

CANADA / JUDGMENT

TB9-21521

COURT

Refugee Appeal Division

DECIDED

8 January 2020

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RAD File / Dossier de la SAR : TB9-21521 TB9-21522 TB9-21523 Private Proceeding / Huis clos
Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX
XXXXXXXX XXXX XXXXXXXXXXX XXXX Personnes en cause Appeal considered / heard at Toronto,
ON Appel instruit / entendu à Date of decision January 8, 2020 Date de la décision Panel T.
Cheung Tribunal Counsel for the persons who are the subject of the appeal Shelley S Levine
Conseil des personnes en cause Designated representative XXXX XXXX Représentant(e)
désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR DECISION
OVERVIEW

- [1] XXXX XXXX (Principal Appellant), XXXX XXXX, and XXXX XXXX are citizens of China who appealed the negative decision of the Refugee Protection Division (RPD). XXXX XXXX is the Principal Appellant's wife, and XXXX XXXX is their child.
- [2] The adult Appellants alleged that they joined a Falun Gong practice group due to their health issues. The Public Security Bureau (PSB) raided their group on XXXX XXXX XXXX 2017, but the adult Appellants were not caught because they were travelling to attend the practice session when they were informed of the raid. The adult Appellants hid at a cousin's home until XXXX 2018. They fled China with the assistance of a smuggler, and they arrived in Canada on XXXX XXXX XXXX 2018.
- [3] The RPD rejected the claim citing the following reasons:
- The adult Appellants did not demonstrate knowledge of Falun Gong that is commensurate with the length and frequency of their practice and their level of education.
 - The Basis of Claim (BOC) form omitted the allegation that the minor Appellant was shunned at school because his parents are members of Falun Gong.
 - The documentary evidence in support of the sur place claim lacks sufficient probative value to overcome the credibility concerns flowing from the inadequate knowledge of Falun Gong and the BOC omission.
 - Given the credibility concerns, the adult Appellants are not genuine Falun Gong practitioners and they would not practice Falun Gong upon their return to China.

- e. The country conditions evidence is mixed and inconclusive that the Chinese authorities monitor Falun Gong practitioners outside of China.
 - f. There is insufficient evidence that the adult Appellants' participation in Falun Gong activities in public spaces has come to the attention of the Chinese authorities.¹
- [4] The Appellants made the following arguments at the Refugee Appeal Division (RAD):
- a. The success or rejection of the claim hinges on the genuineness of the religious identity of the adult Appellants.
 - b. The RPD erred in its assessment of the genuineness of their religious profile when it used the approach of a trivia contest to judge their knowledge.
 - c. The consistent evidence related to the Appellants' exit from China enhances their credibility.
 - d. In regards to the sur place claim, the issue to be determined is not the level of Falun Gong practice, but rather whether the Chinese authorities would perceive the adult Appellants as Falun Gong practitioners because of their association with other Falun Gong practitioners.

DETERMINATION

- [5] The Appellants presented no new evidence at the RAD appeal, and they did not request an oral hearing pursuant to subsections 110(4) and 110(6) of the Immigration and Refugee Protection Act (IRPA).
- [6] The RAD dismisses the appeal and confirms the decision of the RPD that the Appellants are neither Convention refugees nor persons in need of protection, pursuant to section 111(1)(a) of IRPA. ROLE OF THE REFUGEE APPEAL DIVISION (RAD)
- [7] The standard of review at the RAD is correctness on questions of law, fact, or mixed fact and law.² The RAD can defer to an RPD finding where the RPD had a meaningful advantage in assessing the credibility of oral testimony.³ The RAD carries out its own analysis of the record, on a correctness standard, to determine whether the RPD erred.⁴ Unless otherwise stated, the standard of review of this RPD decision is correctness.

ANALYSIS

Summary

- [8] As argued by the Appellants, the defining issue in this appeal is the genuineness of the adult Appellants' identities as Falun Gong practitioners. The Appellants argued case law to support their argument that the RPD erred in testing the adult Appellants' knowledge of Falun Gong by using trivia questions, and in expecting answers that are the equivalent of the Board's own knowledge of Falun Gong.⁵

- [9] Guided by the jurisprudence cited by the Appellants, I find that the RPD's questioning did not stray into testing for trivia. Rather, the RPD asked open-ended questions related to the Principal Appellant's reasons for adopting Falun Gong practice. The RPD gave the Appellants every opportunity to clarify and elaborate their testimony on foundational Falun Gong topics which the adult Appellants had asserted were subjects in which they had knowledge.
- [10] When the RPD asked open-ended questions, their knowledge and comprehension of Falun Gong was vague and at times incoherent. The adult Appellants demonstrated a level of knowledge that is attainable by non-practitioners. On several occasions, they named the elements of truth, compassion and forbearance as the purpose of Falun Gong.⁶ Even though they named these basic concepts, the vagueness of the overall testimony raises doubt as to whether they comprehend the basic concepts beyond naming them.
- [11] Therefore, the RPD is correct in finding on a balance of probabilities that the adult Appellants are not likely genuine Falun Gong practitioners. I arrive at this conclusion after considering the Principal Appellant and his spouse each have 15 years of education culminating in college diplomas.⁷ I am also cognizant that they testified through an interpreter. Genuineness of the Principal Appellant's Falun Gong profile
- [12] The Principal Appellant claimed in his BOC that he became a Falun Gong practitioner to alleviate insomnia and health issues related to work stress. He testified that Falun Gong improved his health.⁸ He testified that he practiced Falun Gong in China at his friend's home several times per week, and he attended group practice on six occasions in China.⁹ He read Zhuan Falun and Master Li's writing during his group practice and at his friend's house.¹⁰ He testified that in Canada, he practices Falun Gong everyday at home, and he attends group practice once or twice per week; he has attended group practice approximately XXXX to XXXX times.¹¹
- [13] Having independently assessed the record, I find the RPD asked open-ended questions to give the Principal Appellant an opportunity to show how Falun Gong has improved his health as he claimed in the BOC.¹² The RPD did not engage in the testing of trivia during the questioning on how Falun Gong improved the Principal Appellant's health. The Principal Appellant was unable to elaborate in a spontaneous manner how he uses Falun Gong to improve his health. For example, the Principal Appellant named "karma" as a cause of illness,¹³ and described karma as a bad thing or a black mark. When the RPD asked questions to clarify how a person acquires karma, he responded that he forgot.¹⁴ I find the RPD was correct in finding that his testimony was not in keeping with his alleged reason for being a Falun Gong practitioner, that is to ameliorate his health issues. The RPD was correct in drawing a negative credibility inference.¹⁵
- [14] In another example, the RPD asked open-ended questions to give the adult Appellants an opportunity to discuss their favourite talk in the Zhuan Falun. The Principal Appellant testified that his favourite is "talk seven", which is about eating meat, jealousy, and Qigong treatment. The Principal Appellant gave a vague explanation that talk seven is about being a

genuine person and doing genuine things.¹⁶ The RPD gave the Principal Appellant an opportunity to elaborate on jealousy. The Principal Appellant responded that he was too nervous to recall, that he is not good at talking, and he is an introvert.¹⁷ The Principal Appellant attempted to explain that jealousy results in personal attachments which is contrary to Falun Gong practice.

- [15] An independent review of the record reveals that the RPD gave the Principal Appellant an opportunity to clarify his own testimony on the concept of attachments, which the Principal Appellant brought up on his own accord. Other than stating that attachments are not good, the Principal Appellant's attempt to further explain his understanding of attachments was incoherent.¹⁸ He was unable to elaborate any further, even though attachment is a significant topic in Falun Gong.¹⁹
- [16] Therefore, the RPD was correct in drawing a negative inference that the Principal Appellant was unable to speak spontaneously, and that his level of knowledge on attachments was not commensurate with the alleged frequency of practice and study.²⁰ Genuineness of the secondary Appellant's Falun Gong profile
- [17] The RPD asked the Principal Appellant's spouse open-ended questions about her favourite talk in Zhuan Falun. The RPD's questioning did not stray into testing for trivia. Having read Zhuan Falun, the Principal Appellant's spouse testified that talk seven is her favorite because it taught her how to behave and to live her life. Her testimony was vague and at times incoherent in response to the RPD's questions about talk seven. Without explaining, she mentioned killing and eating meat as a topic in talk seven. She testified that not feeling jealous is to feel happy for people who have a better life. She was unable to link these concepts together to illustrate why talk seven is her favourite teaching. Her testimony was vague and incoherent when given a chance to discuss why talk seven is her favorite teaching in Zhuan Falun.²¹
- [18] She cited nervousness, an inability to remember, and Zhuan Falun being too complicated as reasons for the inadequate testimony.²² Given her 15 years of education includes a college diploma in nursing, and she has work experience as a nurse,²³ I do not accept these reasons for the inadequate testimony about the topics in Falun Gong's seminal book which she asserts are her favorite teachings.
- [19] An independent review of the record reveals that the RPD was correct in drawing a negative credibility inference based on the secondary Appellant's vague and cursory testimony about the Falun Gong exercises. The secondary Appellant testified that she practiced all five exercises at home. When asked about the fifth exercise, she testified that its purpose was to strengthen divine powers and to purify oneself; and the exercise involves hand signs and sitting with crossed legs. She testified that she could not elaborate further because of nervousness and trouble recalling.²⁴ There was no follow-up testimony on this topic during her counsel's re-examination.²⁵

- [20] The secondary Appellant also gave vague and cursory testimony on the significance of Falun Gong in her life. She testified that Falun Gong taught her how to live and to perform the exercises; that she sends righteous thoughts everyday to rid of bad thoughts, but she could not articulate the purpose of righteous thoughts.²⁶
- [21] I find the RPD was correct in drawing a negative credibility inference in regards to the genuineness of the secondary Appellant's Falun Gong beliefs based on her inadequate answers to the RPD questions.
- [22] The RPD assigned little weight to the letters of support from Falun Gong practitioners because the letters are not sworn statements and the handwritten letters could have been written by anyone from anywhere. The RPD erred in assigning little weight for such reasons because the driver's licenses accompanying the letters are an indication of who and where the authors of the letters are from. If a letter appears authoritative and provides detailed contact information for verification, it is an error to accord no weight to the letters of support merely because they are not sworn statements.²⁷
- [23] I accord little weight to the letters of support for different reasons: the adult Appellants were unable to demonstrate in their testimony the genuineness of their Falun Gong profile when asked open-ended questions about the Falun Gong topics that they claim to know about based on the statements in the BOC that Falun Gong has improved their health; the Principal Appellant did not give clear, cogent and convincing testimony that he was aware of the purpose of the Falun Gong parade in which he had participated;²⁸ and, the Principal Appellant was unable to answer what other activities are referred to in the letters of support.²⁹ Therefore, the bare statement in the letters of support that the Appellants are genuine Falun Gong practitioners does not prove that the adult Appellants' Falun Gong beliefs are sincere. For this reason, I assign little weight to the letters of support from other Falun Gong practitioners.
- [24] I uphold the RPD's findings that the photographs are not probative of the alleged events in China, and they do not establish the genuineness of the Appellants' Falun Gong belief. I concur with the RPD's findings on the photographs that they do not show a deeper understanding of Falun Gong, if the testimonies of their knowledge and understanding of Falun Gong activities are insufficient to establish the genuineness of their Falun Gong profile. For example, the Principal Appellant exhibited vagueness in his testimony about the parade in Canada in which he participated.³⁰ He testified that one of the photos shows him in a Falun Gong parade, but he was unable to spontaneously testify in a clear, cogent and convincing manner about the purpose of the parade when asked a follow-up question.³¹ It was the secondary Appellant who testified that the parade was to celebrate Master Li birthday, which the Principal Appellant later confirmed.³²

- [25] I uphold the RPD's findings that the medical records, in and of themselves, carry insufficient probative value of the genuineness of their Falun Gong profile. Contrary to the Appellants' argument, the evidence related to the Appellants' exit from China does not enhance their credibility if the adult Appellants cannot give clear, cogent and convincing testimony about the sincerity of their Falun Gong practice.
- [26] The Appellants omitted from the BOC that their son was shunned at school in China because his parents believed in Falun Gong. The RPD was correct in finding the omission from the BOC to be significant as the alleged school bullying is an indication that the adult Appellants are known in their community to be Falun Gong believers, and the minor Appellant may face a fear of persecution by virtue of his relationship with his parents. Yet, this salient allegation was omitted from the BOC. The RPD was correct to find this allegation has not been proven on a balance of probabilities.
- [27] To sum up the foregoing independent assessment of the record, I find the adult Appellants did not give clear, cogent and convincing testimony to meet the balance of probabilities on the issue of the genuineness of their identity as Falun Gong practitioners. The claim by the minor Appellant has not been established by credible evidence that he faces a fear of persecution by virtue of his relationship with the adult Appellants. Sur place claim
- [28] In the RAD's independent assessment of the sur place claim, I have considered whether there is sufficient credible evidence of the Appellants' Falun Gong activities in Canada which would result in a well-founded fear of persecution, or cruel and unusual punishment upon their return to China. I must independently consider the evidence in relation to the sur place claim, even if the motivation behind such activities was not in good faith.³³
- [29] I have considered the objective evidence that Falun Gong practitioners outside of China may be monitored by Chinese authorities. A source at the Falun Dafa Association of Canada (FDAC) indicated that the monitoring was described as photographing protesters outside the embassy or consulates, surveillance at Falun Gong parades, and infiltration of community groups and university campuses in cities with Falun Gong communities. The extent and consequences of such monitoring is inconclusive as "very little documentary evidence exists" related to the monitoring of Falun Gong practitioners outside of China and the potential consequences they face upon their return to China.³⁴
- [30] I have considered the two letters from Falun Gong practitioners in Canada. The letters state that the adult Appellants are genuine Falun Gong practitioners who have been practicing Falun Gong together since XXXX 2018, and the adult Appellants have joined Falun Dafa Day parades and other activities.³⁵
- [31] The Appellants submitted four photographs of their Falun Gong activities in Canada. The Principal Appellant testified that the photos show him at a Falun Gong parade, XXXX XXXX XXXX XXXX XXXX XXXX at another location, and performing Falun Gong exercises at a park. The Principal Appellant did not know the exact location of the parade or XXXX XXXX XXXX XXXX XXXX XXXX XXXX, other than it was in downtown Toronto.³⁶ The secondary

appellant testified that she practices Falun Gong at a park in Toronto several times a week.³⁷ I concur with the RPD that there is insufficient evidence to find on a balance of probabilities that the Appellants' Falun Gong activities in Canada have come to the attention of the Chinese authorities. There is no evidence that the Appellants' public activities in Canada occurred near the Chinese consulate or at a university campus where, according to the objective evidence, there may be an increased likelihood of being photographed or monitored by the Chinese authorities. Given the objective evidence indicates that very little documentary evidence exists related to the monitoring of Falun Gong practitioners outside of China, I find the RPD was correct in its determination that there is insufficient evidence to support a sur place claim.

CONCLUSION

- [32] The RAD dismisses the appeal and confirms the decision of the RPD that the Appellants are neither Convention refugees nor persons in need of protection, pursuant to section 111(1)(a) of IRPA. (signed) "T. Cheung" T. Cheung January 8, 2020 Date 1 Exhibit RPD-1, RPD Record, Reasons for decision, pp. 3 to 15. 2 M.C.I. v. Huruglica, Bujar (F.C.A., no. A-470-14), Gauthier, Webb, Near, March 29, 2016, 2016 FCA 93, para. 103. 3 M.C.I. v. Huruglica, Bujar (F.C.A., no. A-470-14), Gauthier, Webb, Near, March 29, 2016, 2016 FCA 93, para. 70. 4 M.C.I. v. Huruglica, Bujar (F.C.A., no. A-470-14), Gauthier, Webb, Near, March 29, 2016, 2016 FCA 93, para. 103. 5 Exhibit P-2, Appellants' Record, Appellants' Memorandum of Argument, p. 22, para. 26 to 28, citing Wang v. Canada (Citizenship and Immigration), 2011 FC 1030 (CanLII), para. 13. 6 Audio of RPD Hearing, 1:33 to 1:35; 3:04 to 3:06. 7 Exhibit RPD-1, RPD Record, Exhibit 1, Schedule A, pp. 73 and 79. 8 Audio of RPD Hearing, 1:26 to 1:28; 2:17 to 2:19. 9 Audio of RPD Hearing, 1:39 to 1:44. 10 Audio of RPD Hearing, 1:48 to 1:50. 11 Audio of RPD Hearing, 2:04 to 2:06. 12 Audio of RPD Hearing, 1:21 to 1:33. 13 Audio of RPD Hearing, 1:29 to 1:33. 14 Audio of RPD Hearing, 2:11 to 2:14. 15 Exhibit RPD-1, RPD Record, Reasons for decision, pp. 8 to 10, para. 19 to 20. 16 Audio of RPD Hearing, 1:50 to 1:51. 17 Audio of RPD Hearing, 1:51 to 1:57. 18 Audio of RPD Hearing, 1:54 to 2:01. 19 Exhibit RPD-1, RPD Record, Reasons for decision, para. 17. 20 Exhibit RPD-1, RPD Record, Reasons for decision, para. 16 to 18. 21 Audio of RPD Hearing, 2:33 to 2:35. 22 Audio of RPD Hearing, 2:33 to 2:37. 23 Exhibit RPD-1, RPD Record, Schedule A, p. 79. 24 Audio of RPD Hearing, 2:29 to 2:33. 25 Audio of RPD Hearing, 3:11. 26 Audio of RPD Hearing, 2:38 to 2:41. 27 Paxi v. Canada (Citizenship and Immigration), 2016 FC 905 (CanLII), <<http://canlii.ca/t/gsw1t>>, para. 52; Kojouri v Canada (Minister of Citizenship and Immigration), 2003 FC 1389 (CanLII) at paras 18-19; Huyen v Canada (Minister of Citizenship and Immigration), 2001 FCT 904 (CanLII), [2001] FCJ No 1267 at para 5. 28 Audio of RPD Hearing, 2:59 - 3:04. 29 Audio of RPD Hearing, 2:59 - 3:04. 30 Exhibit RPD-1, RPD Record, Exhibit 9, pp. 315 to 316, photos. 31 Audio of RPD Hearing, 2:59 - 3:04. 32 Audio of RPD Hearing, 3:13 to 3:14. 33 Koua v. Canada (Citizenship and Immigration), 2015 FC 793 (CanLII), para. 21 and 23; Ejtehadian v. Canada (Citizenship and Immigration), 2007 FC 158 (CanLII), para. 11; see also Ghasemian v. Canada (Minister of Citizenship and Immigration), 2003 FC 1266 (CanLII), at paragraphs 21-23, and Ngongo c.

Canada (M.C.I.), [1999] A.C. F. No 1627 (C.F.) (QL). 34 National Documentation Package, China, March 29, 2019, tab 12.18: Monitoring of Chinese citizens who practice Falun Gong (Falun Dafa) outside of China; consequences upon return to China (2013-September 2016). Immigration and Refugee Board of Canada. 19 October 2016. CHN105635.E. 35 Exhibit RPD-1, RPD Record, Exhibit 9, pp. 309 to 314, letters of support. 36 Audio of RPD Hearing, 2:53 to 3:10. 37 Audio of RPD Hearing, 2:39 to 2:40.

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