

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76065

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AT AUCKLAND

<u>Before:</u>	C M Treadwell (Chairperson) M L Robins (Member)
<u>Counsel for the Appellants:</u>	R Chambers
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Dates of Hearing:</u>	28 & 29 August and 7 September 2007
<u>Date of Decision:</u>	27 March 2008

DECISION DELIVERED BY M L ROBINS

[1] These are appeals against decisions of a refugee status officer of the Refugee Status Branch (RSB), of the Department of Labour (DOL), declining the grant of refugee status to each of the appellants, nationals of the People's Republic of China.

INTRODUCTION

[2] The appellants are a mother and son who arrived in New Zealand in September 2006. They lodged their applications for refugee status two weeks later. Their applications were declined by the RSB in May 2007. It is from these decisions that the appellants now appeal.

[3] Because the two claims are inextricably linked, it has been appropriate to hear the appeals contemporaneously. The appellants agreed that the evidence of each of them could be used in each of their refugee claims.

[4] The claim of the son relies almost entirely on the facts of his mother's claim and his relationship to her. Accordingly, for ease of reference, the mother will be referred to in this decision as "the appellant" and the son will be referred to as "the appellant's son". Collectively, we refer to them as "the appellants".

THE APPELLANTS' CASE

[5] The appellant was born in the 1950s in China. She was the younger of two daughters. Both her parents are deceased.

[6] After completing her schooling in China, the appellant worked as a welder and a truck driver. In 1980, she got married. In the same year, she had a daughter and, 10 years later, the appellant's son was born.

[7] In 1997, the appellant's sister mentioned to her that she (the sister) had started practising *Falun Gong*. She encouraged the appellant to learn about *Falun Gong* but the appellant was busy working and did not pay much attention.

[8] In December 1998, the appellant saw some people practising exercises in a park. She learned that they were *Falun Gong* practitioners. Bearing in mind the positive reports of *Falun Gong* she had received from her sister, the appellant began to practise *Falun Gong* by attending the exercises in the park on Saturdays and Sundays for four hours each day.

[9] The appellant's husband was a prosecutor in the local prosecutor's office. He did not believe in *Falun Gong* but did not object to his wife practising it because *Falun Gong* improved his wife's health and temper.

[10] On 20 July 1999, the Chinese government banned the *Falun Gong* movement. Many people were arrested or beaten by the police and there was a great deal of media publicity to say that *Falun Gong* was now an illegal practice.

[11] The prosecutor's office warned its employees that no one was allowed to practise *Falun Gong* and that they must ensure their family members did not practise it either. They were told that if any employee found their family or friends

practising *Falun Gong*, they were to report them to the authorities. The appellant's husband destroyed all of the appellant's *Falun Gong* materials and forbade her from practising *Falun Gong*.

[12] Over the next six years, the appellant did not have any contact with any *Falun Gong* practitioners but, in the evenings when her son was doing his homework in his bedroom and her husband was socialising after work (the daughter having moved out of home some years before), the appellant would practise *Falun Gong* secretly.

[13] At some point (the appellant could not remember or estimate when), the appellant's daughter spoke to her cousin and learned that the appellant's sister had been arrested and detained several times due to the sister's *Falun Gong* activities.

[14] In May 2000, the appellant and her friend, AA, were walking to the market. The appellant extolled the virtues of *Falun Gong* to AA. She told AA how, by practising *Falun Gong*, her health had improved and she criticised the Chinese government for cracking down on *Falun Gong*. AA was aware that the appellant had practised *Falun Gong* in the park before the July 1999 crackdown. The appellant was careful not to say to AA that she still practised *Falun Gong*.

[15] That afternoon, the local police telephoned the appellant and asked her to go to the police station. When she got there the police accused her of practising *Falun Gong*. She denied it. She was then put into a room, denied food or drink and use of the toilet. At three o'clock the following day her husband arrived, having secured her release by taking the guards out for lunch.

[16] The appellant's husband did not know that his wife had continued to practise *Falun Gong* in secret and, although she still did not admit it to him, he was very angry with her and said he would divorce her if she continued to practise *Falun Gong*.

[17] Two days later, the appellant was called into her manager's office at work and was told that because she was practising *Falun Gong* she was dismissed. He was prepared to call it a "retirement" rather than a dismissal but this was not enough to secure her retirement pension. From this time, May 2000, the appellant did not engage in any other paid work.

[18] In December 2000, the appellant's sister was released from custody. She could not return to her home for fear of being arrested again so the appellant hid her in a house in a fuel storage compound where she stayed for approximately two months. The appellant then hid her at various locations until the beginning of 2002 when she and her sister lost all contact. The appellant's husband was aware the appellant was hiding her sister (who was a *Falun Gong* practitioner), but he was powerless to prevent it because they were sisters.

[19] In late 2003, the appellant's sister's son-in-law arrived at the appellant's house. He said the sister wanted to tell the appellant something. The appellant accompanied the son-in-law on a journey to Beijing airport where the two of them waited in the car park until the sister emerged from the terminal. She told the appellant she was going to a faraway country but she could not say which because that would put both her and the appellant in danger.

[20] In April 2006, the appellant returned home from the local market. As she was emptying her bicycle basket, she found a copy of a book "The Nine Commentaries of the Chinese Communist Party" wrapped up in some advertising pamphlets. This book was critical of the Communist Party and had been banned. The punishment for distributing it was four years imprisonment. Inside the book was a note which said:

"Friend, I don't know who you are but as soon as you see this, you should withdraw from the Chinese Communist Party. This will provide your safety. After you have seen this, please don't throw it away, but give it to your trusted friends to rescue them as well."

[21] The note went on to say that, if the person was not able to go onto a certain website, they could write a note using a nickname, stating that they withdrew from the Communist Party and attach this note to a lamp post. Five days later she wrote two notes (one for herself and one for her daughter) and she signed each note with false names so they could not be identified. She stuck the notes on a lamp post at midnight.

[22] The appellant was afraid that her husband might find the book so she hid it inside her pillow case on her bed. The appellant read the book and, approximately 20 days after she first received it, she gave it to BB who was a close friend of her husband. She gave it to him because he was a nice man, she wanted to save him and she was confident he would not tell her husband. BB was happy to receive the book and thanked her for it.

[23] About a week later, in May 2006, the appellant was at home when two police officers arrived. They forced her into a police car and took her to their base, about ten minutes drive away. The appellant was led through a courtyard and into a room. One of the officers slapped her very hard across the left side of her face. Her ears were ringing and she could not hear easily what was being spoken. From that day, the appellant has been hard of hearing in her left ear.

[24] The men accused the appellant of distributing the book. After interrogating her for some time, they said to each other that the following day they would collect their reward, which she took to mean the RSM10,000 reward for reporting a person in possession of the book.

[25] The men tied the appellant's hands to the chair. They then went next door and drank alcohol. The appellant began crying and calling out the name of the master of *Falun Gong*. As she was shaking the chair, she felt the rope loosen. She shook herself free and, after seeing that the way was clear, she ran from the room across the courtyard and, after pacifying a guard dog, she left the compound through a gate.

[26] The appellant guesses that she would have left the compound at around 2.00 a.m. She kept running until, at 6.00 a.m., she arrived in a village where she found a telephone and called her daughter. The daughter arrived in the village that afternoon and rented a room for the appellant with a village family.

[27] The daughter returned periodically with food. On these visits she told the appellant news of the family. The police, she said, were keeping their apartment under surveillance. A plainclothes policeman was monitoring the windows and doors. The appellant's husband's boss had talked to him about divorcing the appellant. Most worrying of all to the appellant was that the police had told her son's teachers that the appellant had been arrested due to her *Falun Gong* practises. As a result, the appellant's son was suffering bullying from teachers and students.

[28] The appellant's daughter suggested that the only way to resolve the problem was for the daughter to make arrangements for the appellant to leave China with her son. Over the next several months, the daughter obtained a student visa for the appellant's son to study English in New Zealand for three weeks and a limited purpose visa for the mother to accompany him.

[29] In July 2006 (after two months hiding in the village), the appellant took the risk of returning to the family apartment, because she missed her son. To avoid the attention of the police, she did not leave the apartment and, when she had to pass a window, she would get down on her hands and knees and crawl underneath it.

[30] By means of bribes totalling approximately US\$12,000, the appellant's daughter obtained the necessary certificate from the appellant's former employer and an exit permit. In September 2006, the appellant and her son left China through Beijing airport and arrived in New Zealand the following day. At Auckland airport, they were met by CC, a representative of the son's language school. When CC learned their true situation, he guided them to a refugee hostel, where they received advice about applying for refugee status.

[31] A day or so later, the appellant met a woman who was promoting *Falun Gong*. The woman suggested some *Falun Gong* activities, including practising in front of the Chinese Consulate every Sunday. On the second Sunday after their arrival in New Zealand, the appellants joined the *Falun Gong* protest outside the Chinese Consulate in Auckland. Two days later, the appellants applied for refugee status.

[32] The following month, October 2006, the appellant participated in a *Falun Gong* demonstration in Aotea Square. She helped erect banners and she performed *Falun Gong* exercises. She also took part in a pantomime, depicting the harvesting of body parts from *Falun Gong* practitioners by the Chinese authorities. The appellant dressed in a white gown, cap and face mask and acted the part of a surgeon.

[33] A week later, the appellant received a telephone call from her daughter in China. The daughter said her car windscreen had been smashed and a note had been left on it, stating

"Your mother practises *Falun Gong*. You had better watch out for your life!"

[34] The appellant's daughter also said that the appellant's husband had been made to undergo "self-criticism" at work and had been told by his superiors to divorce the appellant. The appellant subsequently received a photograph of her daughter's car, apparently in a panel beater's yard, with a smashed windscreen. Around this time, the appellant met her sister by chance in an Auckland street.

[35] Since her arrival in New Zealand, the appellant has become immersed in the practice and promotion of *Falun Gong*. Every morning she wakes at 4.00am and practises *Falun Gong* exercises until 5.00am. Then she reads *Falun Gong* literature until 7.00am, before helping her son get ready for school. Three times a week she drives from the refugee hostel to her sister's house. They spend the day delivering *Falun Gong* leaflets in various Auckland suburbs. Sometimes she goes alone by bus, for example to Downtown Auckland where she distributes leaflets to shoppers. In the evenings, she listens to lectures of the *Falun Gong* master or reads *Falun Gong* material. On Saturdays, she starts her day with exercises and reading and in the evening she attends a *Falun Gong* assembly from 7pm to 11pm. About three times a week, she visits her sister in the evening. They have dinner together and then they either practise or read about *Falun Gong*. Every Sunday morning the appellant joins about 80 other practitioners protesting outside the Chinese Consulate in Greenlane, Auckland. In addition, she beats a drum in a *Falun Gong* band and participates in every other *Falun Gong* activity such as the "March to quit the Chinese Communist Party". The appellant does not have any friends or interests outside *Falun Gong*.

[36] The appellant's son gave evidence to the Authority. He said he remembered his mother teaching him about *Falun Gong* when he was about nine years old. He was unaware his mother practised *Falun Gong* secretly at home in China. He remembered his mother disappearing for a night and returning the next day. He also confirmed that during the two months his mother was in hiding, his sister refused to tell him what had happened to her.

[37] The appellant's son practises *Falun Gong* with his mother in the evening and reads *Falun Gong* material. He attends every Saturday night assembly and many protests outside the Chinese Consulate. He plays the French horn in a *Falun Gong* band. He has just one friend, who is also a *Falun Gong* practitioner. He has no other interests apart from *Falun Gong*.

[38] The appellant presented numerous photographs to the Authority which show her variously:

- (a) protesting with others outside the Consulate on various Sundays, holding up banners critical of the Chinese government;
- (b) handing out pamphlets in Aotea Square;

- (c) standing prominently on the flat-deck of a truck in a procession, dressed as a *Falun Gong* prisoner in manacles, being beaten with a stick by a PSB guard, with 'blood' on her face and clothes, above a banner (partly obscured) which reads "...63 *FALUN GONG* PRACTITIONERS WERE PUT TO DEATH" ;
- (d) marching in street parades in Auckland, dressed in a bright yellow uniform, to celebrate those who have quit the Communist Party;
- (e) on stage with others, celebrating "World *Falun Gong* Day";
- (f) standing in various public places in Auckland and Wellington, including streets and a supermarket car park, handing out leaflets;
- (g) protesting outside "city hall" in Wellington, holding a large banner stating "*Falun Dafa* is good";
- (h) protesting outside the Chinese Embassy in Wellington;
- (i) taking part in *Falun Gong* group exercises in various public places, including streets in Auckland and Wellington;

[39] Other photographs show the appellant's son marching in a *Falun Dafa* band, in which he is visible playing the French horn.

[40] The appellant says that if she is forced to return to China she will be at risk of serious harm because she was known as a *Falun Gong* practitioner, she escaped from the custody of the Communist Party and, because of her and her son's activities here in New Zealand, they will both be well-known as prominent *Falun Gong* activists.

[41] Mr Chambers provided written submissions and country information on 22 August and, at the conclusion of the hearing, he made oral submissions. All of these submissions and information have been taken into account.

THE ISSUES

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

"... owing to well-founded fear of being persecuted for reasons of race, religion,

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

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

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

ASSESSMENT OF THE APPELLANTS' CASE

[44] Before turning to the two issues posed, it is necessary to make findings of credibility. Because she is the main protagonist, we address first the credibility of the appellant. For the reasons that follow, we find the appellant to be an untruthful witness.

Failure to disclose her sister in New Zealand

[45] In her refugee status application form, the appellant answered "No" to the question "Do you have any relatives in New Zealand?" In her five page type-written statement, submitted to the RSB at the same time, the only mention of her sister was as follows (verbatim):

"In 1998, I started to learn Falungong, before I practised Falungong, I had known it already for my sister practised Falungong. When she practised it, I saw by my eyes that some changes in her body. So I decided to learn Falungong..."

[46] At her RSB interviews in November 2006, the refugee status officer asked the appellant what she knew of her sister's whereabouts and circumstances. The appellant said she was aware her sister had been arrested in China for practising *Falun Gong* but that she did not know any details of the arrests; nor had she assisted her sister in any way in regard to the sister's problems with the Chinese authorities. She said she had lost contact with her sister, apart from meeting her unexpectedly in a street in Beijing in 2003. She claimed to have no knowledge of her sister's current whereabouts.

[47] At some point, the RSB discovered through its own enquiries that the appellant's sister and the appellant's sister's son had, in fact, both been granted permanent residence in New Zealand and that they were living here, following successful refugee applications. In January 2007, the refugee status officer wrote to the appellant's sister asking her to sign a document waiving her right to privacy, enabling the RSB to take into account information on the sister's file. The sister consented to the waiver.

[48] In February 2007, the RSB received a letter from the appellant in which she claimed she had met her sister by chance in Auckland on "November ninth in the city about one o'clock in the afternoon". On the same day, the RSB received a letter from the appellant's sister in which she claimed to have met the appellant by chance in "November 2006".

[49] In her evidence to the Authority, the appellant volunteered that the date of 9 November 2006 was not true. She said that, in fact, she first met her sister in Queen Street in October 2006 (that is, before her RSB interview). When asked why she had given the RSB a false date, she said she had done so because she thought the interpreter was a spy. When it was pointed out to the appellant that she did not disclose the 9 November date in the presence of the interpreter - she had disclosed it in a type-written letter in the English language addressed and posted directly to the refugee status officer - she changed her explanation and said that she was forced to say 9 November in the letter, otherwise the refugee status officer would realise the appellant had lied at her RSB interview.

[50] Asked why she had waited four months (from October 2006 to February 2007) to advise the RSB that she had met her sister in Auckland, she said she was waiting for a letter from the RSB and that she thought she could not approach the RSB without receiving a letter. When it was put to the appellant that it seemed more likely that the reason for the delay was that she had hoped to receive a positive decision from the RSB without having to disclose her sister's existence here, and that the only reason she disclosed her sister's presence in New Zealand was because the Privacy Act waiver sent by the RSB to the sister had forced her hand, she denied this and claimed that she had been about to tell the RSB before it found out for itself. We disbelieve this. It is strongly implausible that, by sheer chance, both women should have fled to New Zealand, settled in the same city here and have met each other by accident in the street, just before the appellant's RSB interview. Added to the staggering coincidence which we are expected to accept in this fanciful account, the appellant's tortuous explanations do not, in fact, explain why she should have wanted to hide from the RSB the discovery of a relevant and important witness.

[51] We conclude that the appellant deliberately failed to disclose her sister's existence in New Zealand. We do not believe that the sisters met by chance in Auckland. Indeed, for reasons elaborated later in this decision, we believe that the arrival of the appellant and her sister and their sons in New Zealand was part of a plan carefully crafted from at least as early as 2003.

Comparison of the two sisters' refugee claims

[52] The appellant's sister was granted refugee status by a differently constituted panel of the Authority in January 2005. A comparison of the two sisters' refugee claims produces a number of remarkable coincidences:

- (a) Both claim to have been dismissed from their work units due to their practice of *Falun Gong*;
- (b) Both claim to have departed China on passports obtained by bribery;
- (c) Both claim to have been denied pensions;
- (d) Both sisters obtained their passports within weeks of each other in late 2003;
- (e) The daughters of both appellants made all their arrangements for their exit from China and their travel to and entry into New Zealand;
- (f) Both appellants obtained visas on the grounds that they were accompanying their sons who were undertaking an English course in New Zealand;
- (g) Both of them came to Auckland where they and their sons applied for refugee status on the grounds of *Falun Gong* involvement.

[53] The appellant's explanations for these coincidences are that both she and her sister were persecuted; that she trusted her daughter to help her; that her sister's case was separate and that the appellant did not "know a thing" about her sister's case.

[54] We do not accept these explanations. The two cases, when looked at side by side, have all the hallmarks of a well thought out plan, going back at least to late 2003 when the two of them applied for their passports within weeks of each other. We conclude that, consequent upon the appellant's sister being granted refugee status in January 2005, the appellant deliberately set out to repeat her sister's methodology.

Inconsistent evidence about her sister

[55] The appellant told the Authority that, when her sister was released from custody in late 2000, she noticed that her sister had no teeth. Told of her sister's evidence to the RSB (in the course of the sister's own refugee claim) that she had lost her teeth in July 2002 as a result of being punched in the face during detention, the appellant's explanation for noticing the absence of her sister's teeth two years before they were knocked out was that only some teeth were knocked out at that time but, after July 2002, all her teeth were gone. We reject this

contrived change to the appellant's evidence. Until she was confronted with her sister's evidence, she had been clear throughout her refugee claim as to the total loss of her sister's teeth before July 2002. At no previous stage has the appellant ever referred to the progressive loss of her sister's teeth.

[56] The appellant also told the Authority that she did not see her sister from the beginning of 2002 (when the daughter uplifted the sister from the rural hiding place arranged by the appellant) until the end of 2003 (when they met in the Beijing Airport car park). This was inconsistent with her original statement to the RSB that she first noticed her sister's teeth missing in 2003 when she accidentally bumped into her in a street in Beijing. Faced with these apparently irreconcilable inconsistencies, she said her answer to the RSB was "totally untrue". She said she deliberately gave a false answer to the RSB because she suspected the interpreter was a spy. She said that whenever the refugee status officer asked a question about her sister, she lied. As to why her concerns about the interpreter would lead her to concoct evidence, her evasive (and ultimately incoherent) answer was:

"The fact is her teeth were knocked out in 2000. That's the truth. That's the fact she told me...I saw her several teeth. When the interview was conducted, because of the presence of the interpreter, when there were questions about my sister I tried to reveal as little information as possible and tried not to keep much information about this aspect from [the refugee status officer. Clearly, in 2000, she sought shelter [in the appellant's area] she told me and I saw some teeth again."

[57] In spite of the Authority's efforts to draw out clear and consistent evidence of the loss of the appellant's sister's teeth, it did not eventuate. The appellant's final position on this issue cannot be discerned with any confidence, solely as a result of her own inconsistent evidence, for which she can offer no sensible explanation.

[58] The appellant's sister, at her own interview, told the RSB that the appellant and the appellant's husband had provided substantial assistance to help her avoid the Chinese authorities. For example, she said they warned the sister of potential arrests; they provided the sister with a safe place to hide on three occasions; the appellant provided the sister with food while she was in hiding and the appellant accompanied the sister to Beijing airport when she departed China for New Zealand in November 2003.

[59] We asked the appellant why she had not disclosed any of these significant and relevant activities when asked by the RSB. Her explanation was that her

instinct told her not to trust the interpreter at RSB. She had no more concrete reason for distrusting him, however, other than he was young and handsome and he stared at her. That explanation is facile.

[60] On being confronted with her sister's differing account of the assistance the sister received from her, the appellant still attempted to omit any reference to her husband's participation in hiding the sister. To do otherwise would, of course, have been at odds with her own claim of her husband's antipathy towards *Falun Gong* and his supposed ignorance of the appellant's continuing practice of it. Her evasive answers culminated in a concession only that he was aware of what the appellant was doing but was powerless to intervene. We do not believe that the husband (a prosecutor who was vehemently against his wife's *Falun Gong* activities) would stand impotently by while his wife put the whole family at risk.

[61] The appellant's evidence about her sister was tainted by a greater degree of evasiveness than her other evidence. So determined was she to distance herself from any knowledge of her sister's circumstances that she was even evasive about her sister's living arrangements in New Zealand. She claimed first that the sister and her son did not live together. Then she conceded they lived "close" to each other. She then feigned confusion about the meaning of "living in different houses" before finally asserting that they live together in the same house.

[62] For all of the above reasons, the Authority rejects the appellant's claims to have assisted her sister to avoid the Chinese authorities and to have met her sister by chance in New Zealand.

The appellant's family

[63] A curious feature of the appellant's evidence was that she and her sister gave entirely inconsistent dates of birth and death (different days, months and years) for both their parents. Asked why, her explanation was "In China, we celebrate Mum and Dad's birthday whenever available so we just choose a date." That explanation is specious. Traditionally, Chinese society has been highly regimented. The family household register (*hu kou*), for example, provides explicit information of the particulars of every person living in the household. People carry identity cards and have traditionally had close ties to their work units (*dan wei*), which document every detail of their lives. Nor does the appellant explain why neither she nor her sister simply stated that they did not know the dates of birth. That both would separately give invented dates is also unexplained. The assertion

that the appellant and her sister do not know the real birth dates of their parents is disbelieved. More likely is a carefully co-ordinated and cynical attempt to avoid giving bio-data which might have led the New Zealand authorities to find the family link between the appellant and her sister.

[64] In relation to their mother's death, the appellant was emphatic that their mother died in 1980. We asked her why, in contrast to this, her sister claimed during her RSB interview in early 2004 that their mother was still alive. The appellant explained that her sister said that because she "wished Mum was still alive". We also put to the appellant the sister's claim at her own RSB interview that the appellant had telephoned her from China in January 2004 with the news that their mother was "quite well". The appellant denied telephoning her sister, saying that until she bumped into her sister in Queen Street in Auckland in 2006, she was completely unaware what country her sister was in. Try as we might to find an interpretation of this evidence which might be favourable to the appellant, we have failed. It is irreconcilable.

[65] The appellant herself gave inconsistent dates for her mother's death. For example, at one point she told the Authority her mother died in 1979 and their father died in 1980. In her refugee application form, however, she gave a very specific date of death for her mother – 15 July 1994. The variation of 14 years cannot be explained by lapse of memory or vagueness.

Practising *Falun Gong* in secret from 2000 to 2006

[66] For the reasons which follow, the Authority also rejects the appellant's evidence about her *Falun Gong* involvement in China.

[67] The appellant told the Authority that she practised *Falun Gong* in the apartment while her husband was out and while her son was doing homework in his bedroom. This is inconsistent with her evidence at her RSB interview where she claimed she got out of bed each night and practised *Falun Gong* between 11pm and 2am while everyone was asleep. When this was put to her, she denied having made the statement recorded by the RSB. We do not accept this. There was ample opportunity for her to have corrected the RSB's record of her evidence if she had disagreed with it, when she was later sent the 'interview report' for comment. Instead, she said nothing.

The second arrest, detention and escape

[68] The appellant's evidence about her second arrest was unsatisfactory in numerous respects. For example, she claimed to have hidden the banned book in her pillow case on the marital bed, claiming that it was not risky to keep it there for 20 days until she gave it to BB. It is extraordinary that she would choose to hide such a dangerous item in such close proximity to her husband - a serving state prosecutor, from whom she knew she had to keep any banned activity hidden.

[69] She also claims to have given the book to a man who, worried about his good friend's safety, was likely to alert the husband that his wife was distributing illegal books. There was nothing in the appellant's knowledge of the man (a friend of her husband, not a friend of the appellant) which could have given her any confidence that the man could be trusted. When this was put to the appellant, however, in typically cavalier fashion she pronounced our assessment "irrelevant".

[70] The appellant's description of shaking loose the rope that bound her hands to the chair, and her miraculous escape past two guards and a guard dog, through an unlocked gate is not believable. In particular, we do not accept the appellant's explanation that she was saved because the *Falun Gong* leader, Master Zhong Li was looking after her in some mystical or spiritual way.

[71] The appellant's description of her journey to the village was inconsistent with the description she had given the RSB. She told the Authority that, during her

four hour run from the police compound to the village, she rested outside in a place where peasants break rocks. On further questioning, she clearly described a barren quarry scene. In her earlier RSB statement, however, she had said she rested on the journey, having “found an empty house and entered it”. Her explanation for this inconsistency (which is so specious we do not accept it) was that the stones were piled up so they looked like a house.

The return home after two months in hiding

[72] The appellant claimed that, while she was in hiding in the village, her daughter warned her that the family apartment was being monitored by the police. She had, she said, asked her daughter not to tell the appellant’s husband where she was “because he worked in prosecution and he would betray me if he got the information”. Despite these extraordinary risks, the appellant says that she then returned to live with her husband in the apartment, because she missed her son. Given that the daughter was already making arrangements for her and her son’s imminent departure from China, it is implausible that the appellant would place herself in such acute danger just because she missed her son.

[73] The appellant’s evidence about the two months she then spent in the family apartment was also unsatisfactory in a number of respects. For example, she said her husband was very angry with her for what she had done and that they argued. She said she assumed her husband knew, through his contacts in the prosecution office, that she had given the banned book to BB. We find it implausible that in the two months they lived together, the subject of the book, or the reason for her arrest, did not arise.

The daughter’s windscreen

[74] The appellant’s evidence about her daughter was fraught with inconsistencies. She told us her daughter’s car-grooming business went bankrupt in late 2005. This was inconsistent, however, with her evidence at her RSB interview in November 2006 when she told the refugee status officer that her daughter was, at that time, working in her car grooming business.

[75] Later in her evidence to the Authority, she also claimed that, subsequent to the bankruptcy of the first business, the daughter started another car grooming business but that this too failed and that she went into hiding after the failure of the second business. We put it to the appellant that she had invented the second car

grooming business because she remembered what she had told the RSB. She denied this and repeated the “two bankrupted businesses” scenario.

[76] We also note the appellant’s evidence that in late 2006 (that is, in between the two bankruptcies), the daughter supposedly had sufficient savings to pay US\$12,000 in bribes to get her mother and brother out of China.

[77] The appellant claimed that it was on 20 October 2006 that her daughter told her that her windscreen had been smashed. The appellant guessed it had been done by “gangsters” in the pay of the Chinese authorities. The daughter, she said, had told her that a note had been left on the car, referring to the appellant’s practice of *Falun Gong*.

[78] The appellants arrived in New Zealand on 12 September. The appellant did not undertake any *Falun Gong* activities here until 24 September and the only incident of any significance to have occurred before 20 October was when the appellant dressed up as a surgeon in a gown, cap and face mask on 14 October.

[79] It is extremely unlikely that, in the four weeks between 24 September and 20 October 2006, Chinese embassy staff in New Zealand would have been able to identify the masked appellant and pass on this information to the authorities in China, and that the Chinese authorities would have had the time or the inclination to locate the appellant’s daughter and send gangsters round to smash the windscreen of her car and leave a threatening note.

[80] If the smashed windscreen was in any way related to the appellant’s *Falun Gong* involvement, it could only realistically be based on the appellant’s *Falun Gong* activity in China. We have already concluded, however, that the appellant did not have any involvement whatsoever with *Falun Gong* in China.

[81] The appellant has produced photographs of a smashed windscreen on a car at a repair yard in China. Even if it was the daughter’s car, we are satisfied that it was not connected in any way with the any involvement by the appellant in *Falun Gong*. We place no reliance on the two photographs of the vehicle. They have, in our view, been obtained for the sole purpose of bolstering the appellant’s case. We reject the appellant’s confused and mobile evidence in relation to her daughter’s business activity and whereabouts and conclude that the daughter is not experiencing any problems with the Chinese authorities as claimed.

[82] For the above reasons, we do not accept that the appellant had any involvement whatsoever in *Falun Gong* in China. It follows that we do not accept that she had the conversation with AA, that she gave a banned book to BB, that she practised *Falun Gong* secretly for many years, or that she was arrested or that she escaped. We find that she and her son left China legally on their own genuine passports and that when they arrived in New Zealand they had no grounds whatsoever to claim refugee status.

***Falun Gong* involvement in New Zealand**

[83] As to her *Falun Gong* activity after her arrival in New Zealand, the Authority accepts that the appellant has attended numerous *Falun Gong* events. There is ample photographic evidence of the appellant taking a prominent role in parades, bands and demonstrations. The photographs appear to have been taken at various venues in Auckland, Wellington and Hamilton. The appellant says some of the photographs were taken by her sister, one by her son and the rest by other *Falun Gong* practitioners, all for commemorative reasons.

[84] At the conclusion of the hearing, Mr Chambers submitted that the appellant and her son have genuinely absorbed themselves completely in *Falun Gong* and that they have no other interest or purpose in life. He asked us to regard the photographs not as self-serving evidence to bolster a refugee claim but rather as realistic evidence that the appellants did participate in the public events they described.

[85] Having considered all the evidence and Mr Chambers' written and oral submissions, we conclude that the appellant's prominent participation in these events (and her son's participation to a lesser extent) has been undertaken solely to provide her and her son with grounds to claim refugee status. We do not believe she is a genuine *Falun Gong* practitioner. We do not believe that, in private, she spends her spare time practising *Falun Gong* exercises or studying *Falun Gong* material. We do not believe that, if she is returned to China, she will have any involvement – public or private – in *Falun Gong*. We conclude that she will have no hesitation in renouncing *Falun Gong* the moment it ceases to be a means of securing permanent residence for her and her son in New Zealand.

[86] Several factors lead us to this conclusion. First and foremost, her evidence has proved untruthful over such a sweeping compass that we are not prepared to believe anything she says.

[87] Second, during the course of her visitor's visa application, her refugee application before the RSB and her appeal before the Authority, the appellant has proved to be an evasive and cunning witness and a bold and enthusiastic liar. Given that "truthfulness" is one of the three fundamental tenets of *Falun Gong*, she cannot be a genuine *Falun Gong* practitioner.

[88] Despite having – on our assessment of the evidence – no experience of *Falun Gong* before she arrived in New Zealand, within days of her arrival the appellant was acting as if she was so totally immersed in and committed to *Falun Gong* that she could not restrain herself from launching headlong into every conceivable *Falun Gong* activity. From the outset, she claimed for herself an exposed and dominant position in seemingly every parade and demonstration. Further, the photographs demonstrate that she was happy, if not delighted, to be photographed. As she well knows, the *Falun Gong* movement in New Zealand publishes such photographs on line, as does the *Epoch Times*, a local newspaper sympathetic to *Falun Gong*.

[89] This attention-seeking behaviour is inconsistent with her assertion that she is fearful that the Chinese authorities might abduct her for escaping from their custody. The appellant told the Authority she was so frightened that either she or her son might be abducted that she would not even move away from the safety of the refugee hostel. She also says that she insists her son come straight home from school each day. The fact that the appellant encourages her son to take part in public *Falun Gong* activities is also inconsistent with her expressed fear for his safety.

[90] For these reasons, we do not believe the appellant is a genuine *Falun Gong* practitioner.

[91] In relation to the son, we do not believe that he is a genuine *Falun Gong* practitioner either because:

- (a) he gave evidence to support his mother's claimed activities in China which he must have known is not truthful;
- (b) he has been a willing participant in activities in NZ which he must also know are not genuinely motivated; and
- (c) there is nothing in his own evidence to displace our view that he has shared in his mother's concoction of a refugee claim.

[92] Apart from accepting that the appellant and her son (to a lesser extent) have played a prominent role in *Falun Gong* activities since their arrival in New Zealand, we reject all other aspects of the claims. We now turn to the first of the two issues posed.

OBJECTIVELY, ON THE FACTS AS FOUND, IS THERE A REAL CHANCE OF EITHER OF THE APPELLANTS BEING PERSECUTED IF RETURNED TO CHINA?

[93] We address first the claim by the appellant.

[94] The question is whether the Chinese government is aware of the appellant's *Falun Gong* activities in New Zealand and, if so, whether there is a real chance of her being persecuted if she is returned to China.

[95] The Authority has dealt with bogus *Falun Gong* claims on a number of occasions in recent years. For example, in *Refugee Appeal No 72857* (16 May 2002), the Authority found that:

"[15] ...the appellant adopted the persona of a *Falun Gong* follower to ride the wave of official hostility to the movement and his subsequent blatant attempts to attract the attention of Chinese officials in New Zealand have been undertaken to further this end."

[96] The Authority dismissed that appeal, concluding:

"[16].3 The appellant has participated in *Falun Gong* practices in various parks in Auckland and has protested outside the Chinese Consulate. Considerable photographic evidence of his participation in these activities was provided to the Authority. Whilst accepting that the appellant has participated in *Falun Gong* in Auckland parks and has conspicuously protested outside the Chinese Consulate in Auckland, given our finding about the cosmetic nature of the appellant's professed adherence to *Falun Gong*, we conclude that he has undertaken these actions simply to lend spurious credibility to his claim. There is absolutely no prospect of his continuing with this pretence on his return to China.

There remains the appellant's claim that having deliberately brought himself to the attention of the Chinese authorities in Auckland, these activities per se will result in persecution on his return...The Authority advised counsel that it was not aware of any country information which suggested that Chinese nationals were at risk of persecution for having applied unsuccessfully overseas for refugee status or for having demonstrated outside Chinese Embassies or Consulates. Counsel for the appellant was granted leave to provide any further country information or submissions concerning (inter alia) the adverse consequences which might arise on the return of an individual who had unsuccessfully applied for refugee status or who had protested at a Chinese Consulate. Counsel's submissions were received by the Authority on 23 January 2002 but indicated no country information or submissions concerning these points other than what had been presented at the hearing.

There is no country information of which the Authority is aware to suggest that the many thousands of Chinese nationals who have unsuccessfully lodged refugee applications in New Zealand, Australia, United States of America, Canada, or United Kingdom face any consequences at all upon their return to China. The Chinese government understands the motivation of its citizens to travel, and live in other countries to gain experience and they are not penalised for this.

With regard to the appellant's protest action outside the Chinese Consulate, clearly the Consulate officials would be aware of the identity of some, if not a large number of those who regularly protest there. They have never, to the appellant's knowledge, interfered or taken action against these people and there is no evidence at all that the Chinese nationals who protest outside the many Chinese Embassies and Consular offices throughout the world (and these events are reasonably frequent) face any consequences at all upon their return to China."

[97] More recently, in *Refugee Appeal No 76088* (6 November 2007), the Chinese appellant claimed to have practised *Falun Gong* in China since early 1999, to have practised privately in his own home for two years after his arrival in New Zealand in 2001, and to have practised *Falun Gong* publicly in New Zealand from 2003 until the appeal hearing in September 2007. He claimed to have started attending *Falun Gong* Demonstrations in 2006. He said his photograph was taken at demonstrations and some of them were posted on the *Epoch Times* website. He provided 59 photographs of himself attending various demonstrations.

[98] The Authority found the appellant's evidence to be "extremely unreliable". It accepted only his evidence about his attendance at *Falun Gong* gatherings and demonstrations between April 2006 and the appeal hearing in September 2007. It accepted that, in addition to attending numerous public demonstrations (at which he played an active and predominant role) he protested every Saturday morning at Ellerslie in Auckland and every Sunday morning outside the Chinese Consulate. On one such occasion, he wore a distinctive uniform while protesting outside the Chinese Embassy in Wellington. The Authority concluded:

"[66] ...While, however, the Authority accepts the appellant's participation and involvement in these events, it considers that involvement has been, particularly since September 2006, undertaken predominantly and significantly to bolster his otherwise very weak claim for refugee status."

[99] The Authority then went on:

"[73] ...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."

[100] The Authority went on, in paragraphs [76] to [105] of that decision, to extensively review the country information about risks faced by failed Chinese asylum seekers who had been involved in protests overseas. It concluded that such people are:

"[97] ... not at a real risk of being mistreated unless there are significant additional aspects to the profile of the claimant."

[101] There have been two relevant decisions since *Refugee Appeal No 76088*. In the first, *Refugee Appeal No 76145* (10 December 2007), the appellant was involved in public *Falun Gong* activities for approximately six months. During that time, she attended practice sessions each Sunday outside the Chinese Consulate; she attended various demonstrations including one in Wellington and, of particular relevance because of its similarity to the facts in the extant appeal, at one such demonstration:

"[14] ... The appellant took a prominent role in the protest and along with another woman, played the part of a torture victim who was hung by her wrists and whipped by another protestor who was acting the part of a Public Security Bureau (PSB) officer. A photograph of the protest featuring this mock torture session appears on the appellant's DOL file."

[102] At paragraph [42], the Authority accepted that the Chinese authorities monitor *Falun Gong* networks abroad. However, endorsing the review of country information in *Refugee Appeal No 76088*, the Authority held that the appellant's brief and limited involvement in *Falun Gong* in New Zealand had:

"[46] ... [not] created for her a profile that will have brought her to the attention of the Chinese authorities or that would create any real risk that she will be mistreated on her return to China."

[103] The Authority also concluded that the appellant was “most unlikely” to practise *Falun Gong* at all after returning to China. The Authority declined the appeal.

[104] In the latest decision of the Authority involving a *Falun Gong* appellant (*Refugee Appeal No 76147* (29 February 2008)), the Authority granted refugee status to the appellant who was found to be a truthful witness and a genuine *Falun Gong* practitioner. In its consideration of well-foundedness, the Authority, relying on *Refugee Appeal No 76088*, recognised a distinction “between persons whose claims to be genuine followers of FG and to have undertaken public protests on this basis are found to be not credible and those whose claims are found to be credible”:

“[86] ... As explained in *Refugee Appeal No 76088*, for the former, the public protests which may have brought themselves to the attention of the Chinese authorities were undertaken for the sole purpose of manipulating the refugee status determination system in the receiving state. As such, they are unlikely to be punished for having a belief they do not, in fact, hold - see also in this context *Refugee Appeal No 72857/01* (16 May 2002) where a similar conclusion was reached.

[87] This is a far cry from the position where it is accepted that the risk of return has to be assessed on the basis of a genuine adherence to FG. The Authority does not understand the concerns raised at paragraphs [103]-[105] of *Refugee Appeal No 76088* as indicating that in no circumstances could any FG practitioner, having participated in public protests in a receiving state, face a well-founded fear of being persecuted, *inter alia*, because of those activities.

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

[105] In this regard, it is pertinent to refer to counsel's conclusion in his written submissions:

“... country information shows that genuine Falun Dafa practitioners do have a well-founded fear of persecution in China. As the crackdown on Falun Dafa is nationwide, there is no internal protection alternative in China, for genuine Falun Dafa practitioners.”

[106] We accept that many genuine *Falun Gong* practitioners do have a well-founded fear of being persecuted on their return to China. We have found, however, that this appellant is not a genuine practitioner.

[107] Turning now to the appeal before us, we are satisfied that the appellant will have no hesitation in abandoning *Falun Gong* as soon as it has outlived its usefulness to her as a device to secure refugee status. We accept there is a real risk that the appellant has been noticed by Chinese embassy staff in New Zealand. We are also mindful of the fact that the appellant's sister has been granted refugee status on the basis of her claimed *Falun Gong* involvement.

[108] We must assess the appellant's profile against the likely reaction of the Chinese authorities to her attention-seeking *Falun Gong* activities in New Zealand. We conclude that the Chinese authorities, in the words adopted by the Authority in *Refugee Appeal No 76088*:

“... on [her] return, will see [her] for what [she] is, a failed asylum seeker who attempted to manufacture a claim in New Zealand, rather than a *Falun Gong* practitioner or democracy activist.”

[109] In relation to the appellant's son, we have already concluded that, like his mother, he is not a genuine *Falun Gong* practitioner. We also conclude that he will not continue to practise *Falun Gong* if returned to China and that he will, in fact, renounce *Falun Gong* at the earliest opportunity. We conclude that the appellant's son does not have a well-founded fear of being persecuted on his return to China.

CONCLUSION

[110] For the above reasons, the Authority finds that neither of the appellants is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeals are dismissed.

“M L Robins”
M L Robins
Member