

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76592

AT AUCKLAND

<u>Before:</u>	M L Robins (Member)
<u>Counsel for the Appellant:</u>	I Anand
<u>Appearing for the Department Of Labour:</u>	No Appearance
<u>Date of Hearing:</u>	13 September 2010
<u>Date of Decision:</u>	25 November 2010

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 citizen of the People's Republic of China.

INTRODUCTION

[2] The appellant arrived in New Zealand in December 2009. She lodged her application for refugee status in February 2010. Her application was declined by the RSB in June 2010. It is from this decision that the appellant appeals.

THE APPELLANT'S CASE

[3] There follows the account given by the appellant to the Authority. An assessment of its credibility will be made later in this decision.

[4] The appellant is a married woman born in Guangzhou in China, the youngest of seven siblings.

[5] The appellant was born in 1963. As a young child she learned that her paternal grandfather had been a hard working furniture maker who saved his earnings and purchased land and property. After the liberation of Guangzhou in 1949, the appellant's grandfather was, because of his wealth and status, forced to parade through the streets where he was scorned and assaulted by the public. He could not afford to see a doctor and ultimately died at home as a result of the physical injuries and mental stress he suffered at this time.

[6] In China, if one person is guilty then all his family members are guilty by association. After the grandfather's death, all family members were treated badly. Because of his former status, the family was, during the Cultural Revolution (1965 to 1968), categorised as "landlord" class. The appellant remembers the abuse and stone throwing that she and her siblings attracted when they walked on the street.

[7] Several of the appellant's brothers and sisters were transported to remote rural areas where they were forced to work on farms. Two of them managed to escape and made their way to Hong Kong where they still live.

[8] As a teenager in the 1970s, the appellant was frequently accused by classmates and teachers of being a traitor because of her family's landlord class and because her siblings had escaped to Hong Kong.

[9] The appellant's mother and father worked in the same factory. In approximately 1970 the mother was dismissed. She was forced to obtain work in a factory where the heavy and dirty work caused her to become ill. She died in 1976, when the appellant was 13 years old. The appellant has a vivid memory of the day her mother died. She holds the Chinese government responsible for her mother's early death.

[10] The appellant's father died five years later, just after the appellant had finished her secondary schooling. If the family had a "good" background it would be expected that the appellant would be offered employment by her father's workplace. The employer refused to offer her a position. Over the next two years she applied for positions in numerous state enterprises. Each prospective employer would interview her, then tell her to go home and wait to hear from them. She did not receive any offers of employment from a state owned enterprise. She believes that checks into her background revealed that she was not an appropriate person to employ.

[11] After two years of unemployment, the appellant secured a job in a privately owned printing house. All her employers, from this time until she left China in December 2009, were private or foreign-owned companies.

[12] In 1988 the appellant's next older sister, AA, came to New Zealand and successfully claimed refugee status.

[13] In about 1995, the appellant made friends with a work colleague, BB. BB was to play a pivotal role in the events which, ultimately, compelled the appellant to seek refugee status in New Zealand. Around the same time she moved out of her family home and began living with the man who would, in 2006, become her husband.

[14] In early February 2009, the appellant was at BB's house. There was nothing unusual about this. They were in the habit of meeting occasionally although they usually met in a restaurant. For many years BB had suffered from allergic rhinitis, but over recent years the symptoms had disappeared. During their conversation on this day, they talked about the appellant's headaches and insomnia. BB said she (BB) had been cured of her allergic rhinitis by her practise of Falun Gong. She disclosed that she had been practising Falun Gong for the previous eight years. The appellant was astounded by this news. She had been completely unaware of this aspect of BB's personal life. BB suggested that the practice of Falun Gong might alleviate the appellant's health issues. She also said that, since becoming a Falun Gong practitioner, she had been able to cast away negative thoughts. This appealed to the appellant although she was sceptical. She accepted the Falun Gong book (Zhuan Falun) that BB offered and she took it home with her.

[15] The appellant knew it was dangerous to have possession of the book but she was curious and also hopeful that it might provide some real health benefits for her. She told her husband what she was doing. They talked through the risks and benefits. He was supportive of the appellant's desire to learn about Falun Gong by reading the book.

[16] The appellant was impressed by the book and accepted BB's invitation to join BB and two other Falun Gong practitioners to practise the exercises. From February 2009 until October 2009, the four practitioners met once a week, usually at BB's house and sometimes at the houses of the other two people and, on two occasions, at the appellant's own house. The appellant joined this group of BB's friends. Over time she began to sleep better and the number and intensity of

headaches reduced. Apart from the health benefits, the appellant felt a degree of satisfaction because the practice of Falun Gong was “truthful” as opposed to the “lies of the communists”.

[17] They arranged to meet for tea at a teahouse on the morning of 3 October 2009. BB was late. The three friends waited for some time and then dispersed, all very worried about what had happened to BB. The appellant made a call to BB’s mobile but it appeared that the line was dead. The appellant and her husband were too frightened to contact BB’s mother (with whom BB lived) or the other two Falun Gong practitioners for fear that such contact would confirm for the authorities the appellant’s connection with them.

[18] Back in April 2009, the appellant’s sister (AA) had visited China. AA was extremely concerned when told that the appellant was practising Falun Gong. Upon her return to New Zealand, AA started preparing the documents necessary for a visitor’s visa application for the appellant to come to New Zealand. The prospects of its success were known to be slight but AA was desperate to take steps to protect her sister.

[19] The disappearance of BB made the residency application a much more urgent matter. It was lodged with Immigration New Zealand in mid-October and the visa was issued in mid-November. The appellant waited nervously, expecting a visit from the authorities at any time. The passport did not arrive back in China with the visa endorsed until about 7 December 2009. As soon as it arrived the appellant caught a bus to Hong Kong where she boarded a flight to New Zealand. She arrived here on 9 December 2009.

[20] Since her arrival the appellant has been in weekly telephone contact with her husband. He has told her of several visits that Chinese government officials (“community officers”) have made to their home since her departure. On the first occasion, 12 December 2009, they asked about the appellant’s whereabouts. He said she was not at home. They also asked him whether he knew who BB was. He denied knowing BB. On 30 December 2009, the community officers returned and he gave them the same answers. On 4 January 2010 they returned and asked the same questions. The husband said the appellant was on holiday in New Zealand. There were further, similar, visits on 11 May and on 8 July.

[21] Since arriving in New Zealand the appellant has practised Falun Gong exercises on Monday to Friday every week, for an hour each day, in the foyer of the Safeway Supermarket at Highland Park in East Auckland. Standing in front of

the supermarket trolleys, beside a large sign advertising “Falun Gong Free Instruction”, the appellant and the other Falun Gong practitioners with her seek to encourage others to learn more about Falun Gong. The appellant also attends a weekly teaching session where the theory of Falun Gong is explained and discussed.

[22] The appellant is frightened that she will be arrested and detained if she is forced to return to China, because of her connection with BB and because of her Falun Gong activities in New Zealand. The Chinese authorities have clearly linked her with BB which must be because, under pressure or interrogation, BB has given the Chinese authorities details of the appellant’s Falun Gong involvement. The appellant said that if she is forced to return to China, she will continue to practise Falun Gong. In August 2010, the appellant’s husband visited BB’s parents and learned that BB is still missing. BB’s parents agreed to provide a letter confirming this.

Evidence of AA

[23] AA wrote a letter to the Authority and gave oral evidence at the appeal hearing. She confirmed that she became aware of the appellant’s Falun Gong practice when she (AA) visited China in April 2009. She also gave evidence that the appellant is a committed practitioner of Falun Gong, and she confirmed the appellant’s evidence about the telephone calls received by the appellant from her husband.

Documents and submissions

[24] Mr Anand, by letter dated 8 September 2010, provided written submissions and twelve items of country information. He also provided the letter (and translation) written by BB’s parents. This letter, purportedly signed by both parents, confirmed BB’s practise of Falun Gong and her disappearance. Five colour photographs of the appellant practising Falun Gong at the supermarket in Auckland were also produced.

THE ISSUES

[25] 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.

[26] 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

[27] Before turning to the two issues posed it is necessary to make a finding of credibility.

Credibility

[28] The appellant gave her evidence in a frank and unembellished manner. AA corroborated, convincingly, important aspects of the appellant's case. The Authority accepts the evidence of the appellant and AA in its entirety.

[29] The Authority accepts that the appellant practised Falun Gong in China. It accepts that her friend and fellow Falun Gong practitioner (BB) has disappeared and that her disappearance is due to her Falun Gong activities. The Authority accepts the letter from BB's parents is genuine and that the Chinese authorities are aware or suspicious that the appellant is a Falun Gong practitioner. The Authority also accepts the appellant's evidence that the Chinese authorities have been making regular enquiries to locate her.

[30] In New Zealand, the appellant has been taking part in a very public and regular demonstration of Falun Gong. She was reluctant to call it a protest but it is

likely that is how the Chinese authorities would view it. There is no reliable evidence that the Chinese government is presently aware of the appellant's New Zealand Falun Gong activities.

[31] The Authority accepts that the appellant has a deep hatred for the communist regime in China, that she is genuinely committed to Falun Gong and that she will continue to practise Falun Gong if she is returned to China.

[32] The Authority turns now to the first issue posed.

Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?

[33] There is a vast amount of country information which demonstrates that persecution against Falun Gong practitioners has increased rather than decreased in 2009 and 2010. To quote just one source (Amnesty International Report on China for 2010 published on 28 May 2010), "The government campaign against the Falun Gong intensified, with sweeping detentions, unfair trials leading to long sentences, enforced disappearances and deaths in detention following torture and ill-treatment". The report also asserted "Police and security forces detained, harassed and abused lawyers representing [...] Falun Gong practitioners", and asserted that former prisoners held under administrative punishment called Re-education through Labour "reported that Falun Gong constituted one of the largest groups of prisoners". Amnesty International *AI Report: China (2010)*

[34] On the basis of the country information, and on the particular facts of this appellant's case, the Authority finds that, if this appellant is returned to China it is only a matter of time before she is identified and questioned by the authorities. She will be questioned about her connection with BB and her practise of Falun Gong in China and/or in New Zealand. The Authority finds there is a real chance that the appellant's genuine and earnest commitment to Falun Gong and her historical personal enmity for the Chinese government will cause her to react aggressively and defiantly to such questioning. She may, inadvertently or deliberately, disclose and affirm her commitment to Falun Gong, including her practise of Falun Gong in New Zealand. Her unfavourable family background may also be taken into account in deciding her fate.

[35] The Authority finds that this appellant, a genuine Falun Gong practitioner who has come to the attention of the Chinese authorities, faces a real prospect of detention or disappearance and the real prospect of mistreatment or torture while

she is in custody. The Authority concludes that this appellant has a well-founded fear of being persecuted.

[36] The Authority turns now to the second issue.

Is there a Convention reason?

[37] Falun Gong can be classified either as a religion or as a political opinion, both of which categories satisfy the Convention reason test.

[38] The appellant has satisfied both limbs of the test and accordingly meets the definition of refugee.

CONCLUSION

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

"M L Robins"

M L Robins
Member