

**REFUGEE STATUS APPEALS**  
**AUTHORITY**  
**NEW ZEALAND**

**REFUGEE APPEAL NO 76143**

**AT AUCKLAND**

**Before:** S L Murphy (Member)

**Counsel for the Appellant:** K Gore

**Appearing for the Department of Labour:** No appearance

**Dates of Hearing:** 21 & 22 November 2007

**Date of Decision:** 4 July 2008

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**DECISION**

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[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 China. He is a male in his 50s.

**INTRODUCTION**

[2] The appellant arrived in New Zealand on 15 August 2006 and claimed refugee status on 8 December 2006. He was interviewed by the RSB on 26 March 2007, 23 April 2007 and 15 May 2007. A decision declining his claim was delivered on 13 September 2007. It is from that decision that he has appealed to this Authority.

[3] The appellant claims to be at risk due to his involvement in the *Falun Gong* movement and protest activities he has undertaken in New Zealand about the treatment of *Falun Gong* practitioners in China.

[4] The appellant's counsel gave written opening submissions and country information on 14 November 2007 and written closing submissions on 4 February 2008. These have been taken into account in the decision.

### **The appellant's account**

[5] The appellant was born in Guangzhou province in China. He has three siblings, two of whom are resident in New Zealand. His parents are dead. He has two sisters resident in New Zealand.

[6] The appellant was raised as a Buddhist. In 1990 he had a religious experience during which he saw a vision of Buddha on the living room wall, which caused an intensification of his Buddhist beliefs.

[7] The appellant's education was curtailed after intermediate school as a result of the Cultural Revolution. After he finished school, he was unemployed until 1974 when he worked in a government-owned factory as a fitter and turner. He stopped working at the factory in 1991 and obtained employment as a taxi driver for about eight years. In 1999, he changed his employment and worked as a bus driver until approximately 2002. After that, he worked casually as a driver.

[8] The appellant was married in 1989 and subsequently had two sons.

[9] In 1997, the appellant became aware of the *Falun Gong* movement through a workmate, Mrs AB. Mrs AB encouraged the appellant to attend a group practice at XY park on Sunday. At the park there were numerous people sitting cross-legged and meditating. The appellant attempted to sit and meditate together with the other *Falun Gong* practitioners but found the position very uncomfortable because he had cracked his spine a number of years earlier and also had "chunky" legs and inflexible joints in his feet. In spite of this difficulty, he obtained a copy of the *Zuan Falun* book and some tapes from a stand at the park.

[10] After this, the appellant studied the book and listened to the tape regularly. He also started participating in *Falun Gong* study groups with Mrs AB on Saturday evenings, where they discussed the *Zuan Falun* book as well as the *Daijerman* book. The study groups were held at the homes of practitioners.

[11] In addition to these activities, the appellant continued going to XY park on Sundays, and also on weekdays when he could find a replacement taxi driver. At the park he would not practise exercises, but instead would talk to a teacher about

*Falun Gong*. At the Sunday sessions in the park, Mrs AB introduced him to Mr CD, Mrs EF and Mr GH, who were *Falun Gong* teachers.

[12] The appellant continued going to the park and attending the study group until the crackdown on *Falun Gong* in July 1999.

[13] The appellant did not have time to undertake the first four exercises because they were usually performed in a group in the mornings in the park and he could not attend as he had to go to work. He did not practise at home because his house was very small.

[14] The first the appellant learned of the July 1999 crackdown on *Falun Gong* was when he went to attend his study group as usual, only to be told it had been cancelled. Soon after this, he met with Mrs AB, Mr CD, Mrs EF and Mr GH who invited him to join them in a trip to Beijing to petition the government against the crackdown. The appellant did not want to go because he did not have time, thought it would be pointless and possibly result in an intensification of the crackdown, and feared that those who did petition the government would be punished by imprisonment or death. He did not see any of the practitioners after these discussions.

[15] After the crackdown, the appellant stopped attending the group study sessions. However, he continued reading the *Falun Gong* books secretly at home in his bedroom.

[16] About a month after meeting his friends, the appellant telephoned family members of three of the practitioners and was told there had been no news of them. Approximately two months later, he telephoned the family members again and was advised that the respective practitioners had been imprisoned.

[17] Over a year later, the appellant received a telephone call from Mr GH who advised him that he had just been released from jail after a year's detention. Mr GH informed the appellant that Mrs AB had also been imprisoned and recently released.

[18] The appellant subsequently met Mrs AB. She told the appellant that she had talked to the prison guards and told them to respect *Falun Gong* followers and not to torture them, and that *Falun Gong* followers believe in truth, kindness and tolerance, so that everything said or done against *Falun Gong* practitioners is

against the law and God's will. Mrs AB told the appellant that one of the guards in her prison quit his job as a result of conversations with *Falun Gong* practitioners.

[19] Some time after this, the appellant encountered Mr CD in the library of a temple. Mr CD said that he had been in prison in a suburb of Guangzhou city for nearly a year and a half. He had been beaten, including with electric prods, and made to lie on a bench and lift his legs to a level that was unbearable.

[20] During their respective imprisonments, pressure was put on each of the practitioners to denounce *Falun Gong* and they each made such a declaration prior to release. Although they made a declaration publicly, they told the guards privately that they would secretly continue practising *Falun Gong*.

[21] The appellant was advised by Mrs AB that Mrs EF had been sentenced to 18 years in prison. The appellant understands she has not been released and is unaware whether she is still alive.

[22] After being released from jail, Mr CD and Mrs AB were kept under surveillance because they are *Falun Gong* teachers.

[23] The appellant decided to come to New Zealand because he is a follower of *Falun Gong* and wanted to have the freedom to practise it. He applied for a visa in March 2006, and was sponsored by his New Zealand-resident sister. He obtained a fake employment certificate from a cousin because he believed he would not obtain a visa to come to New Zealand if he was unemployed. He obtained a single entry visitor's visa on 14 June 2006 valid until 14 September 2006. He departed China legally on his own passport on 12 August 2006, travelled overland to Hong Kong and then flew to New Zealand. He arrived in New Zealand on 14 August 2006.

[24] After arriving in New Zealand, the appellant stayed with his sister who lived in Henderson. After one to two months, he had a chance encounter with two *Falun Gong* practitioners on Mt Eden. One of the practitioners told him about the *Falun Gong* protests outside the Chinese consulate and took him there. The appellant protested outside the consulate every day after he moved into his youngest sister's home in the inner city in November 2006.

[25] In addition to the protests outside the Chinese consulate, the appellant has attended *Falun Gong* protests where he has distributed material to the public

about the plight of practitioners. He has also been involved in distributing such materials into letter boxes.

### **Witness A**

[26] Witness A is a *Falun Gong* practitioner from China. He met the appellant during the *Falun Gong* Christmas parade in 2006.

[27] Witness A has undertaken *Falun Gong* exercises outside the Chinese consulate every day for the last six years. The appellant has practised outside the consulate almost every day since the 2006 Christmas parade.

[28] The appellant practises all of the five exercises outside the Chinese consulate. He also sometimes helps Witness A hold a *Falun Gong* flag. He has difficulties in practising the sitting movement due to a back injury and lack of flexibility in his legs and the fact that they are short and “chunky”.

[29] Witness A gave evidence that he and the appellant undertook the following activities together - attending “*Fa*” study sessions/cultivation together on Sundays and sometimes on Saturdays, practising outside the Chinese consulate regularly, and frequently discussing *Falun Gong* cultivation related issues.

[30] The appellant has told Witness A that he practised Buddhism in 1992 and started practising *Falun Gong* in 1997, and that he believes in *Falun Gong* more strongly than in Buddhism.

### **Witness B**

[31] Witness B is the president of the *Falun Dafa* Association of New Zealand. He submitted a letter in support of the appellant, dated 28 June 2007. Witness B first met the appellant before Christmas in 2006. Witness B has observed the appellant demonstrating in front of the Chinese consulate and attending the weekly study session on Saturday evenings. Witness B attends the protest outside the Chinese consulate every Sunday. He sees the appellant there almost every Sunday. The appellant told Witness B that he did not practise *Falun Gong* in China but attended a study group.

[32] For the first year of his *Falun Gong* involvement, Witness B did not practise the exercises but merely read the books. This was because the practice sessions were far from his home and he did not fully understand the movement.

[33] The appellant has distributed *Falun Gong* materials to the public at protests and has also distributed materials into residential letter boxes.

[34] Witness B considers the appellant to be an honest person who has a good understanding of the principles of *Falun Gong* in spite of his lack of education.

### **Witness C**

[35] Witness C is the appellant's sister's boyfriend. He is a New Zealander. Witness C understands from the appellant's sister that when the appellant arrived in New Zealand, he was intending to apply for refugee status on the grounds of his *Falun Gong* involvement.

[36] Witness C has observed the appellant in mornings between 5am and 6am practising *Falun Gong* in the living room three or four times a week. The appellant sometimes practises the exercises when Witness C and the appellant's sister watch television. Sometimes in the night, Witness C gets up to get himself a glass of water and finds the appellant in the living room either practising exercises or reading *Falun Gong* literature and writing notes in a small notebook. He has never tried to recruit Witness C or Witness C's partner into the movement. Witness C cannot communicate with the appellant because the appellant does not speak English. Witness C has observed the appellant going out of the house nearly every day around 8.30am and returning at about 7pm. On occasions, Witness C has dropped him off at *Falun Gong* activities.

### **Documents**

[37] The appellant submitted the following documents in support of his claim:

- (a) a letter of support dated 4 July 2007 from the President of *Falun Dafa* Association in New Zealand, detailing *Falun Gong* activities undertaken by appellant in New Zealand;
- (b) a letter dated 28 June 2007 from Witness A, detailing *Falun Gong* activities of appellant in New Zealand;
- (c) a letter dated 3 July 2007 from Witness C, detailing *Falun Gong* activities undertaken by the appellant at home;

- (d) a letter of support dated 2 July 2007 from the President of World Organisation to Investigate the Persecution of *Falun Gong* (NZ) Inc.;
- (e) extensive country information; and
- (f) a medical report dated 2 April 2008.

### **THE ISSUES**

[38] 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."

[39] 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**

[40] It is clear from various aspects of the appellant's evidence that he has invented the evidence about the incarceration of his friends in China, and either invented or significantly exaggerated his *Falun Gong* involvement in China.

[41] Central to the Authority's finding that the appellant has fabricated evidence about the imprisonment of his friends in China for their *Falun Gong* practice is his failure to mention anything about the imprisonments to either Witness A or Witness B. It is inconceivable that the appellant would be moved to so frequently protest about the suffering of *Falun Gong* practitioners in China, without mentioning to the witnesses, with whom he regularly protests, that he was personally connected with a number of persons who had been imprisoned by the regime for their *Falun Gong* practice. It is particularly implausible that he would

not mention this to Witness A, given the evidence that they converse frequently about *Falun Gong*.

[42] Similarly, the appellant's failure to undertake *Falun Gong* for the first two months of his stay in New Zealand, and commencement of the practice only after a chance encounter with practitioners, is inconsistent with his claim to be a *Falun Gong* devotee who came to New Zealand for the purpose of practising *Falun Gong* in freedom. His actions on arrival are, in fact, illustrative of a person with little if any interest in the movement. The appellant's explanation for his failure to undertake the practice when he first arrived, namely that he did not have his *Falun Gong* books here, was unpersuasive; if he had indeed come to New Zealand to practise *Falun Gong* as claimed, and if the books were a necessary precondition for him to commence practice, one would expect him to have acquired the books soon as he could after his arrival so he could practice without delay.

[43] The Authority finds that the appellant has either significantly exaggerated or wholly invented his involvement in *Falun Gong* in China, and that he has invented the imprisonment of his friends.

[44] The Authority does, however, accept the appellant's evidence as to his actions since his arrival in New Zealand. There is clear evidence to indicate that the appellant, from two months after his arrival, has become intensively involved in the *Falun Gong* movement, including daily protests outside the Chinese consulate in the year preceding the hearing and distribution of materials about the plight of *Falun Gong* practitioners in China.

### **Does the appellant have a well-founded fear of persecution?**

#### *Country material*

[45] The current situation for genuine *Falun Gong* practitioners in China was helpfully summarised recently in *Refugee Appeal 76145* (10 December 2007):

"[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.”

*Is the appellant a genuine Falun Gong practitioner?*

[46] The Authority has carefully considered whether the appellant has, since arriving in New Zealand, become a genuine *Falun Gong* practitioner, or whether he has simply been involved in the movement and protest actions in an attempt to manufacture a risk upon his return to China. Weighing against the genuineness of his practice is his false evidence about his *Falun Gong* involvement and the fate of his practitioner friends, details of which were apparently invented in order to assist him to obtain residency. One might infer that his preparedness to lie about his *Falun Gong* history is suggestive of an entirely manufactured claim and that his *Falun Gong* practice in New Zealand was and remains entirely instrumental. However, weighing in favour of the genuineness of his current practice is the evidence that his practice in New Zealand has been as fervent in private as it has in public. The evidence of Witness C, which the Authority accepts, demonstrates that the appellant has, in the course of his intensive involvement in the movement, developed a genuine belief in its teachings which transcends any desire to secure refugee status. Witness C's evidence is that the appellant not only undertakes the practice in the privacy of his home, but that he has become a devout and dedicated practitioner who, when alone and in private, performs the movements regularly and studies the texts assiduously. In this context, the appellant's current belief in and practice of *Falun Gong* must be found to be genuine.

*Risk to the appellant*

[47] The appellant has thus become a devoted *Falun Gong* practitioner. By the time of the hearing, he had practised outside the Chinese consulate daily for almost a year in order to protest the treatment of *Falun Gong* practitioners in China, as well as becoming involved in other public *Falun Gong* activities such as the Christmas parade and the distribution of *Falun Gong* literature to the public.

[48] It is apparent from country material that the Chinese government undertakes surveillance of *Falun Gong* activities overseas. The former diplomat from the Chinese embassy in Sydney Chen Yonglin, who defected in 2005, has referred (in a statement to the US House of Representatives Committee) to the assignment of at least one diplomatic official at each overseas embassy to monitor

*Falun Gong*. He has also described the operation of an extensive overseas intelligence network comprising, *inter alia*, local Chinese who are offered financial incentives to mingle with the *Falun Gong* community and collect information about practitioners; US House of Representatives Committee on International Relations *Serial No. 109-62* (21 July 2005). In July 2007, he made specific reference to a spy network in New Zealand, saying that the Chinese government has infiltrated Chinese groups in New Zealand and used them to spy on expatriates; Martin Kay "Defector claims China Kidnapped New Zealand Resident" *Dominion Post* (19 July 2007).

[49] In the above context, it is likely that the intensive activities that the appellant has undertaken in the context of his *Falun Gong* involvement in New Zealand, in particular his daily protests outside the Chinese consulate, and public distribution of *Falun Gong* literature, would have come to the knowledge of the Chinese government.

[50] There is evidence that the Chinese government operates, with respect to overseas practitioners a "broad blacklist of *Falun Gong* practitioners used for border checking, passport renewal and surveillance"; US House of Representatives Committee on International Relations *Serial No. 109-62* (21 July 2005). The Authority has recognised that those whose public activities in support of *Falun Gong* have become known to the Chinese authorities are likely to be detained at the airport upon return and questioned about their activities; see *Refugee Appeal No 76147* (29 February 2008). Given the probability that the appellant's activities have come to the notice of the Chinese government, it is likely that the appellant would be detained and questioned at the airport upon his return.

[51] The Authority in *Refugee Appeal No 76147* (29 February 2008) found that, applying *Refugee Appeal No 75665* (7 July 2004), a genuine *Falun Gong* practitioner should not be required to hide or renounce a genuine belief in *Falun Gong* at the airport in order to avoid being exposed to serious harm, as to do so would strike at the core of his right to freedom of belief in terms of Article 18(1) of the International Covenant on Civil and Political Rights; see paragraphs 85 and 89. However, it is unnecessary to consider this appeal in that context. Given that the appellant has become a very devout practitioner, the Authority is satisfied that he would not renounce his *Falun Gong* beliefs upon return to China.

[52] In summary, therefore, the appellant is a devoutly committed *Falun Gong*

practitioner whose beliefs are likely to have come to the attention of the Chinese government and who will not renounce those beliefs upon return to China. *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; see *Refugee Appeal 76145* (10 December 2007).

[53] It follows then that the appellant has a well-founded fear of being persecuted upon his return to China.

[54] The persecution the appellant is at risk of facing is for the Convention reason of his religion (noting that at international law “religion” includes any theistic, non-theistic or atheistic belief (J C Hathaway *The Law of Refugee Status* (Butterworths, Toronto, 1991)) p145, and that a belief in *Falun Gong* can be classified as a religion for the purposes of the Refugee Convention; see *Yang v Canada (Minister of Citizenship and Immigration)* 2001 FCT 1052. He is also at risk of persecution for the Convention reason of political opinion, given the protest actions he has undertaken in New Zealand.

[55] The framed issues are answered in the affirmative.

## **CONCLUSION**

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

“S L Murphy”  
S L Murphy  
Member