

DECIDED
17 December 2020

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- [1] XXXX XXXX (the principal appellant) and her family are appealing the decision of the Refugee Protection Division (the RPD), which denies their claim for refugee protection.
- [2] The other claimants are: * XXXX XXXX, the husband of the principal appellant (the male appellant); * XXXX XXXX, the mother of the principal appellant (the female appellant); and * XXXX XXXX, the son of the principal appellant and the male appellant (the minor appellant).
- [3] They are citizens of China and allege they cannot return as the authorities will persecute them because they are Falun Gong practitioners.

[4] The determinative issue is credibility. The principal appellant

[5] After an independent analysis, I find that the RPD was incorrect in its finding that the principal appellant was not credible. Her appeal is therefore allowed.

[6] I find that the appellant is a Convention refugee. The remaining appellants

[7] For the male appellant, the female appellant, and the minor appellant, I confirm the decision of the RPD. They are not Convention refugees. Nor are they persons in need of protection. Allegations

- [8] The principal appellant alleges that she was introduced to Falun Gong by a friend in XXXX 2015. Later her friend was arrested by the Public Security Bureau (the PSB). The appellants left China with the assistance of a smuggler and came to Canada via the United States of America. They made refugee claims in XXXX 2016.
- [9] In Canada, the male appellant and female appellant also started to practice Falun Gong. The minor appellant copies the exercises of Falun Gong from the adults on occasion. Role of the Refugee Appeal Division (RAD)
- [10] I am required to examine the record independently and determine if the RPD arrived at the correct decision.¹ I must consider the admissibility of the new evidence and decide on whether to convene an oral hearing if I admit the new evidence. No new evidence; no oral hearing
- [11] The appellants are not submitting any new evidence; nor are they requesting an oral hearing. No oral hearing
- [12] New evidence is a prerequisite for an oral hearing. As I have not admitted the new evidence, I am unable to convene a hearing under 110(6). The RPD was incorrect to find the appellants' use of a smuggler and the surrender of their passports as not credible
- [13] The RPD found that the appellants were not credible for using a smuggler to come Canada. They were not wanted by the PSB; therefore, the use of a smuggler was unnecessary. A travel agency would have sufficed. Furthermore, the RPD found that the appellants were not credible because they surrendered their passports to the smuggler upon their arrival in Canada.
- [14] The appellants argue that their explanation was reasonable. An uncle made inquiries at a travel agency and was informed that the appellants may not be able to get visas if they used a travel agency. They argue that the RPD was incorrect to find them not credible for the surrender of their passports to the smuggler in Toronto. They did so out of fear.
- [15] The RPD was incorrect to make these credibility findings. While the appellants may not have behaved in a rational manner, their testimony with respect to their interactions with the smuggler is consistent.
- [16] Finally, the appellants are correct to argue that their exit from China is a peripheral matter to their claim. The principal appellant was not being sought by the authorities at the time that she left China. The RPD was incorrect to find that the principal appellant is not a Falun Gong practitioner
- [17] The RPD found that the appellant was not credible because she did not know the number of arm movements in exercise three. She said six when there are in fact nine. Otherwise, the RPD acknowledged that she had Falun Gong knowledge: she testified correctly about Falun, about the benefits of the practice and about righteous thoughts.

- [18] The appellants argue that the RPD was incorrect to make a negative credibility inference for the principal appellant based on the male and female appellant. I agree.
- [19] She cannot be held responsible for the lack of knowledge on part of her husband and her mother. While it does undermine her allegations that they are all Falun Gong practitioners, this in itself coupled with her error with respect to the number of arm movements in exercise three does not support the finding that she is not a genuine Falun Gong practitioner, particularly as she has demonstrated knowledge.
- [20] The preponderance of the evidence supports the principal appellant's allegation that she is a sincere practitioner of Falun Gong.
- [21] While it is true that the Chinese authorities are not aware that the appellant is a Falun Gong practitioner, the practice of religion free from persecution means the ability to practice one's faith openly if one so wishes. The fact that Falun Gong is an evil cult banned by the Chinese authorities supports a finding of religious persecution. The principal appellant is a Convention refugee
- [22] The Chinese authorities perceive Falun Gong to be an "evil cult" and have outlawed its practice. Practitioners practice in secret and face arrest, torture, unlawful detention etc. There are reports that the organs of Falun Gong practitioners are harvested.²
- [23] Should the principal appellant return to China, she would have to practice Falun Gong in secret. She would run the risk of discovery and persecution.
- [24] The agent of persecution is the state. Therefore, the presumption of state protection has been rebutted. For the same reasons, there is no viable internal flight alternative. The RPD was correct to find the male appellant and female appellant lack Falun Gong knowledge; therefore, they are not credible
- [25] The RPD found that the male appellant and the female appellant did not establish that they were genuine Falun Gong practitioners, because of their lack of knowledge.
- [26] The appellants argue that the practice of religion is based on sincerity and not knowledge. The RPD was incorrect in its finding because it did not assess the sincerity of the beliefs held by the male and female appellant.
- [27] I disagree with the appellants. Falun Gong places emphasis on knowledge
- [28] Falun Gong is a knowledge-based practice. In a Request for Information Request, the principal Falun Dafa website states that the "foundation of Falun Dafa consists of a body of fundamental knowledge essential for the task of undertaking proper cultivation towards higher stages of attainment."³
- [29] Master Lis says in Zhuan Falun that simply doing the exercises is not enough. The aim of Falun Gong is to cultivate one's gong and mind nature and to attain higher levels of spiritual attainment. The male appellant is not a genuine Falun Gong practitioner

- [30] The RPD found that the male appellant was not a genuine Falun Gong practitioner because he gave an incomplete definition of truth and did not know what evil cultivation is.
- [31] The appellants argue that the RPD did not consider the sincerity of the male appellant's beliefs.
- [32] The RPD found the male appellant was not credible in his definition of truth, when he stated that the concept of truth in Falun Gong was to tell the truth. He did not state that the persecution of Falun Gong practitioners is part of the definition of the principle of truth.
- [33] After an independent review of the evidence, I find that the male appellant is not credible with respect to his definition of truth. I find that the RPD made the correct decision.
- [34] At the time of his hearing in November 2019, the male appellant was practicing Falun Gong for over three years; he started his practice in XXXX 2016 in Canada. He has XXXX years of formal education.
- [35] The appellants found a smuggler to assist them to come to Canada; they sought and retained counsel; they gathered evidence for his refugee claim; and they found a Falun Gong practice group.
- [36] I am aware that the jurisprudence states that it is unreasonable to engage in microscopic and/or academic findings with respect to knowledge. However, knowledge can cast light on the genuineness of religious practice if applied in a reasonable manner.
- [37] Master Li discusses truth in the first talk of Zhuan Falun. He states that other schools may emphasize one principle over another, but that in Falun Gong, all three principles (truthfulness, compassion, and forbearance) are cultivated simultaneously.⁴
- [38] Sources state that the concept of truth in Falun Gong is more than just the dictionary definition of the word. Truth, compassion, and forbearance are the fundamental qualities of the universe itself and are elaborated upon in Zhuan Falun. Many practitioners study the book. Through consistent and dedicated practice, the student of Falun Gong aspires to achieve a state of selflessness, greater insight and awareness, inner purity, and balance-the inner workings of what might be called true health.⁵
- [39] I agree with the RPD that the male appellant's definition of truth lacks credibility. The persecution of Falun Gong is the reason the appellants came to Canada and made refugee claims. It is the reason for the hearing. While the male appellant gave some explanation of truth, it was not of truth as understood by Falun Gong. ⁶
- [40] I reject the male appellant's explanation for his failure to explain the concept of truth when asked by the RPD. I find the RPD was correct to find that this explanation undermined the appellant's credibility.
- [41] I agree with the RPD that the male appellant is not credible for his inability to explain evil cultivation.

- [42] Evil cultivation has its own section in Zhuan Falun, which the male appellant purports to have read once. Evil cultivation is the execution of the exercises with the wrong mindset. This can be conscious or unconscious and is very common. Master Li says that "in doing the exercises, if you do not think about good things, at least you should not think about bad things." 7
- [43] The RPD was correct to find the male appellant is not a genuine practitioner of Falun Gong. After an independent review of the record, I agree with the RPD for the reasons explained above. The female appellant is not a genuine Falun Gong practitioner
- [44] The RPD found that the female appellant was not a Falun Gong practitioner. She testified that she only did the exercises because she was illiterate. The RPD did not find this credible.
- [45] The appellants argue that here, too, the RPD did not assess the sincerity of the female appellant's belief but rather her limited knowledge.
- [46] I agree with the RPD.
- [47] I have already found Falun Gong to be a knowledge-based practice. Master Li himself throughout his work explains the importance of knowledge and the fact that it is not sufficient to do the exercises. It is this knowledge component that sets Falun Gong apart from other types of Qi Gong practice.
- [48] While I acknowledge that the female appellant does not have many years of formal education, learning about Falun Gong is not limited to reading. The minor appellant is not a Falun Gong practitioner
- [49] The minor appellant is not a Falun Gong practitioner. The appellants do not argue that he is.
- [50] On occasion, he copies his mother (the principal appellant) when she performs the exercises. She corrects his movements.
- [51] I agree with the RPD that the minor appellant is not a Falun Gong practitioner.

Conclusion

- [52] I have conducted an independent review of the record, hearing and RPD decision.
- [53] I find that the principal appellant is a Convention refugee.
- [54] For the remaining three appellants (the male appellant, the female appellant and the minor appellant), I dismiss the appeal and confirm the decision of the RPD that the appellant is neither a Convention refugee nor a person in need of protection. 8 (signed) "R. Seyan" R. Seyan 17 December 2020 Date 1 Canada (Citizenship and Immigration) v. Huruglica, [2016] 4 FCR 157, 2016 FCA 93. 2 National Documentation Package (NDP) for China (31 October 2020), item 12.23. 3 NDP for China (31 March 2020), item 12.9. 4 NDP for China (31 March 2020), item 12.12. 5 NDP for China (31 March 2020), item 1.7. 6 NDP for China (31 March 2020), item 12.25. 7 NDP for China (31 October 2020), item 12.12. 8 Pursuant to section 111(1)(a) of the

Immigration and Refugee Protection Act (IRPA).

RAD File / Dossier de la SAR : TB9-34561 TB9-34562 / TB9-34563 / TB9-34564 RAD.25.02 (January, 2020) Disponible en français 2 Immigration and Refugee Board of Canada Refugee Appeal Division Commission de l'immigration et du statut de réfugié du Canada Section d'appel des réfugiés RAD.25.02 (January, 2020) Disponible en français

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Prepared on 29 October 2026 · Esheria