

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76283

AT AUCKLAND

Before: B L Burson (Member)
Counsel for the Appellant: K Gore
Appearing for the Department of Labour: No Appearance
Date of Hearing: 29 & 30 October 2008
Date of Decision: 2 December 2008

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 ("China").

INTRODUCTION

[2] The appellant claims to have a well-founded fear of being persecuted on return to China on the basis of her being a believer of *Falun Gong* and having participated in public demonstrations here in New Zealand.

[3] What follows is a summary of the evidence presented in support of her case. An assessment follows thereafter.

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THE APPELLANT'S CASE

The evidence of the appellant

[4] The appellant was born in the early 1940s. She married her husband in 1961. Her husband was employed by a State company and is a staunch supporter of the Chinese Communist Party (CCP). The appellant worked as a [...]. The couple moved to various places in China as the husband was assigned different work by his superiors but, by the early 1980s, the couple had settled in X city. By this time, the couple had four children [...]. With the exception of the eldest daughter, who is now in New Zealand, the couple's remaining three children live in X city, near to where the appellant and her husband resided.

[5] Following the appellant's husband's retirement in the early 1990s, he was [given another community role]. His duties required him to keep the relevant authorities informed of matters such as illnesses and he settled disputes between neighbours. He was also to inform the residents [...] of any meetings and other events organised by the CCP.

[6] In the late 1990s, the appellant was told by a number of friends including CC, DD and EE that she should take up the practice of *Falun Gong*. These women told her that following their taking up of *Falun Gong* their health and general wellbeing had been improved. The appellant was given tapes by the *Falun Gong* Master, Li Hongzhi, to listen to and began practising the exercises at home. She was also encouraged to take up *Falun Gong* by her eldest daughter, AA, who was a *Falun Gong* practitioner.

[7] While the appellant had also been given *Falun Gong* books to read, she found some of the language too hard to read as she had only a rudimentary education and limited reading ability. She therefore took these books to other *Falun Gong* practitioners' homes to engage in group study. The appellant also began regularly attending public practice sessions in a nearby park with a group led by a man called FF. By this time the appellant was in her late 50s and suffered from a number of ailments. She found that within a few months of taking up *Falun Gong*, her health had improved and was firmly convinced of its benefits.

[8] While the appellant's husband was opposed to her practising *Falun Gong* he did not do anything to try and stop her. Nevertheless, he made his feelings that

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it was superstitious plain to her. All this changed following the clampdown by the CCP on *Falun Gong* in July 1999. At this time, a coordinated media campaign against *Falun Gong* began on State-controlled media. The appellant's husband now told her directly that *Falun Gong* was a cultist group and that she was to immediately stop what she was doing. Her husband went into her room and destroyed all the *Falun Gong* books and damaged the tapes so that she could not listen to them.

[9] At around this time the government began arresting known senior *Falun Gong* practitioners in their area. Over 200 people were arrested of whom over 100 were sent to labour camps. Some were sent to brainwashing sessions. During this round-up CC was arrested and held for a period of time before her family managed to get her released on bail. Another practitioner friend called GG disappeared in November 1999. The appellant has sought information from her family as to her whereabouts but they have had no news from her. The appellant herself was not arrested during this round-up.

[10] Following the clamp-down, the appellant ceased all public connection with *Falun Gong* practitioners although, from time to time thereafter, she encountered DD, CC and FF in the local market. On these occasions she was discreetly encouraged by them to continue her practice of *Falun Gong* in private. She did so but, knowing of her husband's stern opposition to *Falun Gong*, the appellant tried to hide her continued practice from him. She made sure that she only practised the *Falun Gong* routines at times when her husband was away from the family home. The appellant estimates that following the clampdown she was able to practice no more than one or two times per week.

[11] Despite this opposition, the appellant remained firmly convinced of the benefits of *Falun Gong* and hoped that, in time, her husband would come to realise this also. From time to time the appellant raised the matter of *Falun Gong* with her husband which caused heated arguments between them. The appellant's husband often made her watch programmes which were highly critical of *Falun Gong* on the state controlled television channel. In the face of these actions, the appellant steadfastly maintained to her husband that *Falun Gong* was a good and beneficial thing. This led to heated arguments between them and sometimes to physical confrontation. During one such confrontation the appellant damaged one of the television sets in the house. The couple's relationship deteriorated as a

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result of this difference of opinion over *Falun Gong* to the point where they began sleeping in separate bedrooms. She had also mentioned *Falun Gong* from time to time to her remaining children but they had told her that they did not want to get involved in it.

[12] In 2002, the couple's eldest daughter AA, left to come to New Zealand. The appellant applied for a passport in 2003. She was extremely depressed at this time because of her husband's attitude to *Falun Gong* and the fact that she had to carry out her practice clandestinely around him. The appellant applied for a visitor's visa to come to New Zealand but this was declined.

[13] In approximately late 2003 or 2004, the appellant was given a video by FF which contained interviews with *Falun Gong* practitioners stating how the practice of *Falun Gong* had improved their health. The appellant secretly watched this video while her husband was out and then the following day slid the video anonymously under the door of a unit in a nearby building.

[14] The following day the appellant's husband confronted her about this. Her husband informed her that the people who had the video placed under their door had reported it to the local building authorities and claimed the reward that was offered for the handing in of *Falun Gong* material. Her husband asked whether she was the one who had done this. The appellant replied that it was not her. Her husband seemed satisfied with this reply. She was not the only former *Falun Gong* practitioner in the buildings managed by her husband.

[15] Undeterred, the appellant received videos on a further two occasions, each time slipping it under the door of a unit in a nearby building. Each time she was informed by her husband that the recipients had handed the video in. She now decided that her neighbours were simply not interested and did not perform this activity again. However, on one occasion when she met FF in the market some time later without warning he slipped a number of documents into her bag. These documents contained references to Noah and comprised a number of sheets stapled together. The characters were very small and she could not read it but it appeared to relate to stories from the Bible. That evening the appellant distributed the documents randomly to units situated directly opposite them. Again, her husband confronted her about this and informed her that these documents had been handed in and the reward claimed.

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[16] The appellant applied for another visitor's visa to come to New Zealand in 2006. By this time, AA had given birth to her second child and the appellant wanted to see her. There was no suggestion of the appellant's husband accompanying her. He and the eldest daughter did not get on and he had no intention of travelling with her. A visitor's visa was granted and, in late 2006, the appellant travelled to New Zealand.

[17] After arriving in New Zealand, the appellant saw some people practising *Falun Gong* while taking a walk with her grandchild in a local park. She was pleased to see that people could practise *Falun Gong* in New Zealand freely and without harassment. She mentioned this to AA who introduced her to a friend called HH who practiced *Falun Gong*. HH gave the appellant a video to watch showing her the exercises and encouraged her to practise it at the eldest daughter's house while the child was sleeping. The appellant did so. She did not get involved in any group activity on this occasion in New Zealand. However, the video given to her by HH contained reports about events that were widely held up by the CCP as proof of the evil nature of *Falun Gong*. One related to the self-immolation of a child and the other related to a person who had killed his wife. The content of the reports on the video showed clearly that what was being said in relation to these incidents on State-controlled media in China was propaganda. An important part of being a *Falun Gong* practitioner is to clarify the truth about the persecution of *Falun Gong* practitioners and therefore the appellant rang DD, CC and FF to tell them of what she had seen.

[18] In mid-2007, after spending nine months in New Zealand, the appellant returned to China. Approximately two days after her return an officer called II from the local Public Security Bureau (PSB) together with a representative of the neighbourhood committee knocked on the door of the couple's unit. The appellant and her husband had guests at their house at the time. Her husband answered the door and had a brief conversation with them. She does not know what they spoke about but she noticed her husband returned to the living room with a "long face". After the guests had left the police officer II and the representative of the neighbourhood committee returned to their unit. They questioned the appellant regarding whether she had made telephone calls to the *Falun Gong* practitioners in China. The appellant replied that she had done so. The PSB officers then left.

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[19] Approximately a week later another PSB officer called BB, who had been a former classmate of AA, came to their home. He is the superior of the officer who had questioned the appellant, and his son was staying with AA in New Zealand. She could not recall whether BB mentioned her telephone calls on this visit. However, sometime thereafter she was contacted by her eldest daughter from New Zealand who told her that she would soon be returning to China.

[20] Approximately 30 days after she had returned to China AA also returned. She travelled with her two daughters. AA had many meetings with BB and gave a guarantee on the appellant's behalf. After five or six days, AA returned to New Zealand, leaving her youngest child in China so her paternal grandparents, in particular, could have some time with her.

[21] While she remained in China, the appellant did not undertake any public *Falun Gong* activities although she continued to practise in her home when her husband was out from time to time. A surveillance camera was now placed outside her building and her husband told her that their telephone was being monitored. He became even more watchful of her movements and actions. Some time after AA's departure from China, the police officer called II approached her in the street and told her that without the intervention of her eldest daughter she would have been sent for brainwashing classes.

[22] During the second half of 2007, the authorities began clamping down on *Falun Gong* practitioners in the run-up to the Beijing Olympics. In July 2007, CC was arrested and detained. Then, in September 2007, another *Falun Gong* practitioner JJ was arrested for distributing *Falun Gong* pamphlets. Whilst in detention she disclosed that CC had been assisting her in this matter and CC was subjected to a further arrest in October 2007. The appellant found out about these arrests from CC when she met her in the market. She was told by CC that she should not associate with her any more and to be careful because the authorities were now detaining practitioners. She also received a similar warning from DD.

[23] During this time the appellant's relationship with her husband and remaining children deteriorated further. She had continued in her attempts to persuade them that their objection to *Falun Gong* was misplaced and that it could be beneficial to them but to no avail. As a result, she became increasingly unhappy and disillusioned with her life in China.

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[24] In March 2008, the appellant applied for a visitor's visa to return to New Zealand. By now she had given up on ever being able to persuade her husband and remaining children of the benefits of *Falun Gong*. She felt under extreme pressure because of the monitoring of her movements and telephone calls and the increased attention applied to her movements by her husband. She had decided that as she was now in her late 60s she had reached a time where she would "take her own road for the rest of her life". She had spent much time and effort trying to persuade her remaining family members that they had "let her down". She therefore decided that she would come to New Zealand and not return to China even if this meant staying here illegally. All she wanted to do was to be able to practise *Falun Gong*.

[25] She did not mention this plan to AA prior to her reaching New Zealand in late April 2008. The intention of AA had been for her to return to New Zealand for a visit similar to her first visit in 2006 and bring her youngest child to her. Upon reaching New Zealand the appellant told AA of her intention never to return to China. AA tried to calm her down and told her that it was very difficult to remain in New Zealand illegally. AA engaged an agent to seek an extension of her visitor's visa and, once more, contacted HH. HH came to AA's house and met with her and the appellant. On HH's advice, the appellant came to Auckland and made her claim for refugee status. She was told to get her passport for the purpose of this application and she therefore had her daughter take care of this.

[26] Since being in New Zealand on this occasion the appellant has continued with her private practice of *Falun Gong*. In addition, she has undertaken a number of public activities including the distribution of *Falun Gong* pamphlets in Cathedral Square, Christchurch. She also approaches Chinese tourists who are in Cathedral Square and tells them the truth about the persecution of *Falun Gong* and invites them to withdraw their membership of the CCP. Furthermore, for the last few months she has walked every day to a particular park near Christchurch airport and unfurled a pro-*Falun Gong* banner and engaged in practice. On 20 July the appellant went to Wellington and participated in a public demonstration.

[27] The appellant has also telephoned DD, EE and CC to tell them about the freedom she has in New Zealand to practise *Falun Gong*. Concerned that, with her arrest history, CC's telephone might be being monitored, she called her in the early hours when she thought no one might be listening. CC was surprised to

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receive her telephone call and asked where she had got the number from. CC told her the situation was serious in China and that she had not been going out. CC then simply hung up the telephone.

[28] Sometime later in approximately May or June of 2008, the appellant was telephoned by her husband. He was extremely upset with her. He said he had been contacted by one of CC's family members who was angry that she had been called because it might cause trouble. The appellant's husband was angry that she had been continuing with *Falun Gong* and was verbally abusive towards her. He then asked to speak to the appellant's eldest daughter. This was the last contact she has had with her husband or any other member of her family in China.

[29] The appellant does not want to return to China. She had decided to take a new road in her life and *Falun Gong* is the central part of that road. Whilst she could continue to practise privately at home in China she would have great difficulty in doing truth clarification which is a central part of her obligation as a *Falun Gong* practitioner.

The evidence of AA

[30] AA is the appellant's eldest daughter. AA confirmed that she herself became exposed to *Falun Gong* in early 1997 and during this period attended some study sessions. However, at the time she was very busy with her work. [...]. However, following the clampdown that was announced in 1999 she ceased all practice of *Falun Gong* although she continued to believe in its benefits and from time to time privately read *Falun Gong* literature.

[31] AA confirmed that in late 1997 her mother was introduced to *Falun Gong* through work colleagues. She explained that she supported her mother's involvement with *Falun Gong* because at the time she was suffering from many health problems and AA believed that the practice of *Falun Gong* would be beneficial to her. She stated that while her father did not believe in *Falun Gong*, initially he did not try and hinder his wife's involvement with it. However, all this changed after the announcement of the clampdown. Her father was employed as a building manager and supervisor and it was part of his function to enforce the rules imposed by the CCP including the rules relating to *Falun Gong*. He would have lost his job if it had become known that his own wife was continuing to

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practise *Falun Gong* after the clampdown and therefore he was very strict upon her mother.

[32] Because of AA's work commitments her eldest daughter, KK, was often left with her maternal grandparents after school and at lunchtime and AA was often at her parents' home. In the period between 1999 and 2002 she witnessed many arguments between her parents about her mother's practice of *Falun Gong*.

[33] She recalls a specific argument where her mother told her father that the practice of *Falun Gong* actually made her feel better and she thought that she would be able to live longer if she were allowed to continue to practise it. Her father's response was to say that he did not wish her to live longer through the practice of *Falun Gong* and would rather that she died tomorrow without *Falun Gong* and would, in these circumstances, gladly look after her funeral arrangements.

[34] She further recalls going to her parents' home soon after the clampdown and seeing pieces of her mother's *Falun Gong* books that her father had ripped up. Often her mother would telephone her in tears and tell her how her father had hurt her with things that he had said. As a result of these arguments her parents began to lead increasingly separate lives culminating in their living in separate bedrooms in the house.

[35] The daughter tried to mediate between her parents as best she could. During one such argument she suggested to her father that if her mother simply did her exercises in her own room with her curtains drawn he need never know about it. This took place shortly before the Chinese New Year in 2000.

[36] AA further confirmed that the appellant tried to persuade her siblings to take up *Falun Gong*. She recalls her mother raising the subject during family meals. However, the response of her siblings was to laugh at their mother and say that any improvement in her health was due to the natural cycle of things and not any adherence in *Falun Gong*. Following the clampdown however, the issue was not raised openly as far as AA was aware. Her father would not tolerate discussion of this topic with his other children in his presence.

[37] Following her arrival in New Zealand in 2002, AA decided she would try and have her mother come to New Zealand for a visit. Her mother was not happy

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living at home and she wanted her mother to come to New Zealand for a break. She had noticed that during the telephone calls she had with her mother after arriving in New Zealand, her mother was very emotional and on the verge of tears. Her mother made an application for a visitor's visa but this was not successful.

[38] In 2006, AA once more asked her mother to come to New Zealand. She had a number of reasons for doing so. First, she and her eldest daughter missed the appellant. Also, by now she had another daughter whom she wished her mother to meet. She did not extend the invitation to her father. Her relationship with her father had by now broken down. Her father made it clear to her in conversations prior to her departure in 2002 that he blamed her for her mother's continued involvement in *Falun Gong* and the trouble this caused in their marital relationship.

[39] Her mother remained in New Zealand for nine months. During this time AA put her in touch with a friend of hers HH. HH was a *Falun Gong* practitioner and thought this would be beneficial to her mother. HH gave her some *Falun Gong* material and her mother began practising *Falun Gong* exercises at home. She is not aware of her mother doing any public activity during this visit.

[40] Her mother returned to China in mid-2007. A short while thereafter she received a telephone call from a former university colleague BB. He told her that her mother had been practising *Falun Gong* overseas. She asked how he knew. He replied that her mother was now on a black list prepared by the PSB because her mother had made telephone calls to several senior *Falun Gong* practitioners while in New Zealand. AA was shocked. This was the first she was aware that her mother had been making telephone calls to her friends in China, from AA's home in New Zealand. She asked what could be done about the situation. He said that she had better come back to China quickly because it was better that she spoke to the people who were responsible for dealing with *Falun Gong* because she knew them. She told him that she would do her best.

[41] Asked by the Authority to explain how she knew the people responsible for dealing with *Falun Gong* practitioners, AA [explained how she] got to know the people in the 'stabilisation office' quite well.

[42] She explained that she could not return to China immediately because, at the time she received the telephone call, her passport was with Immigration New

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Zealand for renewal of her work permit. She then had to wait for its approval and return before she could travel to China. Once she received her passport she made immediate plans to travel back to China. Her eldest daughter KK asked if she could come with her. It had been five or six years since she had been in China and she wanted to return. AA agreed. Also, she took this opportunity to take her youngest daughter with her because her paternal grandparents had not met her nor had wider members of the family.

[43] Upon returning to China the appellant made contact with BB and her acquaintances in the 'stabilisation office'. She had many meetings with them and bought them dinners. In the end, it was agreed that AA would give a written guarantee that her mother would have no further contact with *Falun Gong* practitioners or present any petitions to the authorities. It was made clear to AA that should her mother break these rules she would be arrested.

[44] AA then returned to New Zealand. She intended to return with both her daughters, however her paternal grandparents implored her to leave the youngest daughter in their care for a little longer so they may have some time with her. AA agreed to this.

[45] Prior to her departure she told her mother of what had been agreed. She said to her mother that if she was going to practise *Falun Gong* she must not let her father know and should do it only in her bedroom. She suggested to her mother that in nine months time she return to New Zealand for a further visit and practise *Falun Gong*. It was her plan that from here on her mother would return periodically to New Zealand as a visitor where she could practise *Falun Gong* away from the pressures of her father.

[46] She therefore arranged for her mother to return to New Zealand in early to mid-2008 and to return with her youngest daughter. She noticed that she had lost a lot of weight and looked very weary. On the first night of her return, the appellant said her father (the appellant's husband) was angry with her almost every day and that a camera had been placed in the entrance to the building. She said their telephone was monitored. The appellant told AA that she could not live any longer in China and told her of her intention to stay in New Zealand permanently. AA told her mother that she could not do this as her visa and passport would not allow it. She told her mother that she would first try and see if

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she could have her visitor's visa extended and then see if there was some way they could work things out.

[47] AA then called HH who came to the house. Her mother described what she had been through in China and HH said that it was better that her mother stay in New Zealand. She asked how this could be done and HH advised her that she could try and apply for refugee status in New Zealand. The appellant then went to Auckland to make the application. The appellant telephoned her from Auckland and told her that she needed her passport. AA then had KK, whose command of English was far superior to her own, contact the Immigration New Zealand helpline. They were told that only their mother could ask for the passport back or a person with her specific authorisation.

[48] AA contacted the agent who had lodged the application to extend the visitor's visa. AA did not want to disclose that her mother was making a refugee application to the agent because she was not sure how it would turn out. When the agent asked for the reason he should give AA told him she did not want to say. The agent then suggested that he should say that her mother wished to return to China as per the original schedule and she told him to do as he saw fit. The passport was then returned to the agent by Immigration New Zealand.

[49] AA confirmed that, following her return from Auckland, the appellant has begun undertaking some public activity for *Falun Gong* with HH. She does not believe her father is aware of these activities although he does know that she has had some involvement with *Falun Gong* in New Zealand. This is because, in approximately mid-May 2008, they received a telephone call from her father who asked her whether the appellant was still practising *Falun Gong* in New Zealand. When she replied that she was, her father became very abusive and aggressive. He blamed AA for this and was verbally abusive towards her for approximately five or six minutes before hanging up the telephone. There has been no further contact with him since.

[50] AA stated that her mother's state of health has improved in the short time she has been here. That said, she is still under much stress. She recalls that on one occasion her mother heard a police siren in the night and this caused her to wake up. Her mother is also very forgetful. Sometimes she turns a tap on and

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forgets to turn it off. On other occasions when she is cooking sometimes she will put no sauce into the dish at all, while at other times she will put far too much.

The evidence of HH

[51] HH confirmed that she had met AA in 2004 and had remained friendly with her ever since. They live nearby to each other. HH told the Authority that she first met the appellant during her visit to New Zealand in 2006. She gave the appellant some *Falun Gong* material to watch and practice. She confirmed that one of the materials she provided was a video relating to a self-immolation incident in Tiananmen Square.

[52] HH told the Authority that she had no doubt that the appellant was a genuine believer in *Falun Gong*. She says this because she has secretly observed the appellant practising *Falun Gong* in AA's home during this first visit. She recalls on one occasion going to visit and noticing as she approached AA's house that the appellant was engaged in *Falun Dafa* exercises. Rather than knock on the door she stopped and observed her practising for a while.

[53] She spent some time with the appellant during her first visit to New Zealand. Although she believed her to be a genuine believer in *Falun Gong* she did not encourage the appellant to undertake any public activity with the *Falun Gong* community in Christchurch. This was because in discussions she had with the appellant at the time, it was clear that the appellant was worried about being separated from her family in China. She constantly mentioned to HH that she was worried about being away from her children and her grandchildren. This made HH think that she still had very strong human attachments and that she had not completely embraced Master Li Hongzhi's teaching that these worries and concerns should be put aside. Therefore, HH did not ask her to practise outside because of these concerns and rather only practised *Falun Gong* with the appellant in the privacy of AA's home.

[54] The next time she saw the appellant was in 2008. She noticed that the appellant looked visibly older and had aged considerably. When she asked her about this, the appellant told her of the problems she had had with the PSB and the fact that she was under constant monitoring by her husband and through the instalment of a security camera in the entrance to their building. The appellant told

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her that she did not want to return. She suggested to the appellant that she should give consideration to applying for refugee status here in New Zealand.

[55] In their subsequent conversations she noticed that the appellant did not mention her children or grandchildren. This made her think that her level of understanding of *Falun Gong* had now reached a point where she would be able to participate in public activities and therefore invited her to become involved in these actions in Christchurch with the *Falun Gong* community there.

[56] HH confirmed that the appellant has undertaken the public activities described by the appellant in her evidence. Finally, HH told the Authority that the appellant informed her that she had made contact with someone called CC in China and this had caused problems for her family. HH told the Authority that the appellant had told her on a number of occasions that she felt very guilty that she had caused problems to this family by making a telephone call.

[57] Finally, she confirmed that she has observed the appellant undertaking these public activities with a 'serious attitude'. Sometimes when she visited her at home during the weekends she saw the appellant teaching her youngest granddaughter *Falun Gong* by playing her a CD for young children produced by *Falun Gong*.

The evidence of LL

[58] The Authority heard from LL. LL is the co-ordinator of the Falun Dafa Association of New Zealand Incorporated which is the only officially registered organisation in New Zealand representing *Falun Dafa* practitioners. He confirmed that he had met the appellant on one occasion since her arrival, namely a demonstration in Wellington on 20 July 2008 which involved a protest outside the Chinese Embassy in Wellington. He explained to the Authority that the reason why he had chosen to be a witness in support of this appeal was that he had received reports from *Falun Gong* practitioners in Christchurch confirming her repeated and regular involvement in truth clarification activities, study and practice. Not only was her activity of an ongoing nature but the reports he received suggested that her involvement in it was an expression of her genuine will and belief.

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The witness statement of other practitioners on the RSB file

[59] On the RSB file is a joint witness statement signed by seven other *Falun Gong* practitioners in China confirming the appellant's involvement in study and practice together with public demonstrations in Christchurch. Furthermore, there is a witness statement on file from Wendy Cao, the president of a New Zealand branch of a pro-*Falun Gong* organisation confirming that she met the appellant in Auckland this year and that together they placed newspaper format copies of the Chinese language edition of the Nine Commentaries of the Communist Party under the doors of hotel rooms where many Chinese tourists were staying. They did this late in the evening in order to avoid being detected.

Witness statements and other documents received in support of the appeal

[60] On 23 October 2008, the Authority received from Mr Gore a bundle of witness statements including further witness statements from AA and HH. Also attached was a witness statement of BB, the former classmate of AA. A witness statement from KK was also provided which confirmed that she was the one who enquired of Immigration New Zealand about the possibility of having her grandmother's (the appellant) passport returned to them. She confirmed that her mother (AA) did not want the agent to know of the reason why they wanted the passport returned. Included in the bundle of documents received from Mr Gore was a witness statement from MM who confirmed that the appellant had been involved in truth clarification exercises in Christchurch.

The witness statement of BB

[61] The undated witness statement of BB confirms that he is now the principal staff member of the criminal investigation team in the area in which the appellant's family reside. He confirms he was one of AA's university classmates and that when he went to the appellant's home to collect items sent back by his son, who had been staying with AA in New Zealand, the appellant told him that the policeman II had questioned her. He confirms that he rang the policeman II and asked him why he had done so and was informed that the PSB was aware that the appellant had made telephone calls to the families of *Falun Gong* practitioners while she was in New Zealand and that her name was put on a surveillance list. He confirms that he then warned the appellant not to go out or make any further

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telephone calls. He then rang the appellant's daughter AA and asked her to come back to China as soon as possible to discuss how to deal with the issue.

[62] BB confirms that AA returned to China approximately one month later and that they had meetings with the staff members of the office responsible for managing *Falun Gong* people in the local PSB to discuss how the appellant could avoid being taken into custody. A solution was arrived at whereby AA wrote a guarantee as to her mother's behaviour and in particular that she would not have any contact with *Falun Gong* people and would not appeal this decision in the coming months.

[63] Attached to this witness statement was a copy of the police identity card for BB confirming his rank as Police Supervisor Class 2 and holding the position of the principal staff member of the Criminal Investigation Team.

Other documents and submissions

[64] Included in the bundle of witness statements received on 30 March 2008 was a brief psychiatric report on the appellant dated 15 October 2008 from Dr Rajendra Pavagada, Consultant Psychiatrist. This letter outlined the basis of an opinion given in a witness statement filed with the RSB and dated 16 July 2008 in which he had formed the opinion that the appellant was suffering from an adjustment disorder with anxiety and that the confusion and inconsistencies in her answers could have been because of ongoing anxiety symptoms. In his subsequent brief report Dr Pavagada noted that not only did the appellant provide an oral account of feeling anxious but he observed anxiety in the appellant during his assessment of her and that anxiety as a symptom can cause difficulty in concentrating one's mind.

[65] Also enclosed in the bundle of 23 October 2008 were the appellant's husband's worker registration form and a 'model employee registration form'.

[66] On 23 October 2008, the Authority received from Mr Gore written submissions dated 20 October 2008 regarding the appellant's case together with country information relating to *Falun Gong* in China.

[67] At the conclusion of the hearing the Authority gave the appellant leave to file further documentation relating to the employment of AA as she described in

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her evidence. On 14 November 2008, the Authority received three further documents relating to AA's employment, namely:

- (a) [...]
- (b) [...]
- (c) [...] containing photograph of AA and indicating qualification certificate issued in [...].

THE ISSUES

[68] 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."

[69] 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

Generally

[70] The Authority notes that there were some discrepancies between the appellant's oral evidence to the authority and what she had said at her RSB interview. However, as against this, the same core events were mentioned and her evidence was consistent with that of AA. Furthermore, the appellant's

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demeanour, observed closely over the course of one and a half days, and that of AA, strongly suggested that the story that has been given is true. Crucial parts of the appellant's claim and, in particular, AA's employment have been corroborated by credible documentary evidence. Having heard from the all the witnesses and considering all the evidence, the Authority has come to the view that the appellant and other witness have been truthful and that in the circumstances of this case, the discrepancies in the appellant's evidence are not indicative of an underlying lack of credibility. Her case can therefore be readily distinguished from that in the recent decision in *Refugee Appeal No 76284* (26 November 2008).

The delay point

[71] The Authority notes that one of the points relied on by the RSB in dismissing this claim was an allegation of delay in claiming in as much as she failed to lodge a claim while in New Zealand in 2006 and reference was made to negative credibility findings based on delay in other cases including *Refugee Appeal No 76088* (6 November 2007). In his written submissions Mr Gore has taken issue with this and draws attention to other cases where refugee status has been granted notwithstanding a delay in lodging the refugee claim.

[72] As to this, the Authority agrees that delay in claiming refugee status is a relevant factor for consideration in all cases. While plainly a relevant factor in any enquiry, care must be taken not to elevate promptness of claiming into some axiom of human behaviour such that delay in claiming refugee status is determinative of the credibility issue. Rather, where there is a delay, the reason advanced for the delay must be assessed in the context of all of the evidence presented. Each case must turn on its own facts having regard to the assessment of the evidence as a whole. A careful reading of *Refugee Appeal No 76088* at paragraphs [28] or [29] makes clear that the Authority in this decision was not advocating a different approach and little, if anything, is to be gained from a decision-making perspective by referring back to credibility findings made in relation to evidence presented in totally unrelated cases.

[73] Considering all of the evidence in this case together with the appellant's demeanour, the Authority is satisfied that no adverse credibility inference can reasonably be drawn from the appellant's failure to lodge a refugee claim in 2006.

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[74] The Authority accepts the appellant as credible and her story is accepted in its entirety.

Well-founded fear of being persecuted

[75] The Authority has remarked on a number of occasions that the suppression of *Falun Gong* by the CCP is one which is ongoing and that this can involve a risk of detention and ill-treatment of genuine followers who have come to the attention of the Chinese authorities – see, for example, *Refugee Appeal Nos 76200 and 76201* (21 July 2008) at paragraphs [38]-[41]. That this systemic campaign exists is not to say, however, that all *Falun Gong* practitioners are being targeted because of their beliefs – see *Refugee Appeal No 76147* (29 February 2008) at [66]-[68]. It is also important to recognise that claimants advancing untruthful claims to be at risk because of their belief in *Falun Gong* may be able to manipulate the country information by having false particulars placed on *Falun Gong* websites as highlighted by the facts of *Refugee Appeal No 76284* – see [103]-[104] and [111].

[76] The appellant already has a profile with the Chinese authorities because of her involvement in *Falun Gong* activities on her first visit to New Zealand. This resulted in a monitoring of her by way of telephone intercept and surveillance. There is a real chance that her activities in New Zealand would have come to the attention of the Chinese authorities. These activities will be considered to be in breach of the undertaking given by AA to the PSB and the ‘stabilisation office’ on her behalf. This is likely to cause a hardening of the attitude of the Chinese authorities towards her if she is returned.

[77] In light of this, there is a real chance that on arrival in China the appellant would be arrested and can be expected, at the least, to be sentenced to re-education through labour (*lao jiao*), an administrative, not judicial, form of detention. While the duration of such detention is uncertain, the conditions under which she may be detained can be expected to be harsh and possibly life-threatening for a person of her age and wellbeing. The appellant therefore faces a real chance of being persecuted by reason of her belief in *Falun Gong*.

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Nexus to Convention ground

[78] The appellant's predicament is contributed to by her belief in *Falun Gong*. The truth clarification element within the *Falun Gong* belief structure requires the appellant to make known the State policy of repression of *Falun Gong*. The predicament thus has an inherent political element to it and can therefore be appropriately categorised as being for reason of political opinion for the purposes of the Refugee Convention.

CONCLUSION

[79] 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.

"B L Burson"

B L Burson
Member