

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76145

AT AUCKLAND

Before: M A Roche (Member)
Counsel for the Appellant: K H Lowe
Appearing for the Department of Labour: No Appearance
Date of Hearing: 19 & 20 November 2007
Date of Decision: 10 December 2007

DECISION

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

INTRODUCTION

[2] The appellant arrived in New Zealand on 4 August 2004. Upon her arrival she was issued a visitor's permit valid to 17 August 2004. Following the expiry of that permit, she remained illegally in New Zealand. On 31 July 2007 police officers stopped her while she was driving. She was detained by the police after they discovered that she had overstayed her permit to be in New Zealand. She was subsequently transferred to the Auckland Region Women's Correction Facility, where she remains. On 9 August 2007, the appellant made an application for refugee status based on her membership of Falun Gong. She was interviewed by the RSB on 29 August 2007. A decision declining her application was issued on 27 September 2007, leading to her appeal to this Authority.

[3] The appellant's claim is based around her involvement with Falun Gong in

2007. The key issues are the credibility of her claim to be a genuine Falun Gong adherent and the risks she may face on return to China because of her involvement with Falun Gong in New Zealand.

THE APPELLANT'S CASE

[4] The appellant is aged in her early 50s. She is married but in the process of divorcing her husband who is in China. She has two adult children in China.

[5] The appellant is from a poor farming family in China. During the Cultural Revolution, her father was arrested by Chinese Communist Party (CCP) officials and accused of being a spy. He died in prison. Several years later, the appellant's brother was also arrested and accused of spying. He was physically mistreated and subjected to public humiliation.

[6] After leaving school the appellant supported herself by working in a rice field. She later had a small business, making and selling clothing.

[7] Following the birth of her second child in the late 1980s, the appellant was subjected to a sterilization operation against her will.

[8] In July 2004, the appellant applied for a visa to come to New Zealand. Her visa was arranged by an agent and she was unaware of the content of the visa application form which, among other things, stated that she would be in New Zealand for only one week. In fact, the appellant had been experiencing marital difficulties. She had decided to leave her husband, and to travel to New Zealand where she intended to find a new partner and remain permanently.

[9] On 4 August 2004, the appellant departed from China for New Zealand. Upon her arrival she stayed briefly with some distant relatives. After her visitor's permit expired she worked illegally on a vegetable farm, child-minding, and in restaurants.

[10] In August 2006, the appellant saw a copy of the *Epoch Times* in a Chinese supermarket. Inside she found an advertisement for Falun Gong with the name and telephone number of a contact person. The appellant was attracted to Falun Gong because she had health problems that she thought could be assisted by the

practise of Falun Gong. She also harboured deep bitterness against the CCP because of the way they had treated her and her family and wished to involve herself in protests against the Chinese government. She telephoned the contact person, witness A, and had a brief conversation with her.

[11] In October 2006, the appellant lodged an application for a permit to be in New Zealand. She had by this time formed a relationship with AB, a Chinese national who had permanent residence. AB sponsored her application for a permit. On 8 January 2007 the appellant's application for a visitor's permit was declined by the DOL. In the letter advising of the decline of the application, the DOL instructed the appellant that she must make arrangements to leave New Zealand immediately. The appellant did not receive this letter which was sent to her lawyer. She had taken no real interest in the outcome of her application for a permit because she assumed it would be unsuccessful.

[12] In late January 2007, the appellant telephoned witness A again and told her that she wished to start practising Falun Gong and asked her where she could do so. Witness A invited her to join the Sunday morning practice sessions held outside the Chinese Consulate in Auckland and gave her directions to the Consulate. The appellant attended the practise and was shown the Falun Gong exercises by witness A. Following her first attendance at the Chinese Consulate, the appellant attended practice sessions almost every Sunday until her arrest in July 2007, missing only when the weather was poor or when work commitments prevented her from attending. She continued to receive help with the exercises from witness A at the practice sessions, but struggled to master them.

[13] In May 2007 the appellant's handbag, containing her passport, was stolen. She did not report the theft of her handbag to the police or the loss of her passport to the Chinese Consulate. Around this time, she told her older sister in China she had become involved with Falun Gong.

[14] On 18 or 19 July 2007, the appellant travelled to Wellington with a group of Falun Gong members to protest at the Chinese Embassy. The protest was staged outside the Botanic Gardens, across the road from the Chinese Embassy. 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.

[15] After the protest, the appellant returned to Auckland. Approximately two weeks later, on 31 July 2007, she was apprehended by the police while driving a car and placed in custody. While in police custody she was interviewed by an immigration official. She told this official that she could not return to China because she had joined the Falun Gong movement. Approximately one week later she filed her refugee application.

[16] When the appellant was interviewed by a refugee status officer she was asked to name the Falun Gong exercises and to perform two of them. She was unable to do so. She was also unable to tell the refugee status officer how many exercises there were or to describe or draw the Falun Gong symbol or to explain the ideas behind Falun Gong.

[17] The appellant believes that the Chinese authorities will be aware that she has been involved in Falun Gong and protests against the Chinese government because she will have been identified from films made of these protests. She believes that her name will be on a blacklist and that upon her return to China she will be persecuted because of her involvement in Falun Gong.

Witness evidence

[18] Two members of the Falun Gong appeared as witnesses in support of the appeal. Their evidence is summarised below.

Witness A

[19] Witness A is a Chinese-born New Zealand citizen. She has lived in New Zealand for 16 years and has been involved with Falun Gong for 10 years. She is currently the Falun Dafa Association Co-ordinator.

[20] Witness A recalled the appellant telephoning her in August 2006 and asking her questions about Falun Gong. She recalls that the appellant told her that she had a sore back which was why she was interested in Falun Gong. The appellant telephoned her again in January 2007. On this occasion witness A told her that there was a campaign to have Chinese nationals quit the CCP and the appellant

agreed to participate. Witness A did this for the appellant by recording on the Falun Gong website that the appellant had resolved to leave the CCP. This was a symbolic resignation only. The appellant was not in fact a member of the CCP and the name used for the appellant on the website was a pseudonym.

[21] During their second telephone conversation, witness A gave the appellant the details of the regular practice sessions outside the Chinese Consulate in Auckland. The appellant began to attend these regularly on Sundays and witness A spent considerable time with her at these sessions showing her the exercises and also talking to her about Falun Gong philosophy. She described the appellant as being slow to learn the exercises and also slow to comprehend Falun Gong philosophy.

[22] Witness A has had no contact with the appellant other than at the Sunday practise groups. She confirmed that the appellant had never attended the regular Falun Gong study sessions which are held on Saturdays, or any other Falun Gong activities apart from the protest outside the Chinese Embassy in Wellington in July 2007. She expressed the view that the appellant was a genuine Falun Gong adherent and said that the Falun Dafa Association did not support people who were not genuine.

[23] Witness A also participated in the protest in Wellington. She observed that two Chinese people from a church group and one person from the *Capital* Chinese newspaper took photographs of the protest. There were also two students who videoed the protest in connection with a school project they were doing. She commented that when the protests are carried out in Wellington and Auckland they are always filmed by Chinese Embassy and Consulate staff respectively.

Witness B

[24] Witness B is the president of Falun Dafa Association in New Zealand. He is a permanent resident of New Zealand and has been living here for more than 11 years. He became involved with Falun Gong in China in 1996.

[25] He recalls seeing the appellant regularly at the Sunday morning practice sessions held outside the Chinese Consulate in Auckland and occasionally talking to her at these sessions. He got to know her better when she came to Wellington and joined in the protest outside the Chinese Embassy there.

[26] Witness B described the appellant as a beginner in Falun Gong but expressed the belief that she was genuine in her commitment to Falun Gong because of the risk she took in participating in such a prominent role in the protest outside the Chinese Embassy in Wellington. He expressed the view that only a few people had the courage to stand up to the Chinese authorities in such a manner and that the Falun Dafa Association determines who is genuine in their adherence to Falun Gong based on the level of their activities on behalf of the organisation.

Documents

[27] Counsel filed opening and closing submissions. At the hearing three documents relating to the persecution of Falun Gong practitioners in China were produced. These were:

- (a) *Compassion a Journal of Falun Dafa around the world* Issue 5: 2004.
- (b) *Searching for Justice: counteracting hate, torture, and crimes against humanity* (19 June 2004).
- (c) David Mathias and David Kilgour *Report into allegations of organ harvesting of Falun Gong practitioners in China* (6 July 2006).

THE ISSUES

[28] 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."

[29] 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

[30] The Authority accepts that the appellant gave true evidence about her brief involvement with the Falun Gong movement in New Zealand. It also accepts that witness A and witness B gave truthful evidence to the Authority about the appellant's participation in Falun Gong activities.

[31] The appellant was candid in her evidence that her intention, on her arrival in New Zealand in 2004, was to stay here permanently although she had no legal entitlement to do so. After her initial two week permit expired, she made no attempt to regularise her immigration status until some two years later in July 2006 when she made an application for a further permit.

[32] That application was declined in January 2007 and the appellant was advised by letter to leave New Zealand. At this point she began her association with Falun Gong. She had had no previous involvement in Falun Gong in New Zealand or China. Although she regularly attended Sunday practices outside the Chinese Consulate in Auckland, she did not attend any Falun Gong study sessions or other activities.

[33] Both witnesses accepted that the appellant was genuine in her adherence to Falun Gong. However, they described her as a "beginner" with limited understanding. When asked in August 2007 at her RSB interview, she was unable to name or perform the Falun Gong exercises and demonstrated a limited understanding of Falun Gong philosophy.

[34] In her evidence the appellant stated that she would not practise Falun Gong publicly in China because it was dangerous to do so. She agreed that if she practised Falun Gong at all, it would be in the privacy of her own home.

[35] The appellant claims to be at risk of being persecuted by the Chinese authorities because of her involvement with Falun Gong in New Zealand. She claims that because of her role in the protest in Wellington, and her regular attendance at Sunday practices outside the Chinese consulate during the first half of 2007, she has a profile with the Chinese authorities. It is claimed that this

profile will result in her placement on a “blacklist” and that she will be intercepted by the authorities should she return to China.

[36] The Authority has considered the treatment of Falun Gong practitioners in a number of decisions. As was noted in *Refugee Appeal No 76030* (13 August 2007) at [44], since the banning of Falun Gong in 1999, there has been no softening in the treatment of its followers. In 2002, Human Rights Watch published a detailed report documenting the treatment of apprehended practitioners and describing punishment regimes such as lengthy administrative detentions, re-education in labour camps and torture: Human Rights Watch *Dangerous Meditation: China and the campaign against Falun Gong* (January 2002). There is no indication that the predicament of Falun Gong practitioners in China has improved in any way since the publication of the *Dangerous Meditation* report. It is clear that Falun Gong practitioners who come to the attention of the authorities and refuse to renounce their beliefs are at risk of ill-treatment in China.

[37] In a position paper published in 2005, the UNHCR stated that (despite the widespread repression of Falun Gong in China) there was no evidence to suggest that all Falun Gong members were systematically targeted by the authorities and that therefore, membership of Falun Gong alone would not give rise to refugee status, although a prominent role in certain other activities (such as proselytising or organising demonstrations) which brings the member to the attention of the authorities may do so: United Nations High Commissioner on Refugees *Position paper on Falun Gong* (1 January 2005).

[38] A similar position is taken in the United Kingdom Operational Guidance Note (OGN) of 12 July 2007 from the Border and Immigration Agency UK. This document was quoted extensively in *Refugee Appeal No 76088* (6 November 2007) a copy of which was provided to the appellant’s counsel at the hearing. In its conclusion, the OGN states that Falun Gong practitioners may face ill-treatment in China if they come to the attention of the Chinese authorities but that there will not normally be any risk from the Chinese authorities for persons who practice Falun Gong privately at home and that therefore ordinary Falun Gong practitioners who have not come to the attention of the Chinese authorities are unlikely to qualify for [refugee status]: OGN at [3.6.11] and [3.6.12].

[39] The appellant's involvement in Falun Gong has been minimal. At the time of her RSB interview, her knowledge of Falun Gong was extremely limited. It is accepted that she has probably studied Falun Gong and practised the exercises intensively between her RSB interview and her appeal before the Authority. However, if she has done so, her motivation has been to advance her ultimate aim of obtaining permanent residence in New Zealand, rather than to achieve the spiritual and physical improvements that mastery of Falun Gong offers. At the hearing, the Authority formed the view that her involvement in Falun Gong has been primarily for the purpose of achieving permanent residence in New Zealand which has been her goal since her arrival here in 2004.

[40] The Authority considers it most unlikely that the appellant will practice Falun Gong at all after returning to China. If she ever does so, on her own evidence, it will be in the privacy of her own home as she has no wish to risk the repercussions that public exposure as a Falun Gong practitioner would bring. Having never been involved with Falun Gong in China, she has no links with Falun Gong networks there that could bring her to the attention of the authorities.

[41] Having found that the appellant will not engage in activities in China that will put her in risk, it must next be determined whether the appellant's limited involvement in Falun Gong in New Zealand will have created a profile with the authorities that will result in her being apprehended on her return to China.

[42] It is accepted that the Chinese authorities monitor Falun Gong networks abroad. Many witnesses that have appeared before us over the years have described the filming of the Sunday practice sessions outside the Consulate and protests outside the Embassy in Wellington by Consulate and Embassy staff. Evidence that the 610 office monitors *Falun Gong* in New Zealand has been accepted in previous decisions of the Authority, see *Refugee Appeal No 75536* (25 May 2006) at [32].

[43] In *Refugee Appeal No 76088* (6 November 2007), the Authority considered the risks on return to China faced by an appellant who was a failed asylum seeker with a far greater Falun Gong profile than the appellant. In that decision in paragraphs [76]-[96] the Authority reviewed the available country information concerning the treatment of failed asylum seekers including Falun Gong adherents who were returned to China. Paragraphs [76]-[96] of *Refugee Appeal No 76088*

will not be replicated here. However, those paragraphs are adopted and relied on in this decision.

[44] At [96] the Authority noted that evidence of the persecution of failed asylum seekers who have had a Falun Gong association or have been involved in protests overseas was scant. At [97] the Authority concluded that, based on the country information and the few examples available, a failed asylum seeker who may have practised Falun Gong while overseas and is being returned to China is not at real risk of being mistreated unless there are significant additional aspects to the profile of the claimant.

[45] The current appellant has had limited involvement with Falun Gong. She has never attended Falun Gong study sessions or got to know other members of the Falun Gong community. She has never visited the homes of other Falun Gong practitioners or had any social involvement with them. When asked, she was only able to name three other members apart from witness A and witness B. She did not even know the full names of these three. She took part in a mock torture session at a protest on a single occasion in New Zealand. Anyone observing her during 2007, would have seen that she was a person attempting with difficulty to master the exercises who had no real or meaningful links to the Falun Gong movement in New Zealand.

[46] The Authority does not consider that the appellant's very brief and limited involvement in Falun Gong in New Zealand has 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.

[47] It is noted that the appellant has no current passport. She claims that her passport was stolen in May 2007 although she reported its loss neither to the New Zealand Police nor the Chinese Embassy. She has advanced no reason for her failure to obtain a new passport or to report her passport lost apart from that she had not had the time to do so. There would appear to be no reason why, should the appellant apply for a passport that it would not be granted. She departed China legally. There appears to be no reason why upon her return she would be of any particular interest to the Chinese authorities.

[48] The first issue framed for consideration is answered in the negative. The appellant does not have a well-founded fear of being persecuted in China. Given this finding, it is unnecessary to consider the second issue of Convention ground.

CONCLUSION

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

"M A Roche"

M A Roche
Member