

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76007

AT AUCKLAND

<u>Before:</u>	M L Robins (Member)
<u>Counsel for the Appellant:</u>	C Curtis
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Date of Hearing:</u>	5, 6 and 22 March 2007 and 10 May 2007
<u>Date of Decision:</u>	19 September 2007

DECISION

[1] This is an appeal against a decision of a refugee status officer 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] This is the second time the appellant has claimed refugee status. He lodged his first claim in December 1996, on the grounds of his involvement in pro-democracy protests, his false imprisonment on charges of corruption and his conversion to Christianity. That first application was declined by the Refugee Status Branch (RSB) of the DOL in March 2000. The appellant did not appeal that decision. His work permit expired in March 2000 and from that time his stay in New Zealand was unlawful.

[3] In August 2006, the appellant was served with a removal order and was detained at the Auckland Central Remand Prison ("ACRP") where he lodged his second application for refugee status. This second application was declined by the RSB in December 2006. It is from that decision that the appellant appeals.

[4] The appellant's second refugee claim is that in 2003, while in New Zealand, he became a *Falun Gong* practitioner. He asserts that in 2004 the authorities in China warned his mother that he must cease his *Falun Gong* activities or face the consequences on his return. The appellant says that the Chinese government persecutes *Falun Gong* practitioners and, because of his *Falun Gong* profile in New Zealand, he faces serious harm if he is returned to China.

JURISDICTION OF THE AUTHORITY TO HEAR THE APPEAL

[5] Section 129O(1) of the Immigration Act 1987 (which came into force on 1 October 1999) ("the Act") provides:

"A person whose claim or subsequent claim has been declined by a refugee status officer, or whose subsequent claim has been refused to be considered by an officer on the grounds that the circumstances in the claimant's home country have not changed to such an extent that the subsequent claim is based on significantly different grounds to a previous claim, may appeal to the Refugee Status Appeals Authority against the officer's decision."

[6] This provision, now incorporated in the Act, is similar in content to the provisions of the Authority's Rules, which applied prior to that date.

[7] It is also relevant to note that, pursuant to s129P(1) of the Act:

"1. It is the responsibility of the appellant to establish the claim, and the appellant must ensure that all information, evidence and submissions that the appellant wishes to have considered in support of the appeal, are provided to the Authority before it makes the decision on the appeal."

[8] The question whether there is jurisdiction to entertain a second or subsequent refugee application was considered by the Authority in *Refugee Appeal No 75139* (18 November 2004). In that decision, the Authority ruled that in a subsequent claim under s129O(1) of the Act, there are distinctive aspects to the appeal:

"[55] First, irrespective of the finding made by the refugee status officer at first instance, the claimant must satisfy the Authority that it has jurisdiction to hear the appeal. That is, the claimant must establish that, since the determination of the previous claim, circumstances in the claimant's home country have changed to such an extent that the further claim is based on significantly different grounds to the previous claim."

[9] The Authority further ruled at [55](e):

"(e) Jurisdiction under ss129J(1) and 129O(1) is determined by comparing the previous claim to refugee status against the subsequent claim. This requires the refugee status officer and the Authority to compare the claims

as asserted by the refugee claimant, not the facts subsequently found by that officer or the Authority."

[10] That approach is respectfully agreed with. In this appeal, therefore, the Authority will consider the appellant's first claim, and his second claim as presented at this appeal, with a view to determining:

- (a) whether, in terms of s129O(1) of the Act, the Authority has jurisdiction to hear this appeal and, if so,
- (b) whether the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention.

THE APPELLANT'S FIRST REFUGEE CLAIM

[11] The appellant's first claim to refugee status may be summarised as follows:

- (a) In August 1989, the appellant's involvement in pro-democracy protests in June 1989 was investigated. He was sent to prison without trial and was detained for 10 months.
- (b) In May 1993, the appellant was falsely charged with corruption. He was convicted and sentenced to hard labour for two years. He was so disillusioned with the Chinese justice system that, after his release, he began to make plans to leave China.
- (c) After arriving in New Zealand in 1996, the appellant was, in 1997, baptised in a Christian church.
- (d) In 1997, the appellant's father told him that the police in China were looking for the appellant.
- (e) If the appellant returned to China, he would come to the attention of the Chinese authorities because of his false criminal conviction.
- (f) His Christian conversion might be discovered, giving rise to a real chance of him being persecuted on the grounds of his religion and imputed political opinion.

THE APPELLANT'S SECOND REFUGEE CLAIM

[12] In 2003, the appellant started working for a painting contractor in New Zealand. From mid-2003 until February 2004, he rented a room in a house owned by AA. On meeting AA, the appellant recognised her as a woman he had seen practising *Falun Gong* outside the Chinese Consulate in Auckland. The Consulate was situated around the corner from her house, on a road often travelled by the appellant.

[13] AA lent him books and audiotapes about *Falun Gong* and the suppression of *Falun Gong* by the Chinese government. The appellant learned the three basic tenets of *Falun Gong* – truth, forbearance and charity. AA taught the appellant some *Falun Gong* exercises.

[14] One day, about a month after he moved into AA's house, the appellant experienced extreme back pain and had to abandon his work for the day. He returned to AA's house where, witnessing his pain, AA told him it was a sign that the Master (Master Li Hongzhi, the *Falun Gong* founder) was cleansing his body. From this time onwards, the appellant was convinced of the truth of *Falun Gong*.

[15] Mid-way through the eight months that the appellant lived in AA's house (in about October 2003), AA took the appellant to *Falun Gong* classes held on Saturday nights at a tertiary institution (the "classes"). Because of his work commitments he was only able to attend four consecutive classes.

[16] During the four weeks he attended *Falun Gong* classes, the appellant learned of a protest in which *Falun Gong* actors were to portray a scene of *Falun Gong* practitioners being tortured by Chinese police. They were wondering what they could use for blood. The appellant suggested water-based red paint. He obtained some red paint through his job and gave it to AA.

[17] AA encouraged the appellant to join the groups that, as a form of protest, regularly performed *Falun Gong* exercises outside the Chinese Consulate. On two occasions while he lived in AA's house, both in the month after he attended the classes, he protested outside the Consulate.

[18] On the first occasion, there were four people doing *Falun Gong* exercises. He helped them distribute pamphlets to people walking in and out of the Consulate. The pamphlets described how the Chinese government persecuted

Falun Gong practitioners in China. There was a security camera on the corner of the Consulate building, angled towards the entrance. The appellant asserted that there was a good chance that the protestors were within the visual range of the camera. On the second occasion, he joined eight people who were practising *Falun Gong* exercises.

[19] During 2004, the appellant protested outside the Consulate occasionally. Most memorable was an occasion when the appellant and about 25 others flew the *Falun Gong* flag and banners which called for Jiang Zemin to be brought to justice in the International Court. On this occasion, the appellant practised *Falun Gong* exercises outside the Consulate and handed out pamphlets.

[20] The appellant explained that 20 July is a significant date in the *Falun Gong* calendar because it was on 20 July 1999 that the Chinese Government established the '610 Office' to crush the *Falun Gong* movement. The *Falun Gong* organise protests to publicise their grievances on this date each year.

[21] On 20 July 2004, a *Falun Gong* parade made its way down Queen Street. The appellant parked his car and rushed to join them. He walked with them back up Queen Street to Aotea Square where they gathered to hear speeches. He saw two journalists from the *Big Time* magazine giving speeches and he also saw a New Zealander giving a speech. He practised some *Falun Gong* exercises in Aotea Square and distributed pamphlets.

[22] Two weeks after this protest, the appellant was in a restaurant when he noticed BB. The appellant knew BB was connected to the Chinese Consulate through an organisation of which BB was the chairperson. BB said to the appellant "I understand you have started practising *Falun Gong*. I heard that you participated in a parade." The appellant admitted to BB "I am practising *Falun Gong* at the moment." BB replied "You should be careful because it won't do you any good" to which the appellant just smiled and said "It doesn't matter."

[23] In October 2004, the appellant moved to a house owned by CC. CC, a *Falun Gong* practitioner, lent the appellant books and tapes. The appellant practised *Falun Gong* exercises with CC in the backyard. During the 14 months that the appellant lived in CC's house, he went three or four times to protest at the Consulate and saw CC there on one or two of those occasions.

[24] In December 2004, the appellant telephoned his mother in China to ask if she received money he had sent her. She asked him if he was “practising *Falun Gong* in other countries with other people”. He said he was. She said the House Registrar (a local official) had asked her whether her son was in New Zealand, to which she replied “Yes.” The House Registrar then told her to tell the appellant not to participate in any *Falun Gong* activities in any other countries “because in China we are catching lots of these people so it would not be good for your family”. The House Registrar told her that if the appellant did not heed this warning, and if he came back to China, he would have to bear the consequences. He added “...and you, old woman, will also be affected”. The appellant told his mother not to worry because he would not be going back to China. He suggested that he and his mother avoid contacting each other.

[25] After this telephone call, the appellant started wondering how the Chinese authorities found out about his *Falun Gong* activities. He concluded that BB must have told them because:

- (a) BB was connected to the Chinese Consulate;
- (b) BB was aware of the appellant’s participation in the July 2004 parade; and
- (c) BB had warned the appellant to cease his *Falun Gong* involvement.

[26] On 20 July 2005, the appellant joined in the annual *Falun Gong* protest. He arrived in Aotea Square at about midday and joined the parade that marched down to the bottom of Queen Street and then back up again to Aotea Square where he practised *Falun Gong* exercises and distributed pamphlets.

[27] In December 2005, the appellant moved out of CC’s house and into his girlfriend’s house in Auckland. She was not a *Falun Gong* practitioner and, during the time he lived there, she went to China. The appellant looked after her mother and daughter until her return in March 2006. Their relationship then ended and the appellant moved out. He worked for a while in another city but was in Auckland on World *Falun Gong* Day when he commemorated this event in Aotea Square.

[28] The appellant was arrested by the New Zealand Police in early August 2006, as an overstayer. Since then he has been remanded in Auckland Central Remand Prison where he has been teaching *Falun Gong* to fellow inmates.

[29] The appellant said that if he was returned to China he would practise *Falun Gong* privately, but if the Chinese authorities asked him whether he was a *Falun Gong* practitioner he would not deny it.

Witnesses called by the appellant

[30] The appellant called three witnesses, all of whom had given evidence on his behalf at the RSB.

[31] DD is an elderly Chinese woman who has practised *Falun Gong* for seven years. She recalled first seeing the appellant at two *Falun Gong* classes. About 80 people attended these classes so, because she was not sitting near him, she was not able to speak to him on either occasion.

[32] DD asserted that she saw the appellant during a *Falun Gong* Car Tour protest that travelled from Auckland to Wellington. The protest was against the introduction by the Chinese Communist Party of "Article 23" which would enable the Hong Kong government to proscribe 'organisations' such as *Falun Gong* that are banned on the mainland.

[33] DD was not sure when the protest took place, guessing it was "a few years ago". She described fourteen vehicles travelling in convoy. Each vehicle had a *Falun Gong* flag (made by DD) flying out of each of their four windows during the journey. Not all vehicles were *Falun Gong* related. A few carried democracy advocates. At some point, DD was distributing food to occupants of other cars when she recognised the appellant in a 'democracy' car. She recognised him as the man she had seen at the two classes. The convoy arrived in Wellington in the afternoon and converged on Parliament where Members of Parliament received their submissions. The protestors then made their way to the Chinese Embassy where they protested before returning to Auckland that evening.

[34] DD also recalled seeing the appellant on one occasion practising *Falun Gong* on One Tree Hill.

[35] The second witness, CC, has practised *Falun Gong* for 10 years. He said that when the appellant moved into his house in October 2004 he (the appellant) was not in a good situation. By that CC meant he had too many bad habits, was selfish and spent too much time at the casino. CC said he lent the appellant books and tapes and taught him *Falun Gong* exercises. CC noticed a big change in the appellant. He became physically fitter, more willing to help others and he stopped going to the casino. CC recalled seeing the appellant on one occasion “a few years ago” protesting outside the Chinese Consulate and he thought he saw the appellant once at a protest in Queen Street.

[36] The third witness, AA, confirmed that the appellant lived with her for about eight months from mid-2003. She said she saw him on one occasion protesting outside the Chinese Consulate and on another occasion protesting in Queen Street. She also took him to four *Falun Gong* classes. She confirmed that he provided the red paint for a *Falun Gong* torture scene in July 2003.

Counsel's submissions

[37] Counsel provided written submissions dated 28 February 2007, 20 March 2007 and 16 May 2007, and a letter attaching country information dated 13 September 2007. These submissions, together with the voluminous country information (including an extract from the *Epoch Times* filed on 27 July 2007) have all been considered.

CONCLUSION ON JURISDICTION

[38] It will be recalled that, in terms of *Refugee Appeal No 75139* (18 November 2004) jurisdiction is determined by comparing the previous claim for refugee status asserted by the appellant with the subsequent claim.

[39] In the present case, the appellant's first claim for refugee status was based on his involvement in pro-democracy protests, his false imprisonment on charges of corruption and his conversion to Christianity. His second claim is based on the assertion that the Chinese authorities are looking for him because they are aware he has been practising *Falun Gong* in New Zealand. The Authority has interpreted the jurisdictional requirement that there be a change of circumstance *in the home country* to include a new risk in the home country due to a change of circumstance

that has occurred outside the home country. See *Refugee Appeal No 75576* (21 December 2006) at [80] to [84].

[40] Comparing the two claims, it is apparent that they are based on different grounds. The Authority therefore finds that it has jurisdiction to consider the appellant's second claim.

[41] The Authority now turns to consider whether the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention.

THE ISSUES

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

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

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

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

ASSESSMENT OF THE APPELLANT'S CASE

[44] Before turning to the issues posed, it is necessary to make a finding as to the credibility of the appellant's account. For reasons that follow, the Authority has concluded that it is not credible.

The appellant and his witnesses gave inconsistent accounts of his *Falun Gong* activities

Protests outside the Chinese Consulate in Auckland

[45] The appellant told the Authority that in about November 2003 – during the eight months he lived in AA’s house – he participated in two *Falun Gong* protests outside the Consulate and that these were the only two times he protested at the Consulate while he lived with AA. He estimated that during the 14 months he lived in CC’s house, he protested at the Consulate three or four times. Otherwise, he said, he protested outside the Consulate occasionally.

[46] To the RSB, the appellant had given a number of different accounts of his Consulate protests:

- (a) In his written statement presented to the RSB before his interview in August 2006, he claimed that he protested outside the Consulate “maybe seven or eight times in a year. I have taken part in such activities maybe in the last two years”.
- (b) At his RSB interview, he said his first *Falun Gong* protest was on 20 July 2003. He said the anti-torture protest (involving the red paint) started from outside the Consulate. He also said he attended Consulate protests most often when he was living in AA’s house.
- (c) In his response to the RSB Interview Report, the appellant claimed that his first participation in a *Falun Gong* protest outside the Consulate was on 20 October 2003.

[47] In September 2006, AA presented a written statement to the RSB. The statement read *verbatim*:

“We went to the Chinese general consulate to protest the persecution of *Falun Gong* in China every week. He [the appellant] admired what we did, but he admitted that he was not such a brave to stand in front of there. He believed the officers in the consulate place *Falun Gong* group under surveillance. He scared of the monitoring. He expressed being willing to study the book rather than to do some public activities.

Frankly speaking, I hardly say [the appellant] is a diligent *Falun Gong* practitioner, but he started to practise *Falun Gong* at that time.”

[48] The Authority asked the appellant why AA appeared unaware when she wrote that statement that he protested outside the Consulate while he lived in her house. His explanation was that they did not protest together and he did not discuss his Consulate protests with her. The Authority asked the appellant why he did not discuss them with her given that:

- (a) he was living in AA's house;
- (b) she had introduced him to *Falun Gong*, and
- (c) during the eight months he lived in her house she was regularly protesting outside the Consulate and was encouraging him to join the Consulate protests.

His only explanation for this surprising anomaly was that "everybody thinks differently".

[49] AA's evidence about the appellant's protests outside the Chinese Consulate was inconsistent with her written statement (recorded above). She initially told the Authority she saw the appellant protesting outside the Consulate "a few times". The Authority asked AA whether the appellant attended Consulate protests while he lived in her house. She said she did not see him at the Consulate but that might be because, when he lived with her, she left the house earlier than him to attend the Consulate protests so they did not actually walk to and from the protests together. Later in her oral evidence she asserted that she did not see the appellant outside the Consulate "more than once".

[50] These inconsistent accounts can be added to those she gave when she was interviewed by RSB:

- (a) The appellant went to the Consulate with her. After he moved out of her house, he went to the Consulate with someone else.
- (b) He did not go to the Consulate with her because he had only started to learn *Falun Gong*. He only protested outside the Consulate after he had moved out of her house.
- (c) She could not remember him protesting outside the Consulate while he lived in her house. He might have arrived at the Consulate later than her, but he definitely did not stand where she was standing.

- (d) She saw him protest outside the Consulate about a year before the RSB interview (ie November 2005).

[51] The Authority asked AA why, in her written statement presented just a few weeks before she gave the above oral evidence to the RSB, she asserted that the appellant was not brave enough to attend any protests outside the Consulate. In reply, she said "It's not much different [to what I have said today] because for us we go there every week. So he [the appellant] goes there occasionally." Asked to explain why she said the appellant was only "willing to study the book rather than do some public activities". She said there is a "different way of thinking between Western and Chinese. When I say 'rather than public activities', in Chinese it doesn't mean he didn't. It might have been my English". That explanation is rejected. The number of occasions on which she has given evidence of the appellant's involvement in the Consulate protests and the range of her irreconcilable answers makes it improbable that yet a further irreconcilable account was caused by language difficulties.

[52] In any event, the Authority observes that AA communicated well in English during the hearing, with little assistance from the interpreter. We do not accept that the inconsistencies can be explained by compromised English.

[53] AA further explained that she did not need to actually see the appellant outside the Consulate to know that he protested there because:

"The RSB officer told me. I didn't need to see him. That's why I said it. Like all Falun Gong practitioners, I always say something positive rather than negative."

[54] AA's account of other aspects of the appellant's *Falun Gong* apprenticeship while he lived in her house differed from that of the appellant. The appellant claimed, for example, that AA taught him some *Falun Gong* exercises yet AA denied this. The appellant gave the Authority a detailed description of the day he suffered such extraordinary back pain that he had to leave work and return to AA's house. He described how AA diagnosed the pain as the Master cleansing his body and, he said, from this time onwards, he was convinced of the truth of *Falun Gong*. AA, in contrast, was non-committal as to whether she had witnessed this important phase of the appellant's conversion to *Falun Gong*.

[55] The appellant asserted that he participated in three or four protests at the Consulate in the 14 months he lived at CC's house. He said he saw CC protesting there on one or two of those occasions. As with AA, CC's recollection was vague.

He recalled seeing the appellant protesting outside the Chinese Consulate “one time, a few years ago”. He did not know if it was when the appellant lived with him.

[56] The Authority is satisfied that if the appellant had protested at the Consulate while he was living with AA or CC, he would have told them he had done so and they would have no difficulty remembering that he had done so. It must be remembered that, on his evidence, both AA and CC were teaching the appellant *Falun Gong* exercises and principles at this time, were encouraging him to take part in *Falun Gong* activities and were each acting as his mentor and coach. It is illogical and ultimately implausible for the appellant not to have told them he had taken the daring step of participating in a Consulate protest, let alone for each of them to have been unaware of the regular presence of one of their disciples.

The red paint protest

[57] The appellant told the Authority that he provided red paint on one occasion for an “anti-torture” protest while he was attending the four classes, in approximately October 2003. He told the Authority that he did not actually attend the protest where the paint was used because he was working that day.

[58] That is inconsistent with the account he gave earlier, at his RSB interview. There, he gave a detailed description of the first *Falun Gong* protest he participated in, in October 2003. He described the scene he witnessed during that protest – *Falun Gong* practitioners on the back of a truck, covered in blood, pretending to be victims of torture. He said he provided the red paint for this torture scene. He described seeing AA at the front of that protest, leading the shouting of slogans and distribution of pamphlets.

[59] The Authority put this inconsistency to the appellant. He gave various inconsistent explanations as follows:

- (a) “He [the RSB officer] didn’t ask what me what year. He only asked me about the process of the parade...and I imitated the actions of police and torture, cruel and bloody”;
- (b) “I can’t remember what year but I did witness such a scene in the city.... I can’t remember if it was the occasion when I provided the paint”;

- (c) “I just handed the paint to AA and then this thing was finished. I donated red paint but when they used it I don’t know. She never told me and I never asked”;
- (d) “I remember one time in the city but I can’t remember which year. A few of us were working together... at a big building in the city and at lunch time we had a stroll so I have seen the scene with paint as blood... . I told [my work mates] Do you see that paint? I used to donate paint to *Falun Gong* members”.

[60] As to AA’s involvement in the “anti-torture” protest, she confirmed that the appellant provided the red paint but said she did not attend the protest herself because she was overseas at that time.

Confusion about protests on 20 July 2004 and 20 July 2005

The July 2004 protest

[61] To the Authority, the appellant gave an elaborate account of his participation in the 20 July 2004 protest in Queen Street, Auckland. It was, he asserted, his prominent participation in this protest that BB referred to two weeks later when he said “I heard that you participated in a parade.” In contrast, at the RSB the appellant did not make any link between BB’s warning and the July 2004 protest, asserting instead that he kept a low profile at the July 2004 protest and explaining that BB would have known the appellant was involved with the *Falun Gong* because it was a small immigrant community.

The July 2005 protest

[62] To the Authority, the appellant gave a brief account of his minor participation in the 20 July 2005 protest in Queen Street. It was remarkably similar to the one he had given to the RSB of the 20 July 2004 protest, in which he asserted that he followed inconspicuously behind the *Falun Gong* practitioners because he did not wish to expose himself due to his unlawful immigration status.

[63] The appellant’s explanation for these two inconsistent accounts was that he had forgotten what years they occurred in. The Authority accepts, of course, that an appellant might confuse one protest for another, for example where there are a series of similar protests over a number of years but, in this instance, the appellant

had expressly linked the very public nature of his July 2004 protest to the warning by BB just two weeks later, which was then followed in December 2004 by his mother's news that she had been threatened.

The Wellington protest

[64] The appellant did not, at any time during his application to the RSB or in his initial evidence on appeal to this Authority, mention taking part in the Wellington Car Tour described by DD. It was only when asked by the Authority whether he took part that he said he did.

[65] The Authority asked him to describe the event but he was unable to do so. He did not, for example, know even approximately the year in which the Car Tour protest took place. He did not know whether he had had any connection at all with *Falun Gong* before going on this Wellington trip (for example whether he had read books or listened to tapes). He did not know how many vehicles were in the convoy, guessing "eight or nine". Asked if he recalled any distinguishing features of the *Falun Gong* vehicles, he thought they might have had *Falun Gong* stickers on them. His explanation for not noticing the flags flying from each window of each *Falun Gong* vehicle was that he was in the front vehicle and did not notice the vehicles behind. A *Falun Gong* website (www.falundafa.org.nz) has a photograph of the cars ready to depart on the Car Tour to Wellington. The *Falun Gong* flags are plainly visible on each vehicle and it is inconceivable that the appellant could have failed to notice them if he was part of that convoy.

[66] The *Falun Gong* website referred to above states that the "New Zealand Car Tour from Auckland to Wellington against Article 23" took place on 17 and 18 March 2003. DD's evidence was that she recognised the appellant on the Car Tour because she had previously seen him at the classes. The appellant's evidence was that he did not attend those classes until approximately October 2003. Clearly, given this chronology, DD could not have recognised the appellant from the Unitec classes.

DD

[67] The Authority also had concerns about DD's evidence. At the appeal hearing, she appeared to be reading her answers from a piece of paper. When the Authority asked her what was written on the paper, she said it was directions

of how to get to the Authority's premises. The Authority asked the interpreter to translate the notes written in Mandarin on the paper. The interpreter's verbal translation was:

"Met three years ago. We studied at Unitec two or three times a week. We were not familiar with each other but have seen each other together at study and practised at One Tree Hill and [unintelligible] Square. We went to Wellington and I was in charge of lunch and we never talked to each other alone."

[68] The appellant's counsel asked DD why she told the Authority the notes were directions. DD initially declined to answer but then said:

"What I received was written in English. I couldn't understand it. So last night I tried to recall what happened last time I gave evidence because it's been a long time and if I don't remember clearly it might cause problems."

[69] In answer to counsel's questions why she did not tell the truth about what was written on the paper she said:

"I have only been here one time. I can't remember what level it was on.... I thought the formal questions start from the questions about [the appellant] and I just wrote this down last night.... I didn't treat it so seriously because it is just a few words on paper.... Its just a bit of recycled paper that I wrote at midnight."

[70] The Authority finds that DD did not tell the truth about what was written on the piece of paper and that she did not tell the truth about seeing the appellant on the Wellington protest. The Authority does not regard DD as a credible witness and places no reliance on her evidence whatsoever.

Falun Gong activities from December 2005 until arrest in August 2006

[71] The appellant says he did not practise *Falun Gong* at all from December 2005 to March 2006, because he was living at his girlfriend's house and was too busy looking after her mother and daughter. He initially had no recollection of any *Falun Gong* activities in the five months from the time he left his girlfriend's house until his arrest in August 2006.

[72] In contradiction to this, however, he had earlier given the RSB a detailed description of his participation on 13 May 2006 in World *Falun Gong* Day activities. The Authority asked him whether he had, in fact, attended this event on that date. He said he had and asserted that it had taken place in Aotea Square. He said the practitioners practised *Falun Gong* exercises and distributed pamphlets. Other than that, he was unable to describe the day's activities and, ultimately, he conceded that he did not have any recollection of the day at all.

[73] His recall, such as it was, was inconsistent with the detailed account he gave the RSB. There, he said the 2006 World *Falun Gong* Day activities took place just inside the entrance to One Tree Hill park. He said the weather was not good but that there was a barbecue. He said he participated in singing and *Falun Gong* exercises. He met AA there. They talked about what had been happening in their lives since they saw each other last and they also talked to some mutual friends. AA told him more people were joining *Falun Gong* and that the movement was going well. He said he left the event at 2pm because he was busy at work. The Authority put this account to the appellant and asked him whether he had attended such an event at One Tree Hill. He said he thought he had been once or twice but he could not remember the year.

[74] The Authority asked the appellant to describe the last public *Falun Gong* activity he participated in before his arrest in August 2006. He said he had been very busy at work at that time and did not remember much. As if to give the impression that nothing of note had happened in the period leading up to his arrest in August 2006, he said he would sometimes drive by the Consulate to have a look.

[75] In contrast, the appellant had told the RSB that the last *Falun Gong* activity he attended before his arrest on 8 August 2006 was a protest in Aotea Square in June 2006 to encourage people to withdraw their membership of the Chinese Communist Party ("CCP"). He said he took part from noon until 4pm. He distributed pamphlets printed on white and yellow paper about how the CCP was suppressing the *Falun Gong*. These pamphlets contained photographs of tortured and deceased *Falun Gong* followers. He said CC also attended this protest and that CC was also handing out pamphlets.

[76] The Authority reminded the appellant of his RSB account of this protest. He said he now recalled this protest but asserted that it took place in February or March 2006. The Authority reminded him of his evidence that until March 2006 he was living at his girlfriend's house and did not take part in any *Falun Gong* activities. He then agreed the protest must have taken place after he moved out of his girlfriend's house but he claimed it could not have been in June 2006 because he was not living in Auckland then. Ultimately he conceded that he did not know when this protest took place.

[77] Apart from his inability to recall his *Falun Gong* activities, the appellant did not appear to be committed to the principles and practice of *Falun Gong*. The Authority notes that the appellant cut short his attendance at the classes because of work commitments and his reason for not attending a number of protests was that he was working. The Authority also notes that the appellant gave up all practice of *Falun Gong* while he was living in his girlfriend's house. He conceded that he did not even do *Falun Gong* exercises in private during those four months and explained that the Master would not have disapproved because *Falun Gong* practitioners need only do what they are able to do.

[78] The inconsistencies in the appellant's evidence and the inconsistencies between the appellant's evidence and that of his witnesses in relation to his *Falun Gong* activities were, cumulatively, serious and fundamental. The Authority has rejected DD's evidence in its entirety. The Authority's impression of witness AA was that she had sympathy for the appellant and wanted to help him, and that she was prepared to 'massage' her evidence to achieve that end. Ultimately, however, the extent of AA's evidence about the appellant's claimed *Falun Gong* profile was that she saw him once outside the Consulate and once in Queen Street, but was not sure when. As for CC, he specifically and repeatedly stated that the scope of his evidence was limited to his observation that the appellant had made significant personal changes since he started practising *Falun Gong*. CC avoided giving evidence about whether he had actually ever seen the appellant practise *Falun Gong* in public. Ultimately the extent of CC's evidence about the appellant's *Falun Gong* profile was that he saw the appellant outside the Consulate on one occasion a few years ago and perhaps saw him once on a protest in Queen Street.

[79] The Authority does not accept the evidence of the appellant or his witnesses that his participation in *Falun Gong* activities was due to a genuine belief in the principles of *Falun Gong*, or that it has given him any *Falun Gong* "profile" or that it has brought him to the attention of the Chinese authorities either here or in China.

BB

[80] The appellant told the Authority that when he met BB at the restaurant he was aware of BB's connection with the Chinese Consulate through his (BB's) chairmanship of a Chinese organisation. He said that, despite the risk to his life,

he could not deny to BB that he practised *Falun Gong*, because as a *Falun Gong* practitioner he was obliged to tell the truth.

[81] The appellant gave a different account to the RSB. He told the RSB he was unaware of BB's Consulate connections when he met BB at the restaurant. When this inconsistency was put to him by the Authority, he said:

"I didn't think about [whether BB was connected to the Consulate].... I had told many people [I was a *Falun Gong* practitioner] because I want to convince them.... I knew he was connected but I did not know he was collecting information.... I thought the Immigration Service can't catch me [and therefore it was not dangerous to tell him].... I know he was connected to the Chinese embassy - that's why I smiled."

[82] In addition to this critical inconsistency, the appellant's vulnerable (unlawful) New Zealand immigration status at the time of this alleged conversation, the sheer lack of necessity for the appellant to confess to BB, his tenuous reasons for assuming BB informed on him and the implausibility of his assertion that he did not think it dangerous to confess to BB, lead the Authority to conclude that the appellant did not have any such conversation with BB. It follows that the Authority also rejects the appellant's claim that BB informed on him to the Chinese authorities.

The threat to his mother

[83] The appellant says that it was in December 2004 that his mother told him the Chinese authorities were aware of his *Falun Gong* activities and had threatened both him and her. In December 2004, the appellant was living with CC. Despite the fact that CC had been teaching the appellant about *Falun Gong*, the appellant did not tell CC that his *Falun Gong* activities had been discovered and that he had been threatened by the Chinese authorities. His explanation was that he was "too busy".

[84] If the appellant genuinely believed that his mother had been threatened because of information passed to the Chinese authorities by BB, the appellant would have told CC of the threat, not just because it was highly relevant *vis a vis* the appellant and CC (given CC's role as the appellant's *Falun Gong* mentor) but also because BB may well have posed a threat to the Auckland *Falun Gong* community.

[85] The Authority asked the appellant why, after he learned of the threat to his mother, he did not curb his *Falun Gong* activities and practise in private, instead of continuing to participate in public *Falun Gong* activities. He said that even if the Chinese authorities were aware he was continuing to practise *Falun Gong*, they would only monitor and question his mother because she was not practising *Falun Gong*.

[86] The Appellant said he felt he had an obligation to help *Falun Gong* people in China because he was not in any danger of going back there. When the Authority pointed out that his immigration status in New Zealand was unlawful and so he was at significant risk of going back to China, he said "Everyone thinks in different ways." He also said that although he was aware he was not lawfully entitled to remain or to work in New Zealand he believed he would be able to stay indefinitely if he did not get into trouble with the police.

[87] The Authority asked the appellant why he did not, after learning that the Chinese authorities knew of his *Falun Gong* activities, file an application for refugee status forthwith. His explanation was that he remembered a discussion at one of the classes to the effect that if *Falun Gong* practitioners applied for refugee status, the *Falun Gong* committee would help them but to apply for refugee status based on the practice of *Falun Gong*, "does not seem the purpose of *Falun Gong*". The appellant also considered the teachings of Master Li to the effect that a genuine practitioner of *Falun Gong* "must get rid of their insistency and their persistent demands and conditions". He felt that if he applied for refugee status based on *Falun Gong*, he would be demanding and therefore he would not be a genuine *Falun Gong* practitioner. He was not, however, prepared to condemn as non-genuine those *Falun Gong* practitioners who had claimed refugee status. In relation to his own claim, he said the Master would not expect him to forfeit his life, so he was therefore justified in seeking refugee status once he had been arrested.

[88] The Authority rejects this flimsy excuse. The appellant had already been through the refugee status application process once before in New Zealand. By December 2004, he had been living and working in New Zealand for eight years. The Authority considers that the appellant, if he had received information that led him to have any genuine fears at all for his own safety, he would have claimed refugee status before he was arrested in August 2006.

[89] The Authority concludes that the telephone discussion between the appellant and his mother in December 2004 is pure fabrication, concocted by the appellant for the sole purpose of bolstering his refugee claim. The Authority concludes that there has been no threat by the Chinese authorities. There is no reliable evidence at all that the Chinese authorities are interested in the appellant.

The appellant's practice of *Falun Gong* in prison

[90] At the hearing, the appellant claimed to be practising *Falun Gong* in prison and to be actively teaching other inmates the exercises and philosophy of *Falun Gong*. The appellant could not identify any of his student inmates (he tried unsuccessfully to recall or guess their names and nationalities) and he conceded that, because he cannot speak English, his ability to communicate the *Falun Gong* philosophy and any other instructions was limited to gestures only. The Authority rejects this aspect of the appellant's evidence.

[91] In her letter to the Authority dated 13 September 2007, counsel advised that the appellant claims to be continuing his practice of *Falun Gong* in prison, and that he claims to have been beaten by other inmates as a result. There is no evidence before the Authority to support this bare claim, notwithstanding that counsel advises (from unstated sources) that visitors have seen signs of injury. Nor is this claim confirmed by prison or medical staff. Given his lack of credibility in respect of the balance of his claim, the Authority concludes that no weight should be given to the assertion that he is practising *Falun Gong* in prison.

Conclusions on Credibility

[92] The foregoing concerns, taken cumulatively, lead the Authority to conclude that the evidence of the appellant and his witnesses is unreliable. The grounds upon which he claims to be at risk of serious harm are rejected as untruthful. There being no reliable evidence upon which a finding of a well-founded fear of being persecuted can be made, both issues must be answered in the negative.

[93] The Authority notes the provision by counsel of country information about the treatment of *Falun Gong* practitioners in China, including the recently provided "Bloody Harvest: Revised Report into Allegations of Organ Harvesting of *Falun Gong* Practitioners in China" by David Matas and David Kilgour, dated 31 January 2007 (available at <http://organharvestinvestigation.net> and <http://investigation.go.saveinter.net>). This country information does not, however, assist the appellant,

given the Authority's rejection of his claim that he is at risk of being persecuted as a *Falun Gong* practitioner.

CONCLUSION

[94] For the reasons set out above, the Authority finds that 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 L Robins"
M L Robins
Member