

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

**REFUGEE APPEAL NO 76056**

**REFUGEE APPEAL NO 76057**

**REFUGEE APPEAL NO 76058**

**REFUGEE APPEAL NO 76059**

**AT AUCKLAND**

**Before:** A N Molloy (Chairperson)  
S L Murphy (Member)

**Counsel for the Appellant:** K Gore

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

**Dates of Hearing:** 7, 8, 9 & 10 August 2007

**Date of Decision:** 31 August 2007

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**DECISION DELIVERED BY S L MURPHY**

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[1] These are appeals against the decisions of a refugee status officer of the Department of Labour (DOL), declining the grant of refugee status to the appellants, nationals of the People's Republic of China.

**INTRODUCTION**

[2] The appellants are a man in his 60s ("the father"), his son ("the son"), his daughter-in-law ("the son's wife") and the son and his wife's minor daughter ("the child").

[3] The father arrived in New Zealand on 20 September 2006 and applied for

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refugee status on 28 November 2006. He was interviewed by the Refugee Status Branch on 19 February 2007 and a decision declining his claim was delivered on 9 May 2007. The son, and his wife and child arrived in New Zealand on 29 October 2006 and applied for refugee status on 8 December 2006. They were interviewed by the Refugee Status Branch on 20 February 2007 and a decision declining their claims was delivered on 9 May 2007. It is from those decisions that the appellants have appealed to this Authority.

[4] The claims of the father, the son and his wife were heard together both before the Refugee Status Branch and before the Authority as they are interlinked. The son and his wife have represented the interests of their daughter in accordance with s141B of the Immigration Act 1987.

[5] This claim centres on the risks faced by the family on account of their having adopted the practice of *Falun Gong*.

## **THE APPELLANTS' EVIDENCE**

### **Witness A's evidence**

[6] The evidence of Witness A will be set out first. This is because Witness A's evidence provides context for the accounts of the appellants.

[7] Witness A is the sister of the son, and daughter of the father. She came to New Zealand in February 2004 and obtained permanent residency in July 2004.

[8] Witness A took up *Falun Gong* in 1998 whilst living in Guangzhou. At that time, she suffered a variety of health difficulties such as migraines and constipation and also had a stressful home environment. Her physical and mental health improved dramatically after taking up *Falun Gong* so she became an enthusiastic practitioner. She attempted to recruit her family members into the movement. Although her father, in whose business she worked, supported her activities, he was too busy with the business to become involved. She gave her brother and his wife copies of the *Zhuan Falun* book. Her brother read the book and liked it but did not take up the practice at that stage. His wife did not read the book.

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[9] On 20 July 1999, the Chinese government denounced and banned *Falun Gong*. “Witness A”, together with six fellow practitioners, attempted to travel from Guangzhou to Beijing to try to convince the government as to the merits of *Falun Gong*. She and four other practitioners were arrested at Guangzhou airport. She was taken to a police station and held overnight. Her father was able to secure her release the next morning by paying bail. After her release she went straight to the airport where she boarded an aeroplane to Tianjin. She then travelled from Tianjin to Beijing.

[10] “Witness A” stayed in Beijing for 5-6 days, after which time she was arrested from her motel room with two friends. She was held in custody for two days and told she would be jailed if she continued to practise *Falun Gong*. She was subsequently transferred to a stadium where she was held with approximately 1000 other practitioners. She was then sent by train back to Guangzhou, and taken to Guangzhou Prison where she was held for a night before being transferred to a further prison from which her husband managed to secure her release. At the time of her release she was given a “stern warning” that she must discontinue her practice of *Falun Gong*.

[11] On 30 July 1999, she was again arrested whilst performing *Falun Gong* exercises in a park. She was taken to a police station where she was held for two nights during which time she was interrogated by five policemen. She was forced to remain on bended knees for the duration of the detention. On the third day her father and husband managed to secure her release by convincing the police officers that she would discontinue her practice. She understood they were required to sign some form of documentation to facilitate her release.

[12] After her release she was closely monitored. She was repeatedly telephoned by officials and asked to explain her movements. Officials also came to check up on her in her home and her family were instructed to spy on her.

[13] On 25 September, Witness A and her family were met by police officers when arriving home after attending Moon Festival celebrations. Witness A was again taken to the police station and then transferred to a prison where she was held in administrative detention for 15 days. She was kept with over 20 people in a small dark room. There were no toilet facilities so prisoners had to defecate on the floor. Witness A’s husband was required to pay her prison expenses at the

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time of her release.

[14] After this she continued secretly to practise *Falun Gong* at her home. She came under pressure from her family to discontinue her practice, as the police continually called her parents to make sure she had discontinued her involvement. They also repeatedly made unannounced visits to her home to monitor her movements, usually at night.

[15] On 17 November 2000 Witness A was again arrested, this time for distributing pamphlets about *Falun Gong*, which included information about the persecution of members. She was held in detention during which time she was severely mistreated, including being dragged around the floor with bound legs by other prisoners acting under instruction from prison officials, and deprived of food and water whilst being hung upside down for three days. During the detention she was put under pressure by prison officials to divorce her husband, which she did by means of a ceremony in prison.

[16] A court hearing in respect of Witness A and a number of other practitioners was held on 2 August 2001. At the start of the hearing the judge announced the prosecution case had been withdrawn. In spite of this ruling, the practitioners including Witness A were taken back to detention. They were subsequently given documents advising that they had been sentenced to two years in a labour camp.

[17] At the labour camp, Witness A was placed in a “re-education” class where she was indoctrinated with anti-*Falun Gong* propaganda. After more than a year of pressure, she eventually relented and signed a document denouncing *Falun Gong* and promising she would never be involved in it again. After this she was given the role of convincing practitioners who had refused to sign denunciations to do so before being released in April 2002. She remarried her husband after her release.

[18] Following detention in the labour camp, Witness A was too frightened to practise *Falun Gong* often. She and her husband travelled to New Zealand in October 2003 for about 10 days before travelling permanently to New Zealand in February 2004. She had obtained a passport prior to her 2000 detention and did not have any difficulties departing the country.

[19] *[Deleted]*

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[20] Witness A's husband, who does not himself practise *Falun Gong*, has returned to China *[deleted]*. He did not face any difficulties upon his return. Witness A believes that this is because his father was a high ranking communist official.

[21] Witness A corroborated her father, brother and sister-in-law's evidence about their adoption of *Falun Gong* in New Zealand (see below).

### **The father's evidence**

[22] The father set up a successful construction company in 1995. Witness A worked there as his assistant prior to her detention in 2000. The son also worked there until he set up his own business in 2002.

[23] After Witness A took up *Falun Gong* in 1998 she encouraged her father to join the movement. He was busy with his business so did not wish to take it up.

[24] When Witness A was arrested on 30 July 1999 her father was advised by the authorities that she had been detained. He subsequently attended the police station. When there he was admonished by the authorities for the actions of his daughter. Upon instructions by the authorities he begged his daughter to write a letter saying that she would discontinue her involvement with *Falun Gong*, aware that if she failed to do so she may be imprisoned indefinitely. She refused and, believing there was no other way to secure her release, he wrote a letter on her behalf guaranteeing that she would abandon the practice. When she was released, he was told that if Witness A did not listen to him he would suffer serious consequences. In spite of signing the guarantee, he did not in fact discourage his daughter from practising *Falun Gong* because she was passionate about the practice and "very stubborn".

[25] The father was summoned to the police station the day after Witness A's arrest on 30 July 1999. At the police station he saw through a window that his daughter was on bended knees and that a policeman had his hands around her neck and was slapping her hard. The father was held for hours without food and water, threatened with imprisonment, again admonished for failing to stop his daughter from practising *Falun Gong*, and forced to write a further guarantee that his daughter would desist from her activities. The following day Witness A was released. This time the father did try to stop her from practising, but to no avail.

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[26] After Witness A's release, the father was frequently subjected to threatening telephone calls from officials. Officials would also come to the father's office to harass him about the activities of his daughter. The father believes he was considered to be particularly responsible for the actions of his daughter because he was both her father and her employer.

[27] When Witness A was arrested in November 2000 the father tried to seek help from a friend in the police department but was advised that he could not assist because of the seriousness of her crime. The father was only able to visit the prison on one occasion throughout this detention but did not see his daughter.

[28] After Witness A's release in 2002 the father continued to receive telephone calls once or twice per month warning him to maintain control over his daughter. He does not know which agency the officials who called him were from but believes it may have been the secret police. The calls stopped in 2004/2005.

[29] The father's business started to decline at the time Witness A's troubles with the authorities began. Part of her role was to organise the renewal of the business licence. In 2002 the licence was not renewed. This meant that existing contracts had to be honoured but new contracts could not be entered into. The business was finally wound-up in 2004.

[30] On 16 May 2005, the father came to New Zealand to visit Witness A. After he had been here for a short period he had a heart attack. He was hospitalised in New Zealand but as a non-national was required to pay his hospital fees, so he decided to return to China for surgery.

[31] He returned to New Zealand again on 20 September 2006 after having heart surgery in China. He arrived with a suitcase full of Chinese medicines, which prompted Witness A to encourage him to adopt *Falun Gong*. She gave him a *Falun Gong* book for him to read. He read the book and was so impressed by its contents that he immediately took up the practice. He felt an immediate improvement in his health.

[32] The Sunday after his arrival he went with his daughter to the Chinese Consulate. He observed his daughter and other *Falun Gong* practitioners performing *Falun Gong* exercises outside the Chinese Consulate from his car but did not join in. The following Sunday he felt compelled to join in the protest. He

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believed that it was his responsibility to do something in return for *Falun Gong*; that is, protest against the persecution of *Falun Gong* members in China, as *Falun Gong* was having such a positive effect on his life. He has practised *Falun Gong* outside the Chinese Consulate every Sunday morning since.

[33] As well as practising outside the Chinese Consulate, the father regularly practises *Falun Gong* exercises in his home. He also attends the Ellerslie Masonic Centre every Saturday night for two hours to learn about *Falun Gong*. He has also been involved in a number of other *Falun Gong* events such as Christmas parades in Auckland, Christchurch and Hamilton.

### **The son's evidence**

[34] The son initially worked for the father's business but formed his own business in 2002.

[35] In 1998 when Witness A told him about *Falun Gong*, the son read the *Falun Gong* book and liked its contents. However he had just graduated from Art School and was more interested in pursuing other interests so did not take up the practice. After *Falun Gong* was banned he saw *Falun Gong* practitioner friends of Witness A from time to time although was not himself involved in the movement.

[36] In July 2000 the son, on request from Witness A, purchased a second-hand photocopier and stored it in his office in an empty house owned by his father. Witness A used the photocopier to copy *Falun Gong* pamphlets. The son would on occasion photocopy pamphlets for her when she was busy. He was frightened but believed that he was partly protected by the fact that he himself did not practise *Falun Gong*.

[37] The son was questioned from time to time by officials about the movements of Witness A after her arrests started. The last time he was questioned was after her release from the labour camp in 2003.

[38] The son was a member of the Communist Youth League wing of the Communist Party until 2005, when Witness A telephoned him from New Zealand and asked him to withdraw from the party. It was not officially possible to withdraw from the Communist Party but Witness A arranged for his resignation to be announced on the *Epoch Times* website. The son did not face any direct

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consequences following his withdrawal.

[39] The son and his family came to New Zealand on 12 October 2006 to visit Witness A.

[40] Upon his arrival in New Zealand the son was impressed to observe a dramatic change in his father's health, which his father and Witness A attributed to his adoption of *Falun Gong*. His sister gave him the *Falun Gong* book upon his arrival and he started reading it the next day. The book, together with the health improvement of his father and, earlier, his sister, and the respect for the human rights of *Falun Gong* practitioners in New Zealand caused him to decide to take up the practice. Shortly after arriving in New Zealand he also learnt the truth about the persecution of *Falun Gong* practitioners in China. While he previously had some knowledge of this, he was not aware of the full extent of the abuses against practitioners.

[41] After taking up *Falun Gong* he felt like "a changed man". He has practised outside the Chinese Consulate every Sunday since his arrival in New Zealand together with Witness A, his father and his wife. He has felt compelled to do this so that the world can be made aware of the persecution of *Falun Gong* practitioners.

[42] The son practises *Falun Gong* as often as he can – as he has two young children (the second child was born since the family arrived in New Zealand) he cannot adhere to a rigid routine. However, he does manage to practise the exercises regularly. He also distributes pamphlets about the Chinese government's persecution of *Falun Gong* practitioners. Like the father he attends the Ellerslie Masonic Centre every Saturday night for two hours to learn about *Falun Gong*, and has been involved a number of other *Falun Gong* events such as Christmas parades in Auckland, Christchurch and Hamilton.

### **The son's wife's evidence**

[43] The son's wife was a clerical worker when she lived in China. She first learned about *Falun Gong* in 1998 when she was dating her husband (the son). At this time Witness A gave her a copy of *Zhuan Falun*. She accepted the book out of politeness but was still at school and did not read it. After the crackdown on *Falun Gong* in July 1999, she hid the book to avoid problems.

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[44] In June 2005, the wife's sister was hospitalised with serious undiagnosed lung disease. The condition worsened and she nearly died. Witness A learned of the problem through the family and called the son's wife's mother suggesting that she repeatedly recite in her head the *Falun Gong* prayer "Falun Dafa is good", to assist her recovery. This the mother and the ill sister did, and within a week the sister had recovered.

[45] In June 2006, the son's wife fell pregnant with her second child. Three months later she started bleeding and was instructed to have bed rest. Recalling the recovery of her sister the son's wife started reciting the Falun Dafa prayer in her head. The bleeding stopped and her pregnancy proceeded normally.

[46] When the son's wife arrived in New Zealand she was given a copy of the *Falun Gong* book by Witness A, which she started reading immediately. She enjoyed the book and took up the practice within days. She has enjoyed health benefits such as the lessening of headaches. Her relationship with her husband has also improved. She practises *Falun Gong* outside the Chinese Consulate every Sunday morning together with the other family members. She also meditates four times daily, attends the group in Ellerslie together with her husband and father-in-law, distributes *Falun Gong* pamphlets and attends *Falun Gong* parades such as Christmas parades. She and Witness A have worked using computer automated recorded message devices to call persons in China to inform them of the abuses committed against *Falun Gong* practitioners by the Chinese Communist Party.

[47] A second child was born to the son and his wife in New Zealand. This put the family in breach of the one child policy in China. The family is not particularly concerned about this as they can pay bribes to avoid difficulties.

### **Witness B's evidence**

[48] Witness B gave a written statement and oral evidence. He is the President of the Falun Dafa Association of New Zealand.

[49] He gave brief evidence as to his experiences in China after the crackdown on *Falun Gong*.

[50] He recalled meeting the appellants outside the Chinese Consulate in about

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October 2006, but thinks that he may have met the father on an earlier occasion. He has attended various *Falun Gong* events with the appellant and has on occasions eaten meals with them after practising *Falun Gong*. He recognises that some practitioners may be motivated to join *Falun Gong* in order to secure refugee status but considers that the actions and speech of the appellants are consistent with that of genuine practitioners.

### **Witness C's evidence**

[51] Witness C gave both oral evidence and a written statement. She is a *Falun Gong* practitioner who was detained for two years in a labour camp after the crackdown on *Falun Gong*. She was granted refugee status by the Refugee Status Branch in November 2005.

[52] She met the appellants during a rehearsal for a *Falun Gong* parade and has met them since at numerous *Falun Gong* events. The appellants live in the same suburb as Witness C and often drive her to events. The appellants and Witness C talk together about the practice of *Falun Gong*. The father has discussed with her his health improvements since taking up *Falun Gong*, but she is aware that he still has some problems. She encourages him to continue with his practice of *Falun Gong* to ease his worries.

[53] She is certain that the appellants are genuine practitioners because they abide assiduously by the *Falun Gong* principles of truthfulness, forbearance and compassion. She said that they are quiet but sincere people. They have held banners in *Falun Gong* parades.

[54] On one occasion, at short notice, a *Falun Gong* group sought to come to perform in New Zealand. The lack of notice meant that the New Zealand *Falun Gong* chapter could not secure sponsorship money in time. The son and his wife stepped in and paid \$1600 to secure the visit, in spite of their limited means and lack of income in New Zealand.

[55] Witness C noted that the son's wife's two year old child can recite the holy words of the Dafa. On one occasion when Witness B was in the car with the family, they played a tape that included the song "Falun Dafa is Good". The child was obviously familiar with the song and insisted that that it be played repeatedly.

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### **Witness D's evidence**

[56] Witness D was a United Nations mandate refugee who escaped China through Thailand, and arrived in New Zealand in 2006. He and his pregnant wife were detained in China for possession of *Falun Gong* books in November 2002. His wife died the following month apparently as a result of serious mistreatment during her detention. Witness D was subsequently held for nearly three years before escaping the country.

[57] Witness D met the appellants at a rehearsal for a Christmas parade. He also sees them weekly at the community centre in Ellerslie, and outside the Chinese Consulate on Sundays. He described the family as shy. He once helped them buy a car from a car dealer. Witness D recently attended a *Falun Gong* event with the appellants in Wellington and shared a room with the father and son. He said they were honest and did not exaggerate. He also believed their perseverance in regularly practising outside the Chinese Consulate, in the face of the fear that all the protestors felt, is testament to the genuineness of their commitment to the practice. Witness D believes that the Chinese Consulate would have videoed them as he understands that the Chinese Consulate takes video footage of all new practitioners.

[58] In addition to a written statement, Witness D provided a copy of an article in the *Listener* regarding the persecution of him and his wife for their *Falun Gong* activities (Graham Reid "Nothing Left to Lose" *Listener* (29 April 2006), p24).

### **Documents**

[59] The appellants submitted the following documents:

- (a) Original and translated copy of document from People's Procuratorate of Guangzhou City entitled "Bill of Complaint" dated 28 March 2001 in respect of Witness A's *Falun Gong* activities.
- (b) Original and translated copy of document from Intermediate People's Court of Guangzhou City entitled "Criminal Verdict" dated 1 August 2001.
- (c) Original copy and translated copy of document from Guangzhou City

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Administrative Committee on Re-education through Labour entitled "Decision on re-education through labour" dated 14 September 2001.

- (d) Various documents relating to father's heart condition.
- (e) Witness statements from Witness A, B, C and D.

[60] The appellants' counsel provided comprehensive written submissions prior to the hearing. These have been taken into account in this decision.

### **THE ISSUES**

[61] 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."

[62] 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**

[63] Before the framed issues can be determined it is necessary to make an assessment of the credibility of the appellants' evidence.

[64] There is ample credible evidence that the appellants have adopted the practice of *Falun Gong*, become active members of the *Falun Gong* community, and attended numerous public *Falun Gong* events and protests, including weekly protests outside the Chinese Consulate. The only real question for the Authority is whether their practice of *Falun Gong* is genuine. This is because refugees *sur*

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*place* may manipulate their situation to manufacture or enhance a risk of persecution to create or augment a refugee claim. The Authority has thus held that a good faith requirement is necessary in determining whether a person whose claim is based on *sur place* circumstances is entitled to refugee status; *Refugee Appeal No 2254* (21 September 1994). While a good faith requirement exists, the principle must be applied with caution. A balancing exercise may be called for and a careful assessment required of all the circumstances, including the degree of bad faith, the nature of the harm feared and the degree of risk.

[65] We find the circumstances giving rise to the appellants' adoption of *Falun Gong* to be consistent with their being genuine practitioners.

[66] Witness A, who was instrumental in "converting" all the appellants, is a veteran *Falun Gong* practitioner. The Authority accepts her account as to her activities and subsequent detentions in China on account of her *Falun Gong* practice. Her account was consistent with the allegations particularised in the Amended Statement of Claim lodged in support of the High Court proceedings referred to, a copy of which the Authority obtained under High Court Rule 66. Witness A's zeal for the practice of *Falun Gong* was apparent from her evidence, and is unsurprising in light of the abuses to which she has been subjected in China on account of her activities. We accept her evidence that she had endeavoured to introduce all the appellants and other family members to the practice in China before it was banned, and again encouraged them to take up the practice in New Zealand, where she could "proselytise" without repercussions.

[67] In considering the sincerity of the *Falun Gong* beliefs of the appellants we have considered carefully the evidence that they have protested regularly outside the Chinese Consulate since shortly after their arrival, given that this component of their actions enhanced their risk upon their return to China. However given that all the appellants stayed with Witness A upon their arrival, and given that she is a regular protester at the Chinese Consulate who herself was persecuted in China, it is not implausible that they would see fit to attend the Chinese Consulate with her soon after taking up the practice. In this regard we note that one of the tenets of *Falun Gong* is to "clarify the truth" which involves alerting the world to the plight of practitioners in China (see eg Li Hongzhi "Fa Lecture of the Conference in Florida" (29 December 2001)).

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[68] We have also taken into account the evidence of Witnesses B, C and D as to the genuineness of the beliefs of the appellants.

[69] We accept the appellants' evidence that they are genuine *Falun Gong* practitioners.

## Country information

### *General situation for Falun Gong practitioners*

[70] The Chinese government banned the practice of *Falun Gong* in July 1999. Since then, known practitioners as have been subjected to various serious human rights abuses that have been documented in numerous reports such as: Amnesty International *Report on Torture and Ill-Treatment of Followers of the Falun Gong* (22 October 1999); Human Rights Watch *Dangerous Meditation* (2002); Canadian Immigration and Refugee Board, Research Directorate report, *China: Situation of Falun Gong practitioners and treatment by state authorities 2001-2005* (31 October 2005); United Nations High Commissioner for Refugees *Position Paper on Falun Gong* (1 January 2005).

[71] United Kingdom Home Office *Operational Guidance Report: China* (12 July 2007) describes the current situation for practitioners as follows:

“The arrest, detention, and imprisonment of Falun Gong practitioners continued during 2006, and there have been credible reports of deaths due to torture and abuse. There have also been reports that practitioners who refuse to recant their beliefs are sometimes subjected to harsh treatment in prisons, extra-judicial re-education through labour camps and ‘legal education’ centres. Due to the strength of the Government’s campaign against Falun Gong there were very few public activities from Falun Gong activists within China during 2006.

Given the lack of judicial transparency, the number and treatment of Falun Gong practitioners in confinement is difficult to confirm. Nevertheless, there is substantial evidence from foreign diplomats, international human rights groups, and human rights activists in Hong Kong that the crackdowns on the Falun Gong have been widespread and violent, particularly in the period immediately following prohibition. Overseas Falun Gong sources claim that more than 1,000 people detained in connection with the Falun Gong have died since the organisation was banned in 1999, mostly as a result of torture or ill-treatment.

In addition to reports of harassment and detention of adherents, the Falun Gong movement has claimed that family members of practitioners are also subject to harassment. There are accounts of family members allegedly being arrested in order to pressure adherents who are wanted by authorities into surrendering, or otherwise punished for the adherents’ Falun Gong activities...”

[72] According to the United Kingdom Home Office *Country of Origin Information*

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*Report: China* (30 April 2007), *Falun Gong* practitioners are subject to close scrutiny by local security personnel, and their personal mobility is tightly restricted, particularly at times when the government believed public protests are likely. The report (at 21.36) also quotes a Canadian IRB report that states:

“Practising Falun Gong in the privacy of one’s own home may be possible, but according to HRW, it could become ‘dangerous’ if officials or the police became aware of it... while it is possible to practise in private, concealing one’s beliefs and daily practice from relatives and neighbours is difficult”.

### *Situation for practitioners overseas*

[73] Since the defection in 2005 of Chen Yonglin, a diplomat from the Chinese Consulate in Sydney, it has become apparent that the Chinese government monitors the activities of overseas *Falun Gong* practitioners. In a statement made to the US House of Representatives Committee on International Relations *Serial No. 109-62* (July 21 2005), Mr Chen said:

“The war on the Falun Gong has expanded to overseas in the year 2000. In each Chinese mission overseas, there must be at least one official in charge of the Falun Gong affairs. In February 2001, the Chinese consulate in Sydney set up the special group for struggling against the Falun Gong. This group is part of the 610 Office system, and its sole task is to monitor and persecute the Falun Gong. To my knowledge, similar groups have been established in the Chinese missions in the United States and other countries where the Falun Gong is active.

Beside the diplomatic system, there is an intelligence collection system working against the Falun Gong as well. I am aware there are over 1000 Chinese secret agents and informants in Australia, and the number in the United States should not be less. The CCP’s foreign policy on the Falun Gong is to fight intensely and give no ground, to attack at will, and aggressively ...

... strict surveillance and monitoring measures have been imposed on the overseas Falun Gong as well. There is a broad blacklist of the Australian Falun Gong practitioners used for border checking, passport renewal, and surveillance in Australia.”

[74] Mr Chen described the tasks of the Chinese missions overseas as being, *inter alia*, as follows:

“Strictly controlling and monitoring the Falun Gong activities. The Consulate has informed the Russian Consulate-General in Sydney twice about the main list of the Falun Gong practitioners, and the latter helped to intercept a number of the Falun Gong practitioners who wanted to enter Russia in the period while Jian Zemin were visiting Russia [sic]. All the Chinese language schools in NSW are allowed to use the textbook issued by the Overseas Chinese Affairs Office of the State Council except Sydney Minhui School with the Falun Gong background. Each year, there are over 20 Falun Gong practitioners intercepted by the Chinese Consulate, who want their visas or Chinese passports to be renewed. For those Chinese nationals who want to extend their passports, the Consulate normally confiscated their passports. There are some local Chinese and Chinese students encouraged to mix with the Falun Gong practitioners for the purpose of collecting information, and

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the award will be some cultural performance, tickets, dinners, gifts and cash.”

[75] Mr Chen has also recently made specific reference to a Chinese government spy network in New Zealand. Last month he was quoted as saying that the Chinese government has infiltrated Chinese groups in New Zealand and were using them to spy on expatriates; Martin Kay “Defector claims China Kidnapped New Zealand Resident” *Dominion Post* (19 July 2007).

### **Risk to appellants**

[76] The appellants are *Falun Gong* practitioners who are likely to endeavour to continue their practice of *Falun Gong* if they return to China. We think it unlikely that they would practise in public, given the severe repercussions that would probably ensue. We find the sincerity of their beliefs, however, to be such that they would continue to practise within their homes.

[77] According to the 2007 Home Office Report, *Falun Gong* practitioners are not “sought out” at home. However the same report makes it clear that practitioners whose activities bring them to the attention of the government may be at risk (See United Kingdom Home Office *Country Report: China* (30 April 2007) para 21.21; see also para 21.36). The report identifies the person’s individual profile as a relevant issue in assessing the question of whether a person’s membership is likely to become known to the authorities (para 21.21).

[78] We find that there is a real chance that that the activities of the appellants would come to the attention of the authorities.

[79] *[Deleted]*

[80] We note that the appellants were in China at the time *[deleted]* and there is no evidence that they were targeted at that stage. Similarly, the appellant’s husband has returned to China *[deleted]* without apparent difficulties. However, their position is substantially different now from the time they were in China. It is also materially different from the position of Witness A’s husband, who is the son of a high ranking communist official and who does not practise *Falun Gong*. Not only have the appellants closely associated with Witness A in New Zealand, but they have openly embraced *Falun Gong*, and themselves sought to embarrass the Chinese government through their repeated public protests both outside the

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Chinese Consulate and in the streets of New Zealand. Their close relationship with Witness A and association with her *Falun Gong* activities, in combination with their protest activities in New Zealand, are likely to have afforded them a profile which will render them of interest to the Chinese authorities upon their return. At a minimum, they will be kept under close surveillance, meaning any attempt to practise *Falun Gong* in their homes is likely to come to the attention of the Government. There is also a possibility, in light of the nature of their profile and the apparent existence of a black list of overseas practitioners used for border checking (see US House of Representatives Committee *Serial No. 109-62* (21 July 2005) that they will be intercepted at the airport.

[81] It is clear from the country information that *Falun Gong* practitioners risk arrest, detention and, potentially, torture. Accordingly, we find there to be a real chance of the appellants being persecuted upon their return to China.

[82] The persecution the appellants fear is for reason of their religion. In this regard it is noted 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. They also fear persecution for reason of their political opinion, in light of the political protests they have staged against the Chinese government.

## **CONCLUSION**

[83] For the above reasons, the appellants are refugees within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeals are allowed.

“S L Murphy”

S L Murphy  
Member