



RPD File No. / N° de dossier de SPR : VB0-04162

Private Proceeding / Huis clos

## Reasons and Decision – Motifs et décision

<b>Claimant(s)</b>	<b>XXXXXX XXXXX</b>	<b>Demandeur(e)s d'asile</b>
<b>Date(s) of Hearing</b>	14 October 2011	<b>Date(s) de l'audience</b>
<b>Place of Hearing</b>	Vancouver, BC	<b>Lieu de l'audience</b>
<b>Date of Decision</b>	16 January 2012	<b>Date de la décision</b>
<b>Panel</b>	Douglas Fortney	<b>Tribunal</b>
<b>Counsel for the Claimant(s)</b>	Dean D. Pietrantonio Barrister and Solicitor	<b>Conseil(s) du / de la / des demandeur(e)s d'asile</b>
<b>Tribunal Officer</b>	N/A	<b>Agent(e) des tribunaux</b>
<b>Designated Representative(s)</b>	N/A	<b>Représentant(e)s Désigné(e)s</b>
<b>Counsel for the Minister</b>	Renee Wyslouzil	<b>Conseil du ministre</b>

## REASONS FOR DECISION

[1] These are the reasons for the decision of the Refugee Protection Division (RPD) in the refugee protection claim of **XXXXXX XXXXXX** (the “claimant”), who alleges to be a citizen of China.

[2] The claimant claims refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (the “Act”).<sup>1</sup>

### IDENTITY

[3] I find that the claimant has established her identity as a national of China by her testimony and documents, including her passport.<sup>2</sup>

### DETERMINATION

[4] I find that the claimant is a Convention refugee. My reasons follow.

### ALLEGATIONS

[5] The claimant is a 52 year-old married female, born in China. Her detailed allegations are set out in her Personal Information Form (PIF) and need not be repeated here. The following is a synopsis of her allegations supplemented by her testimony at the hearing:

[6] While born in China, the claimant moved to Singapore in 1995. She, her husband and daughter became permanent residents of Singapore in **XXXXXX** 1996. In **XXXXXX** 1998, the claimant was first introduced to Falun Gong thoughts and activities by a friend who was also a Singapore permanent resident. The claimant became an active follower and practitioner of Falun

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<sup>1</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

<sup>2</sup> Exhibit 2.

Gong thought and activities in Singapore and also participated in Falun Gong activities during frequent international travel.

[7] The claimant alleged that starting in 2006 the Singapore government began harassing Chinese citizens who held permanent resident status in Singapore and who were practitioners of Falun Gong and that such actions were attributable to pressure the Singapore government was receiving from their Chinese government counterparts. The claimant cited in her PIF examples of Chinese citizens who were Singapore permanent residents and well-know Falun Gong practitioners whose work permits and re-entry permits to Singapore were cancelled by the Singaporean government.

[8] In 2003, the claimant was investigated by Singaporean police about her public Falun Gong activities along with other fellow practitioners. While the claimant and other followers were released with a warning, police charged the Falun Gong organizers of her group after they had criticized the government and they were imprisoned for one year. Following that, one of the Falun Gong organizer's request for a re-entry permit was denied and she was told to leave Singapore in **XXXXXX** 2007.

[9] While living in Singapore, the claimant returned to China to visit parents and relatives about twice a year between 1996 and 2003. In 2004, a fellow Falun Gong practitioner who had returned to China had been arrested while in China. She had been released after her father signed a guarantee statement on her behalf. The claimant's friend told her that the police had asked her to identify all the contacts in her cell phone and she told the police that the claimant was her insurance agent.

[10] From 2006 onwards the validity of the claimant's re-entry permit for the claimant and her family were shortened to one year from the usual five-year period.

[11] In **XXXXXX** 2008 the claimant applied for a visa to Hong Kong to participate in Falun Gong but her request for a visa was denied.

[12] In XXXXX 2009, the claimant went to the Chinese embassy in Singapore to renew her passport as her current passport was to expire in XXXXX 2011. Despite several follow-ups with the Chinese embassy, the embassy refused to issue a new passport.

[13] As the claimant had heard through her friends in Canada that Chinese Falun Gong practitioners in Vancouver were able to renew their passport, the claimant traveled to Vancouver on XXXXX, 2010 and applied for a new passport. On XXXXX, 2010, the claimant received a phone call from the Chinese consulate in Vancouver informing her that her application for a new passport had been rejected and no reason was given.

[14] Before arriving in Canada, the claimant and her family had applied for an extension to their Singapore re-entry permits which were to expire on XXXXX, 2010. When the claimant's husband inquired as to the status of their requests, Singapore officials told him that the claimant's husband and daughter could obtain one-year re-entry permits but that they would not issue a new one for the claimant. No reason was given. While in Vancouver, the claimant also applied online through the Singapore government website for extension of her re-entry permit. On XXXXX, 2010, the claimant received confirmation that this request for an extension of the Singapore re-entry permit had been denied. On XXXXX, 2011, the claimant received a letter from Singapore immigration authorities indicating that she has lost her Singapore permanent resident status as she remained outside Singapore without a valid re-entry permit.

[15] The claimant believes that her efforts to preserve her permanent resident status in Singapore have been frustrated by Singaporean authorities. She fears returning to her country of nationality, China, on the basis that she would be subject to persecution on the basis of her Falun Gong practices and affiliations.

## **ANALYSIS**

[16] The Minister of Public Safety (the "Minister") participated in this claim through the participation of its representative at the hearing and the filing of written submissions.

[17] In coming to my decision, I have considered all of the oral and documentary evidence, together with submissions of counsel for the Minister and counsel for the claimant.

[18] The primary question which has arisen in the claim of the claimant for refugee protection with respect to her country of reference of China is that of exclusion from the refugee determination process because the evidence is that she is, in fact, a permanent resident of Singapore.

**Article 1(E) of the Convention provides:**

That this Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

[19] Counsel for the claimant recognized in his submissions that the claimant did possess what is considered under Singapore law to be permanent resident status in Singapore prior to arriving in Canada on **XXXXXX**, 2010. The greater question here is whether or not what is considered under Singapore law to be permanent resident status satisfies the requirements of exclusion under Article 1E of the *Convention* where the claimant must possess “rights and obligations which are attached to the possession of the nationality of that country”.

[20] According to information provided in counsel for the Minister’s submissions, there is no expiry date for Singapore permanent resident status; however, there is a validity for the reentry permit (REP) which is issued to Singapore permanent residents. The REP allows a Singapore permanent resident to retain permanent resident status while traveling abroad, provided that he returns to Singapore before the REP expires. Counsel for the Minister submits that if the claimant had returned to Singapore prior to expiry of her reentry permit, she would have benefited from the fact that there is no expiry for permanent resident status in Singapore and therefore could have remained in Singapore. Counsel for the Minister further submitted that had the claimant reentered Singapore prior to expiry of her REP she would then have been able to apply again for a new reentry permit, and if refused again, have the ability to appeal the decision pursuant to section 11 (3) of the *Singapore Immigration Act*.

[21] Counsel for the claimant provided the complete text of the *Singapore Immigration Act* as part of his written submissions. Section 7 of the *Singapore Immigration Act* gives the unlimited right of entry (or re-entry) to Singapore citizens. However, unlike citizens of Singapore, Singapore permanent residents must obtain a reentry permit to reenter should they travel outside Singapore. Section 11 of the *Singapore Immigration Act* details the requirements and process to obtain such reentry permits for permanent residents which are made on application to the controller of the Immigration appointed under the same Act. Upon application and upon payment of the fee, the controller *may* issue to the applicant a reentry permit. There is no specified validity indicated in the act for such reentry permits. Should the controller refuse to issue the reentry permit, the applicant can appeal to the Minister of Immigration whose decision would be final.

[22] Counsel for the claimant submitted that the claimant did not possess an inherent and secure right of return to Singapore. That is, her reentry permit was required to be renewed annually. Counsel for the claimant submitted that, while she may have been considered under Singapore law to have permanent resident status, such status in Singapore does not confer rights substantially similar to those of nationals which constitutes the legal test in Canada for exclusion under article 1E of the Convention.

[23] As stated in paragraph 21 of the Federal Court Trial Division case of *Nepete*,<sup>3</sup> when the Minister files evidence that the claimant had PR status that constitutes *prima facie* evidence that Article 1 E applies. The onus then shifts to the claimant to rebut the evidence by showing why they could not renew their status. In this case and as summarized above, the claimant did submit evidence that she had applied for a re-entry permit and it was not granted. Singapore has also told her in a letter that she has lost her PR status.

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<sup>3</sup> *Nepete v. Canada (Minister of Citizenship and Immigration)* (2000), IMM-4471-99, (F.C.T.D.).

[24] In considering whether or not the claimant possessed rights and obligations which are attached to the possession of the nationality of Singapore, I am guided by the Federal Court Trial Division case of *Shamlou* where Justice Teitelbaum listed the tests to be followed:<sup>4</sup>

Lorne Waldman in his text submits that Boards should apply section 1E with "great caution". He outlines four criteria that, in his opinion, the Board should follow in undertaking an analysis regarding the "basic rights" enjoyed by an applicant. These four criteria are:

- (a) the right to return to the country of residence;
- (b) the right to work freely without restrictions;
- (c) the right to study, and
- (d) full access to social services in the country of residence.

If the applicant has some sort of temporary status which must be renewed, and which could be cancelled, or if the applicant does not have the right to return to the country of residence, clearly the applicant should not be excluded under art. 1E.

[25] In the case at hand, I find that the claimant's status as a permanent resident of Singapore does not meet the test of having the right to return to Singapore as would be the case for a Singapore citizen. I find that the claimant has presented credible evidence that in her particular case her applications for a REP were denied and she was notified in writing that she has lost her permanent resident status. The requirement under Singapore law for a reentry permit for persons considered to be Singapore permanent residents is not an inherent right on application. The text of the *Singapore Immigration Act* indicates that the decision to issue a reentry permit rests at the discretion of the controller and upon appeal to the Minister of Immigration of Singapore. I therefore find that the claimant should not be excluded from refugee protection pursuant to article 1E of the Convention. It will therefore be appropriate to now consider the inclusion aspects of this claim.

[26] In respect to the inclusion aspect of this claim pertaining to the claimant's country of reference of China, the determinative issue is credibility. Based on the claimant's testimony and

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<sup>4</sup> *Shamlou v. Canada (Minister of Citizenship and Immigration)* (1995), 32 Imm. L.R. (2d) 135 (F.C.T.D.).

the extensive documentation submitted to corroborate key elements of her claim, I found the claimant to be a credible witness. Based on the evidence submitted, the claimant and other similarly situated individuals who are identified as Falun Gong activists have encountered difficulties in renewing their REP or maintaining their permanent resident status for Singapore. Such difficulties do appear to be linked to the Singaporean government's desire to minimize friction with the Chinese government.

[27] Moreover, the claimant herself has brought to the attention of Chinese authorities her Falun Gong activities in her direct communications with the Chinese Embassy in Singapore and the Chinese consulate in Vancouver, copies of which were submitted into evidence. Such communications with Chinese authorities as to her Falun Gong activities certainly appear to be naïve and misguided but I have no reason to believe that they have been fabricated for the purposes of submitting a claim for refugee protection. While the claimant's Falun Gong affiliation and activities were initiated after she left China in 1995, from a forward looking analysis would there be a serious possibility that the claimant would be persecuted on account of her Falun Gong activities should she return to China?

[28] It is clear from the Board's China country documents that Falun Gong practitioners are subjected to serious penalties in China. The United States Department of State report on China for 2011 contains numerous references to the punishment ranging from loss of employment to imprisonment for persons known or suspected to be Falun Gong supporters. Punishment can include imprisonment in 're-education through labour camps' or incarceration in psychiatric institutions and transformation centres.<sup>5</sup>

[29] It is also clear from the country documentation that family members of Falun Gong practitioners and those who are considered to have supported or assisted Falun Gong practitioners are also at serious risk of persecution in China. As noted in a July 11, 2007 Response to Information Request (RIR) issued by the Board:

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<sup>5</sup> Exhibit 3, National Documentation Package (NDP), China, 20 April 2011, Item 2.1, United States (US). 8 April 2011. Department of State. "China (includes Tibet, Hong Kong, and Macau)." *Country Reports on Human Rights Practices for 2010*.



[the Chinese] authorities use ... family members as "hostages" to force [Falun Gong] practitioners to give up the practice. If practitioners do not cooperate with the authorities, their family members are subject to punishment as well....The punishment includes harassment by the police (random visit by police to the home), arbitrary interrogation, losing [a] job, losing [the] chance of promotion, losing [a] pension/state housing, etc.<sup>6</sup>

[30] I therefore find that the claimant would be at a serious risk of persecution should she return to China. Once having determined that the claimant is credible, I also find that, since the state is the agent of persecution, it is clear that state protection would not be reasonably forthcoming for her. Additionally, I find that given the state is the agent of persecution, there is no reasonable or viable internal flight alternative.

[31] Based on the country documents and circumstances in evidence in this particular claim, and the nature of household registration and other sources of information concerning the government's abilities to locate the whereabouts of individuals sought by the state, I conclude that there is a serious possibility that the claimant would be persecuted anywhere she went in China.

## CONCLUSION

[32] For the foregoing reasons, I find that **XXXXXX XXXXXX** is a Convention refugee and her claim is therefore accepted.

(signed)

**"Douglas Fortney"**

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**Douglas Fortney**

**16 January 2012**

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**Date**

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<sup>6</sup> NDP, Item 12.18, CHN102560.E. 11 July 2007. Treatment of family members of Falun Gong practitioners by the Chinese authorities; situation of persons who unwittingly or knowingly assist Falun Gong practitioners (e.g., by allowing use or rental of property, offices, office equipment, vehicles, etc.); the treatment of such persons if they deny knowledge of having assisted Falun Gong practitioners, agree to cease such assistance, or denounce Falun Gong.

**KEYWORDS – REFUGEE PROTECTION DIVISION — EXCLUSION – ARTICLE 1 E –  
RIGHTS AND OBLIGATIONS OF A NATIONAL IN SINGAPORE - RELIGION – FALUN  
GONG –POSITIVE – CHINA**