appellant would have remedied the omission in his written response to the interview report. His failure to mention this protracted and sustained level of protest at any stage in his RSB application,

coupled with the other flaws as to the timing of his involvement in the *Falun Gong* community in New Zealand, leads to the inevitable conclusion that this evidence is untrue.

[35] In spite of there being credible evidence of the appellant attending one *Falun Gong* and one pro-democracy demonstration in the six months leading up to his refugee claim, the Authority does not accept the appellant's evidence that the Chinese authorities had harassed his wife about his *Falun Gong* activities in May and September 2006. First, the appellant was asked both by the RSB and the Authority as to why he lodged his refugee application at the time he did. If, as he claimed in his Confirmation of Claim form, his wife had advised him the previous day that the Chinese authorities were seeking him, that would surely have been a significant factor in his lodging the application. However, he did not mention this as a factor either to the RSB or to the Authority, until the Authority prompted him after he had given an unrelated explanation. Moreover, the appellant gave inconsistent evidence about the number of times the Chinese authorities had approached his wife; initially he said it was once in May 2006 and when subsequently reminded that his Confirmation of Claim form referred to an incident in September 2006, he changed his evidence to say there had been a second occasion which he had forgotten.

[36] In light of the above, the Authority rejects the appellant's evidence of involvement in *Falun Gong* in China, and in New Zealand prior to 2006. The only evidence of the appellant's that the Authority is able to accept is that he had a very low level involvement in the China Democratic Party from 2003 and became involved in public *Falun Gong* activities and democracy demonstrations from 2006, the year he lodged his refugee application.

INTENSIFICATION OF APPELLANT'S ACTIVITIES 2006 - 2007

[37] The appellant lodged his application for refugee status with the RSB in a letter dated 25 September 2006, which was received by the RSB on 27 September 2006. The RSB went on to interview the appellant on 1 and 2 November 2006 and issued its decision on 26 June 2007, wherein refugee status was declined. It was determined that the appellant had

“... a low profile within the New Zealand *Falun Gong* community. His involvement has been limited to that of participating in events as opposed to having an organising or leading role. Due to his low profile, it is considered that to the Chinese authorities would not be aware of [the appellant's] practice of *Falun Gong* in New Zealand.”

[38] Then, relying on *Refugee Appeal No 75509* (12 July 2005), where it is found that an appellant who was not a genuine *Falun Gong* practitioner would therefore not practise *Falun Gong* upon return to China, the RSB found the appellant not a genuine *Falun Gong* practitioner and, as such, that he would not continue his current level of *Falun Gong* activities should he return to China. The RSB also noted that in a *sur place* claim involving bad faith, the degree of risk and harm a refugee claimant potentially faces must be considered alongside the degree of bad faith of his committed actions and a balance must be undertaken; *Refugee Appeal No 75536* (25 May 2006) at [54]. In the appellant's case, they considered the degree of bad faith was considered to outweigh the potential risk of discovery by the Chinese authorities or the harm he may face should he return to China.

[39] In a letter from the DOL, dated 21 September 2006, the appellant was advised that he had been unlawfully in New Zealand since 6 February 2002 and that unless he departed immediately, a removal order would be served. This letter was sent to the appellant at an address recorded as on Auckland's North Shore. Before the Authority, the appellant stated that he had not received that letter and his counsel submitted that there was no house at that address.

[40] The Authority has noted above that there is general unreliability in the appellant's evidence and, in particular, the array of differing details relating to where and with whom he has lived in New Zealand.

[41] Also relevant in this regard is the evidence of the appellant that he spoke to his wife on the telephone on 24 September 2006 and she told him that the government authorities had asked her whether he was practising *Falun Gong*. His

wife advised him not to return to China because he would suffer persecution from the authorities.

[42] The issue of the timing of his refugee application and whether it was due to the letter from the DOL advising him of his imminent removal, was considered by the RSB and by this Authority. The RSB concluded, as this Authority has, that his evidence relating to all of his addresses in New Zealand was full of contradictions, mobility and implausibility and was thus difficult to accept.

[43] In a second interview with the RSB, the appellant is recorded as stating that his second address in New Zealand was a differently spelt address and that he used that address as his postal address. It was put to him that, according to the DOL, his address was at another house on the North Shore. The appellant stated he did not live there but all letters would be sent to that address. The appellant then claimed to the RSB that the address on the letter was incorrect.

[44] The appellant's counsel then submitted there was a mistake on the postal address and that the letter notifying him of his illegal status had never reached him. The RSB accepted that the appellant may not have received the letter from the DOL but also there was a possibility that it may have been received, given the inconsistencies relating to his postal address. They went on to conclude that the date of the letter and the lodgement of the appellant's claim were six days apart; those timings were too close together to be considered just a coincidence. When the same issue was raised by the Authority and it was suggested that the lodging of the refugee application had been a result of receiving the DOL letter, the appellant stated that this was not correct as the address was a section of land, not a house, and thus he could not have received the letter. He acknowledged, however, that the RSB had been given this as a mailing address but stated:

"The interpreter did not fully understand what I said so it is a mistake."

(Reference was made to paragraph 36 and the appellant's response at page 191 of the file.)

[45] The appellant claimed he did not receive the letter and only became aware of it for the first time at the RSB interview.

[46] It is the Authority's conclusion, based on the totality of the evidence, particularly the inconsistencies relating to his addresses in New Zealand, the coincidence of the timing of the posting of the letter from the DOL, the alleged

telephone call with his wife a few days later and then the lodging of his application for refugee status and subsequent events, that the letter from the DOL was received prior to lodging his application and that the appellant has since taken considerable steps to bolster an otherwise weak claim for refugee status.

[47] The *Falun Gong* and Democracy Movement activities of the appellant, and the timing of them, are significant. Prior to lodging his application in late September 2006, the appellant's claim is that he appeared in two *Falun Gong*/Democracy-related activities or demonstrations. These were in early May 2006 and then in the 4 June commemoration activities on that date in 2006. From the Authority's assessment of the appellant's evidence, including the photographic material provided, his role in those two events was relatively insignificant. Moreover, the two photographs he brought to the Authority's attention, from the *Epoch Times* website, show him, even in the colour copies, as virtually hidden behind banners and not someone who is clearly recognisable from these website photographs.

[48] The evidence of his activities, however, after 21 September 2006 and the lodging of his application a few days later, show a significant upswing.

[49] On 29 September 2006, the accepted chronology of events records that he participated in a *Falun Gong* demonstration in Queen Street, Auckland, from 11am until 2pm, along with 50 or 60 other people. On 22 October 2006, shortly before his first interview with the RSB, he practised *Falun Gong* in a spacious area close to traffic lights in Auckland, along with 30 or 40 other people, for a period of two hours. On 29 October 2006, he practised *Falun Gong* with other practitioners outside the Chinese consulate in Auckland and, at this time, he and other practitioners saw people taking photographs of them from inside the Chinese consulate compound. While acknowledging the photographers may not have been taking photographs of him, he was convinced that photographs were taken by Chinese consulate staff.

[50] The appellant stated before the Authority that he attended *Falun Gong* activities each Saturday morning in Ellerslie and on Sundays outside the Chinese consulate. As stated above, the Authority has disbelieved the level of these activities prior to lodging his application. However, since lodging his application, given his general pattern of behaviour, the Authority is satisfied that the appellant, in making every attempt possible to be viewed as a *Falun Gong* practitioner and

blatantly expose himself to the Chinese authorities, has attended these Saturday and Sunday sessions over the past year.

[51] On 2 May 2007, according to the Companies Office records supplied to the Authority, the appellant became a member of the Council of "A" Trust. The Authority is led to the conclusion that his appointment to the council took place shortly before 2 May 2007, on the basis that particular list of officers and trustees appear to have been regularly lodged with the Companies Office and the details of another trustee were lodged on 5 April 2007. Whilst the Authority accepts that he is now a trustee, it does not accept the claim the appellant made during his hearing that his appointment was in January 2006, which appears, from the records, to be the date when the majority of the trustees were appointed (including the appellant's representative as legal advisor).

[52] The written comments below the photographic material from the websites that were provided to the Authority is virtually all in Chinese and, apart from one page (photographs of the appellant outside the Chinese embassy in Wellington on 20 July 2007), the Authority has received no interpretation of comments attached to those websites. It appears, to the best of the Authority's knowledge and from the information provided at the hearing, that the photographs do not relate to the event outside the Chinese embassy commemorating eight years of maltreatment of *Falun Gong* practitioners held on 20 July 2007, but relate to an event in Auckland commemorating the 4 June anniversary in 2006 and possibly an earlier event on 1 May 2006, in Auckland. Without translations, the Authority can of course be no more certain.

THE APPELLANT'S ACTIVITIES OUTSIDE THE CHINESE EMBASSY 20 JULY 2007

[53] This event appears to mark the pinnacle of the appellant's public exposure and protests to date. It is notable that it took place on 20 July 2007, less than four weeks from the date of the refusal of his application by the RSB and three weeks after he lodged his appeal with this Authority.

[54] The photographs of him at this event were submitted to the Authority. The Authority was informed that this event had taken place directly across the road from the Chinese embassy. A translation of the material in the *Epoch Times* of 21 July 2007 states:

"In the morning of 20 July 2007, *Falun Gong* practitioners throughout New Zealand rallied in a city square in Wellington, practising *Falun Gong* in a group, demonstrating anti-persecution. The demonstration parade set off from a city square on the same day, passing through busy commercial area and ended in front of the Chinese embassy to New Zealand. Participants of the parade made speech on the scene and sent strong verbal message into Chinese embassy."

[55] A photograph of the appellant with a pamphlet in his hand has a caption under it which is translated:

"[The appellant], a *Falun Gong* practitioner, is distributing "telling-truth" pamphlets."

[56] The Authority was provided with an article from *Epoch Times* dated 20 July 2007 headed "*Falun Gong* marks eight years of persecution at Chinese embassy" and refers to the same event, stating that the Chinese embassy staff in Wellington pulled the curtains in their offices and hovered near the windows as around 100 *Falun Gong* supporters appealed to them on Friday, 20 July. It also stated that the roadside opposite the embassy was adorned with banners calling for the end of persecution in China and:

"... displays including organ harvesting by military doctors were shown alongside torture demonstrations. Small cages where practitioners were forced to squat inside for up to 120 days were shown; and beams where practitioners were suspended for extended periods were used to show the embassy staff the true nature of the persecution in China," says the co-ordinator for the event, Joan Zhang."

[57] A sound system is reported to have been used to broadcast the practitioners' voices as they address embassy officials in Mandarin. The same report also states:

"There are 3,024 documented cases of *Falun Gong* practitioners who have been persecuted to death in China. Over 100,000 practitioners have been illegally sent to labour camps; more than 6,000 sentenced to prison terms of up to 18 years; hundreds of thousands have been illegally arrested and detained."

[58] These particular photographs and translations were brought to the Authority's attention in the re-examination carried out by the appellant's counsel towards the end of the hearing. The Authority then advised both counsel and the appellant that the appellant's behaviour and presence at the demonstration outside the Chinese embassy in Wellington on 20 July 2007, particularly given the uniform he was wearing and his activities, and that the event had taken place less than three weeks after lodging his appeal with this Authority, could be seen as possibly an act of bad faith on his part in relation to his claim for refugee status. Additionally, the Authority invited comment that the activity had been carried out to bolster that claim and upset Chinese authorities in New Zealand by direct, very blatant and obvious activity.

[59] The appellant responded that he would not remain silent in New Zealand and would come forward to speak up. He said:

“The master (Li) has stated to reveal the truth and offer salvation to all so I must come forward. We are practitioners of *Falun Gong* and should do this. Every co-practitioner is entitled to do something.”

[60] The Authority explained to counsel that because of the appellant’s activities, dress and comments, the Authority was bound to tell him that it was giving consideration to the issue of whether the appellant’s activities were in the nature of bad faith and that his appeal may be rejected on that basis, following the established jurisprudence in New Zealand, as was set out in *Refugee Appeal No 2254/94 re HB* (21 September 1994). The Authority also noted that there was other jurisprudence on this issue in New Zealand, the United Kingdom, Europe and possibly Australia and Canada. Because of the Authority’s concerns, counsel was offered the opportunity to present legal submissions on the issue of bad faith/good faith and its possible applicability to this appellant, on or before Friday, 5 October 2007.

[61] Set out in the fourth issue of the submissions are counsel’s submissions on the good/bad faith issue, as it related to the appellant. In the light of the Authority’s conclusions on the appellant’s lack of credibility on virtually all aspects of his claim and findings that he does not have a well-founded fear of being persecuted on return, set out later in this decision, it has been unnecessary for the Authority to consider the issue of the possible impact of bad/good faith on his claim.

[62] The submissions do note on this issue that, if identified by the Authority, it would be significant only if it could be established the appellant had attempted to mislead or deceive the Authority by giving evidence which he knew to be incorrect.

“It is always possible for honest answers to be made, but this does not necessarily undermine credibility; nor do failures of recollection or minor discrepancies.”

[63] The submissions go on to claim that, in this case, the appellant did not ask to be dressed as he did and his response was spontaneous. His “inner power unconsciously led him to act in a way he did not realise at the time was contrary to his own best interest”. It is further stated that in any event, the appellant was prepared to defend the principles of freedom for his faith which motivated him to accept the danger involved. He was stated as simply doing what the “monks are now doing in Burma, despite their knowledge of the junta’s brutality”.

[64] Counsel further submits that the appellant's active involvement in *Falun Gong*, particularly in July 2007, was so overwhelming that he forgot his own vulnerability and the refugee claim was not predominant in his mind at the time. All he wanted to do was to demonstrate how the Chinese authorities treated *Falun Gong* practitioners and ask others for support and sympathy. The pamphlets he delivered were also stated as being given to him as part of a team effort and that he believes he needs to expose persecution of *Falun Gong* practitioners. It is thus submitted that the appellant considers he has never deliberately acted with a conscious intention of endangering himself for the purpose of creating a risk in order to qualify for refugee status and that he has undertaken *Falun Gong* activities to keep physically healthy and mentally stable.

[65] Finally, counsel submits that any possible interpretation of the documents presented by the appellant as being grounds for reaching a conclusion that he is not a credible witness makes sense only if it is assumed that the appellant knew his name would widely published on the Internet. Such an interpretation, it is claimed, would require the Authority to disregard most of the evidence proving otherwise, for example, the photographs and published documents submitted showing his action in front of the Chinese consulate. He submits that these demonstrations cannot be dismissed as attempts to influence the decision on his refugee claim. Counsel states:

"It is, of course, the easiest thing in the world to assert that someone is being disingenuous when they say they deeply believe in something, it is not so easy to justify that assertion, and in fact the Authority should attempt to do so."

SUMMARY OF CREDIBILITY FINDINGS ON ACTIVITIES IN NEW ZEALAND SINCE MAY 2006

[66] From its analysis of the totality of the evidence presented by the appellant, the country of origin information and submissions placed before it, the Authority accepts the appellant's credibility only insofar as his attendance and participation in the public activities over the period from the beginning of May 2006 through to 20 July 2007. These events are recorded by photographs and letters of confirmation from various associates and others also involved in the same activities/demonstrations. While, however, the Authority accepts the appellant's participation and involvement in these events, it considers that that involvement has been, particularly since September 2006, undertaken predominantly and significantly to bolster his otherwise very weak claim for refugee status.

[67] The Authority is satisfied that his involvement in these activities and demonstrations which took place between 29 September 2006 and 20 July 2007 flow significantly from his receiving notice of the intention of the DOL to remove him from New Zealand, which was quickly followed by his application for refugee status. The appellant's motivation in undertaking these activities is relevant in the Authority's view in the ultimate assessment of risks on return and his profile and possible interest to the Chinese authorities at that time.

[68] The Authority reaches this conclusion after careful and cautious consideration. As noted above, the Authority does not accept the appellant's credibility in relation to his claimed involvement in *Falun Gong* in China, nor his activities in New Zealand in that regard up until May 2006. As set out above, the appellant's evidence lacks consistency and plausibility and, after being given the opportunity for comment on all relevant concerns, showed further contradictions rather than clarification.

[69] The Authority has noted, as did the RSB, the inconsistencies in his addresses, the coincidence of lodging the application so soon after the letter from the DOL (which he claims not to have received), the telephone call from his wife and then the substantial upswing in public protest activities.

[70] During the hearing, the Authority asked the appellant why he had lodged his application for refugee status when he did, that is some four and a half years after arriving in New Zealand. He replied that he had lost confidence in the Chinese authorities totally. The Authority asked if there was any trigger to his application or was it just the general lack of confidence. The reply was that a trigger had been when he realised, from a report prepared by two Canadians, that organs were being harvested from the live bodies of *Falun Gong* practitioners. He was then asked why he failed to mention a second telephone call from his wife made shortly before his application, where she had apparently stated to him that the Chinese authorities had again visited her. He replied that this was the second incident and that he thus considered it was time to make an application for refugee status.

[71] The Authority then put to the appellant that, up until that time, was it correct to state that he did not consider himself a refugee? To this, the appellant replied "Yes."

[72] This apparent concession by the appellant that he did not consider himself to be a refugee until very shortly before he lodged his application, combined with

the appellant's general lack of credibility as set out above, the Authority considers go to the core of his claim.

[73] We are thus left in a situation that indicates the appellant was not at any significant level of risk at all of being persecuted on return to China at the time when his application was lodged in September 2006. For this reason, had the Authority been in the situation where its assessment was being made as at the date of application (which of course is not the situation in refugee law), then emphatically it would have concluded that the appellant did not have a valid claim. The events in which he has participated since that time, the Authority considers, whilst apparently predominantly undertaken to manipulate the refugee status process, do show a real risk that he has been noticed by the Chinese authorities, at least in New Zealand, as he no doubt desired would happen.

[74] The Authority is thus left to address the question: accepting that the Chinese authorities are aware of the appellant's public activities in this country over the past year, which culminated in dressing as he did and carrying out activities outside the Chinese embassy in Wellington on 20 July 2007, does this lead to a well-founded fear of being persecuted for a Refugee Convention reason, if the appellant were returned to China?

[75] In this regard, having rejected the appellant's credibility on his *Falun Gong* activities up to September 2006, and then his lack of genuine commitment to that faith since that time, but rather using it as a cloak in which he could attempt to bolster a weak claim, the Authority finds that, on return, he would not attempt to either take part in *Falun Gong* activities nor try and persuade the Chinese authorities that he was or would be a *Falun Gong* practitioner. His profile, therefore, must be assessed against those findings and the likely reaction of the Chinese authorities to this appellant on the basis of the blatant activities in New Zealand over the past year. The Authority is of the view, therefore, that based on the facts found, and its assessment of country of origin information set out below, the Chinese authorities, on his return, will see him for what he is, a failed asylum seeker who attempted to manufacture a claim in New Zealand, rather than a *Falun Gong* practitioner or democracy activist.

RISKS ON RETURN AS A FAILED ASYLUM SEEKER

[76] The most objective and up to date material acquired from a number of sources, including the United States Department of State, UNHCR and indeed,

some comments from *Epoch Times* itself, are helpfully brought together in the UK Border and Immigration Agency, *Country of Origin Information Report - China* (30 April 2007) (COIR). Of particular note is the COIR under the section headed “*Falun Gong*”, paragraphs 21.15 to 21.25 and 21.34 through to 21.38. The Authority also noted, in relation to “Monitoring of activists abroad”, paragraph 21.43 - 21.45. Related to that, the Authority also noted the Operational Guidance Note (OGN) from the UK Home Office - Border and Immigration Agency dated 12 July 2007, in particular paragraphs 3.6.2 through to 3.6.12.

[77] The COIR at paragraph 21.15 quotes the USSD International Religious Freedom Report 2006, stating:

“*Falun Gong* practitioners continue to face arrest, detention, and imprisonment, and there have been credible reports of deaths due to torture and abuse. Practitioners who refuse to recant their beliefs are sometimes subjected to harsh treatment in prisons, re-education through labour camps, and extra-judicial ‘legal education’ centres, while some who recanted returned from detention. Reports of abuse were difficult to confirm within the country and the group engaged in almost no public activity within the country. Overseas *Falun Gong* practitioners claimed this was a result of the harsh government campaign, which began in the 1999 crackdown against the group. There were continuing revelations about the extra-legal activities of the Government’s ‘610 office’ including torture and forced confessions, a state security agency implicated in most alleged abuses of *Falun Gong* practitioners.”

[78] The same source goes on to quote that there had been as many as 2.1 million adherents to *Falun Gong* in 1999 and that the number may have been higher; that it has declined since the crackdown but that there are still hundreds of thousands of practitioners in the country, according to reliable estimates. It goes on to state (21.17):

“According to *Falun Gong* practitioners in the United states, since 1999 more than 100,000 practitioners have been detained for engaging in *Falun Gong* practices, admitting that they adhere to the teachings of *Falun Gong*, or refusing to criticise the organisation or its founder.”

[79] At paragraph 21.18, the Amnesty International report of 2006 is quoted. This states that:

“Many *Falun Gong* practitioners reportedly remained in detention where they were at high risk of torture or ill-treatment.”

[80] At paragraph 21.21, the UNHCR position paper on *Falun Gong* of 1 January 2005 is reported:

“As indicated above, there exists 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). Therefore, although membership of *Falun Gong* alone would not give rise to refugee status, a

prominent role in certain overt activities (such as proselytising or organising demonstrations) which bring the membership to the attention of the authorities, may do so. As is general practice, each claim requires an examination on its own merits. This examination should be undertaken in light of the individual profile and personal experiences of the asylum-seeker, the nature of his/her role and activities within the movement and whether these activities had been (or could be) brought to the attention of the authorities and could cause treatment that is tantamount to 'persecution'."

(In the Authority's considerations, it has closely followed the above guidance from the UNHCR.)

[81] The Authority has concluded, as noted above, that the profile of this appellant was minimal and insignificant up until the time of his application. It finds that his activities, since the time of his application for status, are likely to have been noticed but, because the Authority does not consider he has a committed *Falun Gong* faith, any involvement in activities recently in New Zealand would be explained and/or probably recanted by him to the Chinese authorities on return.

[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.

[83] There is limited current country information to which the Authority was able to refer (and none was produced by the appellant). Of most assistance is the material in the UK Operational Guidance Note (OGN) of 12 July 2007 from the Border and Immigration Agency UK (www.ind.homeoffice.gov.uk) and the Country of Origin Information (COI) Report - China of 30 April 2007, referred to in the OGN. The summary of the COI China country report of April 2007 set out in the OGN was placed before the appellant and his counsel for comment. The Authority found reference to risk on return to China also referred to in a UNHCR/Accord Report of 2005, "China: 10th European Country of Origin Information Seminar", 1-2 December 2005, Budapest, (*Libinfo*), an Australia *ABC* report and some *Clear Harmony* and *Epoch Times* website reports. All of these reports are noted below.

[84] The OGN sets out conclusions at 3.6.11 and 3.6.12. These state:

"Conclusion. There is widespread repression of *Falun Gong* by the Chinese authorities and *Falun Gong* practitioners/activists may face ill-treatment in China if

they come to the attention of the Chinese authorities. *Falun Gong* practitioners and in particular *Falun Gong* activists who have come to the attention of the authorities are likely to face ill-treatment that may amount to persecution in China and therefore are likely to qualify for a grant of asylum under the 1951 Convention by reason of imputed political opinion.

However, the Court of Appeal found in **L (China) v SSHD [2004] EWCA (Civ) 1441** that anyone can become a member or cease to be a member of *Falun Gong* at any time and can practise *Falun Gong* exercises on their own in the privacy of their home without significant risk of being ill-treated. The IAT found in **[2005] UKIAT 00122** that there will not normally be any real risk from the Chinese authorities for a person who practices [sic] *Falun Gong* in private and with discretion. Therefore, ordinary *Falun Gong* practitioners who have not come to the attention of the Chinese authorities are unlikely to qualify for a grant of asylum or Humanitarian Protection.”

[85] The same OGN sets out several paragraphs on the treatment of *Falun Gong* between 3.6.2 and 3.6.7. These state:

- “3.6.2 Treatment.** Estimates of the number of *Falun Gong* (or Wheel of the Law, also known as *Falun Dafa*) practitioners have varied widely; the Government claimed that prior to its crackdown on the *Falun Gong* beginning in 1999, there might have been as many as 2.1 million adherents of *Falun Gong* in the country. The number has declined as a result of the crackdown, but according to reliable estimates there are still hundreds of thousands of practitioners in the country.
- 3.6.3 The arrest, detention, and imprisonment of *Falun Gong* practitioners continued during 2006, 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 were very few public activities from *Falun Gong* activists within China during 2006.
- 3.6.4 Given the lack of judicial transparency, the number and treatment of *Falun Gong* practitioners in confinement is difficult to confirm. Nevertheless, there is substantial evidence from foreign diplomats, international human rights groups, and human rights activists in Hong Kong that the crackdowns on the *Falun Gong* have been widespread and violent, particularly in the period immediately following prohibition. Overseas *Falun Gong* sources claim that more than 1,000 people detained in connection with the *Falun Gong* have died since the organisation was banned in 1999, mostly as a result of torture or ill-treatment.
- 3.6.5 In addition to reports of harassment and detention of adherents, the *Falun Gong* movement has claimed that family members of practitioners are also subject to harassment. There are accounts of family members allegedly being arrested in order to pressure adherents who are wanted by authorities into surrendering, or otherwise punished for the adherents’ *Falun Gong* activities. However, it is unclear to what extent that these accounts are accurate and whether they are part of a systematic national practice or are the work of zealous local officials.
- 3.6.6 The UNHCR reported in January 2005 that there is no evidence to suggest that all *Falun Gong* members are being systematically targeted by the Chinese authorities (especially in view of the large numbers involved). Therefore, membership of the *Falun Gong* alone would not give rise to refugee status, although a prominent role in certain over activities (such as

proselytising or organising demonstrations) which brings the member to the attention of the authorities may do so.

- 3.6.7 Members are not 'sought out' at home by the Chinese authorities; however even lower level members may risk longer-term detention if they go out and practice [sic] in public. Likely punishment would be detention in 're-education through labour' camps and (extra-judicial) beatings that often accompany such detention. Thus, the likelihood of members/practitioners returning to China and engaging in public activities is low."

[86] The COI report of April 2007 itself refers to the monitoring of activists abroad (21.43 to 21.45). It quotes the *Epoch Times* (a publication sympathetic to *Falun Gong*), on 4 June 2005, which refers to a deported *Falun Gong* practitioner from Germany to China who was sentenced to three years in a labour camp after refusing to recant his beliefs on return to China. Paragraphs 35.10, 35.05 "Entry/exit Procedures" in the COIR were also noted. Paragraph 35.06 "Treatment of returnees" sets out a report from *New York Times* of 11 June 2006, which states:

"There is some dispute about what happens to those who are repatriated to China, in part because there have been so few ... a Department of Homeland Security told me: 'We have no reports of people who have been sent back to China being persecuted.' Others, though, are not so sanguine. Two years ago, Richard Posner, a judge of the US Court of Appeals for the 7th Circuit, vacated a deportation order for a Chinese youth because the immigration judge did not consider the evidence, numerous human rights reports from both the US and British organisations - that the asylum-seeker might be sent to jail or a labour camp if returned to China. Posner was concerned that the Chinese youth might be tortured upon his return, though he also conceded that 'The treatment of repatriated Chinese by their government is to a considerable extent a mystery.' Indeed, one Chinese legal scholar I spoke with, Daniel Yu, said that while there is a law on the books in China that calls for a short jail sentence if a person leaves the country illegally, more than likely whatever punishment there might be is at the discretion of local officials."

(In passing, we note that this appellant did not depart from China illegally.)

[87] The only other reports, apart from the *Epoch Times*' report of 4 June 2005 referring to the person returned from Germany to China, the Authority could locate, were also in *Epoch Times* or related *Falun Gong* reports. The first is one from Ireland: "Feng and Fang's current situation" (undated) TCD *Falun Dafa* website, <http://societies.csc.tcd.ie/falundafa/fengandfang.html> (accessed 23 October 2007). This stated that Mr Feng and Miss Fang, because of their belief in *Falun Gong*, were both persecuted in China.

"In December 1999, both young students bravely returned to China to peacefully appeal to the Chinese government to cease its persecution of Falun Dafa practitioners. Both students were detained, their passports were taken away and their right to return to China and continue their education was denied."

[88] This event however appears to have taken place in 2000, although the story goes on to state that in summer 2002, the two of them managed to reclaim their passports and obtain Irish visas but were apparently unable to return due to being blacklisted. A further report in *Epoch Times* “*Falun Gong* practitioner deported: supporters dismayed”, 9 August 2005, states that there was strong concern about a Canadian art professor, Mr Zhang:

“Despite being a Canadian citizen, Mr Zhang’s adherence to *Falun Gong* resulted in Chinese authorities sentencing him to three years in a forced labour camp while he was visiting China in 2000. he was rescued back to Canada in 2001, but not before being severely tortured with an electric baton. He was also forced to denounce his beliefs, then to thank his torturers on camera, leaving him with a feeling ‘worse than death’”.

[89] This same report appears to the same incident of the people returned from Germany noted above. Both the last two reports date back six or seven years. A more recent report, also in an *Epoch Times* article “UN refugee secretly deported to China”, 30 March 2007, states:

“Russia - On March 29, St Petersburg residents and accredited UN refugees Ma Hui and her 8 year-old daughter, Ma Jinjing, were unlawfully kidnapped and illegally deported back to China. Both had been confirmed to have arrived in China.

Ms Ma practises *Falun Gong*, and her daughter’s deportation is believed to have been at the insistence of the Chinese Communist Party regime’s persecution of *Falun Gong*, in this case extended to Russia.”

[90] The report goes on to state that Ma Hui was stated by her husband to be a *Falun Gong* practitioner and a refugee who had been protected by the United Nations for three years.

[91] *Australian Broadcasting Corporation* (ABC) transcripts of 29 June 2007 report that a pro-democracy activist who had been seeking asylum in Australia since 1997, was deported earlier in 2007 and had spoken about being interrogated and tortured after returning. The report goes on to state that “Mr Zhang” was of interest to the Chinese authorities because he supported students during the 1989 pro-democracy movement and organised a large taxi strike in 1994. He was also noted as a *Falun Gong* protester and involved in a well-publicised hunger strike while being detained at Villawood. The report states that as soon as the Australian immigration officials were out of sight at Chinese customs, he was whisked away and interrogated over the course of 15 days.

[92] The report goes on to state that Mr Zhang was one of five deportees. The first one did not get through customs in China but just disappeared and volunteers

in Australia were very worried because he was a *Falun Gong* practitioner. Another one was stated to be an underground Christian woman who was told not to go home as they were watching her house.

[93] The UNHCR/Accord report from the December 2005 “COI Seminar” sets out, at paragraph 3.6.6 “Return of *Falun Gong* adherents to the PRC”:

“There is a very interesting case in Germany: a family escaped from China and asked for political asylum in Germany. Their application was rejected. During their stay abroad, they became adherents to *Falun Gong*. However, this didn’t seem credible to the authorities and they were sent back to China.

In China they were checked. They were asked questions, but there was no persecution. But then they had telephone calls to Germany, to other *Falun Gong* adherents. They talked on the phone about their adherence to *Falun Gong*. The police came, the husband received an administrative sentence, for Re-education Through Labour punishment. The case became known to the German embassy, the man was released for medical treatment and the embassy will try to take the family to Germany.

In this case, there was no persecution directly upon return (because they asked for asylum, for instance), but only after the authorities got knowledge of the family’s adherence to *Falun Gong* through the telephone calls.”

[94] Also in the same report, at paragraph 5 “Return to the PRC”, the Authority noted the following:

“Forced repatriation can be problematic, especially if the Chinese authorities do not cooperate on this matter. There are cases in Germany, for instance, where the Chinese embassy refuses to issue travel documents to rejected asylum seekers.

One has to be cautious when assessing whether there is a risk of persecution upon return or not: basically, if the returnee (a rejected asylum seekers or a repatriated migrant) is unknown to the authorities, then persecution is not likely. But Chinese authorities didn’t care so much in the last years, even if they know that this person asked for political asylum in foreign countries, because the authorities expect that they left China for economic reasons. Diplomats from Western countries monitored the situation of repatriated people, and they found out that in most of the cases there was no political persecution, nor criminal prosecution.

On the other hand, the situation differs for returnees involved in offences or actions against the Chinese government, or the CCP. Practising *Falun Gong*, being a member of an underground church, playing a leading role in the opposition (in exile, too) can still be a reason for persecution.

Every Chinese should know that the telephone will be controlled, the internet will be controlled, and every media is controlled by the government and by the different secret services. See the chapter on *Falun Gong* for an example of a returnee who did not face persecution upon return - until authorities got knowledge of his adherence to *Falun Gong*.”

[95] The Authority notes the Accord seminar report appears to be the transcript of speech given by a Mr Thomas Weyrauch, a German legal specialist, who appears to have become a China expert and director of a liaison office.

[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.

[98] The Authority now moves to consider previous decisions of this Authority on *Falun Gong* related cases.

DECISIONS OF THE AUTHORITY

[99] The Authority has considered risks to claimants based on fear of returning because of *Falun Gong* activities in a number of cases since *Refugee Appeal No 2254* was published in 1994. The most significant of these appear to be: *Refugee Appeal No 72167/2000* (3 May 2001), *Refugee Appeal No 72446/2000* (17 May 2001), *Refugee Appeal No 72857/2001* (16 May 2002), *Refugee Appeal No 74137* (19 December 2003), *Refugee Appeal No 75256* (3 February 2005), *Refugee Appeal No 73678* (24 February 2005), *Refugee Appeal No 75536* (25 May 2006) and *Refugee Appeal No 76030* (13 August 2007).

[100] The determinations in 75536 and 76030 have both resulted in refugee status being granted and appeals being allowed after an acceptance of credibility and analysis of the Chinese government's approach to the practice of *Falun Gong*. In 76030 at [47], the Authority accepted that the appellant was now genuinely committed to *Falun Gong* and then at [48] and [49] went on to state:

"[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."

[101] The distinguishing feature in that determination, from the current case, is set out in [48] where it notes

"... particularly in view of his previously expressed support of *Falun Gong* and the occasional surveillance he experienced prior to his departure."

[102] The determination in *Refugee Appeal No 75536*, the Authority also considers can be distinguished. This determination considered the issue of good faith/bad faith at [53] to [57] and found, despite reservations and only by a narrow margin, that the operation of good faith principles should not remove the appellant from the protection of the Refugee Convention and that panel of the Authority granted her the benefit of the doubt and accepted that she was now a genuine *Falun Gong* adherent. Because of the cynical manipulation of this appellant's claims since he was advised of his illegality in New Zealand and his claim for refugee status shortly thereafter, the Authority does not accept, even if the appellant may be accepted by local members of the *Falun Gong* community in New Zealand as credible, that this appellant is genuine in his beliefs.

[103] Also in *Refugee Appeal No 75536* at [63] and [73], there is an acceptance "given the nature of the appellant's activities, particularly her participation and repeated publicised protests about the repression and torture of *Falun Gong* practitioners in China" that she will come under scrutiny on her return to China. Unfortunately, there is no analysis of risks on return for failed asylum-seekers who have made claims based on *Falun Gong* activities, carried out in that determination. However, the same decision, at [69] and [70], does refer to the UNHCR report of 1 January 2005 which sets out that membership of *Falun Gong* alone would not give rise to refugee status although a prominent role in certain overt activities such as proselytising or organising demonstrations which bring

members to the attention of the authorities may do so.

[104] Paragraph [70] of the decision correctly cites the UNHCR report and states:

“It also identifies as a relevant issue the question as to whether there are elements in the asylum seeker’s individual profile that would raise the likelihood of his/her membership becoming known to the authorities.”

[105] As stated, there is, unfortunately, little analysis of country information on risks on return for failed asylum-seekers, but rather there is a general acceptance (at [73]) that 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. While that is noted, the country information evidenced before this Authority, as set out above, does not show that the activities of the appellant in this case in New Zealand, which the Authority finds likely to be known to the Chinese authorities in New Zealand, will result in him being persecuted when he returns to China. The reports of problems on return (set out in [58] to [59] of *Refugee Appeal No 75536* (25 May 2006) clearly relate to persons with a far higher established *Falun Gong* profile than this appellant and thus, do not give a comparative viewpoint.

CONCLUSION

[106] The Authority’s assessment of the appellant’s credibility left it in a position it did not accept his credibility beyond that of accepting that he attended various demonstrations and activities, *Falun Gong* and democracy-related, over the period from early May 2006 until the hearing before the Authority. His involvement with *Falun Gong* has, at best, up until the time of his refugee application, been minimal and insignificant. He acknowledged that he was not at risk until very shortly before the time of his application for status.

[107] The Authority has found that his activities since the time of his application have been undertaken without genuine commitment to *Falun Gong* beliefs but rather in a cynical attempt to bolster an otherwise very weak claim for refugee status. Those activities, in the Authority’s view, must be seen as having placed him at a real chance of being noticed by the Chinese authorities in New Zealand. The Authority is satisfied there is a real chance that the Chinese authorities will see his activities for what they are and of little consequence, on return, particularly given the Authority’s findings that he does not have a true commitment to *Falun*

Gong and this would become self-evident in any interview that took place on return.

[108] The objective country of origin information relating to risks on return is minimal and certainly does not indicate any form of statistically based risk of maltreatment on return. It is certainly not sufficient to show, objectively assessed, a real chance of him being persecuted on return.

[109] Thus, in answer to Issue (a), the Authority finds that the appellant has not established, on the facts as found, including an analysis of the country of origin information, that there is a real chance of him being persecuted if returned to his country of nationality. It is therefore unnecessary to go on to consider the second Issue.

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

"A R Mackey"
A R Mackey
Chairman