

CANADA / JUDGMENT

TB8-06396

COURT

Refugee Appeal Division

DECIDED

19 June 2019

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RAD File / Dossier de la SAR : TB8-06396 TB8-06397 Private Proceeding / Huis clos Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXXXXXX XXXX Personnes en cause Appeal considered / heard at Toronto, ON Appel instruit / entendu à Date of decision June 19, 2019 Date de la décision Panel T. Card Tribunal Counsel for the persons who are the subject of the appeal Stacey Margaret Duong Conseil des personnes en cause Designated representative N/A Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR DECISION

- [1] XXXX XXXX (the "Principal Appellant"), and XXXX XXXX, (the "Second Appellant") are citizens of China. They are appealing a decision of the Refugee Protection Division (RPD) denying their claims for refugee protection.

DETERMINATION

- [2] The appeals are dismissed.

BACKGROUND

- [3] The Appellants are citizens of China. The Principal Appellant has practised Falun Gong since XXXX 2015. The Second Appellant is married to the Principal Appellant and does not practise Falun Gong.
- [4] On XXXX XXXX 2017, the Principal Appellant was told that a practitioner from her group had been apprehended by the authorities. The Second Appellant left China for Canada on XXXX XXXX 2017, and the Principal Appellant left on XXXX XXXX 2017, both using smugglers.
- [5] The Appellants made their refugee claims in Canada but were refused by the RPD on the grounds they were found not to be credible, and the Principal Appellant was found not to be a genuine Falun Gong practitioner as claimed. NO NEW EVIDENCE OR ORAL HEARING
- [6] The Appellants did not submit any new evidence to be considered under s.110(4) of the Immigration and Refugee Protection Act (IRPA).¹ No analysis of new evidence is therefore required.

- [7] As an oral hearing can only be held where there is new evidence that has been admitted under s.110(4), and since there is no new evidence in this case, no oral hearing is required.
- ISSUES IN APPEAL
- [8] The Appellants argued the following issues in their appeals:
- (a) The RPD erred in its assessment of the omissions from the Principal Appellant's Basis of Claim (BOC) form and its subsequent adverse credibility findings.
 - (b) The RPD erred in its assessment of the evidence regarding the Appellants' travels to Canada and its subsequent adverse credibility findings.
 - (c) The RPD incorrectly applied the case of Elazi² when making its analysis and determination.
 - (d) The RPD was unreasonable in its analysis of the Principal Appellant's knowledge of Falun Gong and its finding that the Principal Appellant is not a genuine Falun Gong practitioner as claimed.
- [9] I find that the determinative issues in these appeals are credibility, and whether the Principal Appellant is a genuine Falun Gong practitioner as claimed.

ANALYSIS

- [10] I have conducted an independent analysis of the evidence concerned, including reviewing the RPD hearing, as well as considering the Appellants' Memorandum,³ the RPD Decision,⁴ and the Principal Appellant's BOC form,⁵ amongst other documents. RPD did not err in analysing BOC omissions
- [11] The RPD noted that there were a number of omissions between the Principal Appellant's BOC, and her oral testimony.
- [12] The RPD firstly noted that the husband of the practitioner who had been arrested on XXXX XXXX 2017 had also himself been arrested since then by the Public Security Bureau (PSB). The Principal Appellant had not referred to this in the BOC. When the RPD member asked the Principal Appellant why it had not been omitted, she stated she thought it was a detail she could add later. The RPD did not accept this explanation, and drew an adverse credibility inference against the Principal Appellant.
- [13] The Appellants have argued that as this event was not part of the Appellants' personal experiences, this was a reasonable explanation as to why it was not included in the Principal Appellant's BOC, and that the RPD erred by drawing an adverse credibility inference from the omission.

- [14] I note that the BOC is meant to outline everything about why an applicant is applying for refugee status and explaining why they should be granted refugee status. It is not there purely to give a bare bones outline events that only took place in the country of reference from the date of the first incident leading someone to leave, and stopping the second the applicant leaves the country of reference.
- [15] In this case, the allegation of the practitioner's husband's arrest is directly related to the issue of what the Appellants would fear would happen if they are returned to China and is not a minor matter. I concur with the RPD's analysis that the omission is serious, and note that while a BOC amendment was provided shortly before the RPD hearing date, and therefore an opportunity to add this event was available, the Appellants did not do this. I find the RPD did not err in its analysis in this regard, concur with the adverse credibility inference drawn and uphold its finding accordingly.
- [16] The Principal Appellant also omitted the two PSB visits to her parents' home that have taken place since the Appellants left China. Here, the Principal Appellant stated that she forgot at the time of completing the BOC. The RPD did not accept this explanation and drew an adverse credibility finding against the Principal Appellant.
- [17] The Appellants have argued that it was unreasonable to expect the Appellants to update the narrative with more recent events.
- [18] I do not agree with the Appellants' argument. The Appellants in fact provided an updated BOC after the two PSB visits, and have not explained why at the time of making the amendment to the date when the practitioner was arrested they could not also have provided the additional information about the two PSB visits. I also concur with the RPD that simply "forgetting" these events is not a credible explanation. The Appellants allege to fear the PSB, and the allegation that the PSB have visited the Principal Appellant's parents' home twice looking for the Appellants goes directly to the issue of well-founded fear.
- [19] The Appellants also have quoted the case of Zhang⁶ that with recent events, it was reasonable for an applicant to update the Board at their hearing rather than updating their Personal Information Form (PIF, now BOC).
- [20] Having reviewed the Zhang case, I find that the Appellants have rather mischaracterised what this case was saying. In the Zhang case, the applicant had amended their PIF to add the date of baptism. The Board member in that case drew an adverse credibility inference for this late amendment, and for not including it in the original completed PIF.
- [21] The Federal Court stated that they were puzzled that the Board gave as much importance to this date as it did, and basically considered it to be a minor detail. In this regard, it felt that given the minor nature of this amendment, it would have been perfectly acceptable to have made the correction at the Board hearing. Zhang does not say that it is unreasonable to make BOC amendments ahead of a hearing, and notes "There are obviously circumstances where an adverse inference can be drawn from an omission from a PIF or from an

amendment to it, depending on the facts and circumstances of the case."⁷

- [22] In this case, the omissions are far more central to this case than the correction made in Zhang, and as originally noted, the Appellants in fact did make an amendment submission to the RPD, but did not include these crucial details.
- [23] I find the RPD did not err in its analysis of these BOC omissions and uphold its findings accordingly. RPD did not err in its findings regarding the Appellants' travel to Canada
- [24] The RPD also drew negative credibility inferences against the Appellants in relation to their journeys to Canada. The credibility issues arose from the fact that the Appellants not only did not travel together, but that in fact the Second Appellant left before the Principal Appellant, and that the Principal Appellant's country of residence was indicated as the Czech Republic, with the visa being issued in Vienna.
- [25] The Appellants have argued that the RPD erred in its analysis, and did not consider the totality of the evidence. The Appellants have also argued that the RPD erred due to the presence of the presumption of truthfulness principle. The Appellants also argued that the RPD erred in its reference to the case of Elazi⁸ in stating that the absence of a reasonable explanation for the unavailability of passports leads to an adverse credibility finding about an applicant's travel history.
- [26] I note that one of the major problems with the Appellants' travel history is that the Second Appellant, who is not a Falun Gong practitioner, and is not the alleged main target of the PSB, still left before the Principal Appellant. The Appellants have stated that for both of them, they simply slavishly followed the smuggler's instructions. I concur with the RPD member that this creates a credibility problem, given that the person in most immediate danger was the Principal Appellant, not the Second Appellant, and that it is reasonable that they would want to know why the Second Appellant should leave China first, rather than the Principal Appellant. I find the Appellants have not addressed this issue satisfactorily, and uphold the RPD's finding on this point.
- [27] Additionally, I note that it is for the Appellants to prove their case, not for the RPD to speculate on explanations for inconsistencies. I find that the RPD has in fact considered the totality of the evidence in front of it, noting that the RPD did find there was sufficient evidence to establish the Appellants' personal identities, but not their travel history.
- [28] The travel history itself is important in order to verify that the allegations of when the Appellants were in China, and how they left, did take place in the manner alleged. In weighing all of the evidence, I find that the RPD did not err in identifying the credibility problems, and that the explanations provided by the Appellants are simply not adequate. When taking this totality of evidence into account, along with the other adverse credibility findings, I find that the presumption of truth is rebutted in this case.

- [29] Overall, I find the RPD did not err in its analysis of the Appellants' travel history and its subsequent adverse credibility findings. I uphold the RPD's findings in this regard. Principal Appellant is not a genuine Falun Gong practitioner
- [30] The Appellants have also argued that the RPD erred in its assessment of the Principal Appellant's Falun Gong practice in Canada and its finding that the Principal Appellant is not a genuine Falun Gong practitioner as claimed.
- [31] The Appellants specifically argued that the RPD should not rely on "religious trivia" when assessing the Principal Appellant's beliefs, and that jurisprudence exists stating that just because an applicant's knowledge isn't equivalent to that of a panel member does not mean that an applicant is not a true believer. The Appellants concede that Falun Gong is not a religion specifically, but that nevertheless, similar jurisprudence should apply.
- [32] I note that the Principal Appellant alleges that she was introduced to Falun Gong in XXXX 2015 and began learning the five exercises and philosophy since XXXX 2015. She began attending group practices in XXXX 2016, and started reading Zhuan Falun after arriving in Canada in XXXX 2017. The Principal Appellant had been involved with Falun Gong for more than two years before the RPD hearing date.
- [33] I also note 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."⁹ The Appellant did demonstrate some knowledge of Falun Gong, but I concur with the RPD's finding that the knowledge demonstrated by the Principal Appellant was cursory at best, particularly when considering the allegation that she has been practicing for over two years by this point.
- [34] I do not concur with the Appellants' argument that the inability to answer "trivia" about Falun Gong does not equate to a lack of belief. Falun Gong is not a religion as conceded by the Appellants. It is a philosophy. Unlike religions, which were the subject of the cases referred to by the Appellants, the practice of Falun Gong, as stated above, requires sufficient knowledge to be a bona fide practitioner, and does not rely on pure faith the way religions do.
- [35] In this case, I concur with the RPD's findings. I note that the Principal Appellant does have some knowledge, but has not demonstrated sufficient knowledge to convince me that she is a genuine Falun Gong Practitioner, particularly when read with the other adverse credibility findings. The RPD's findings on this issue are upheld. Second Appellant's claim fails
- [36] The Second Appellant's claim is entirely reliant on the allegations of the Principal Appellant. He does not allege to be a Falun Gong practitioner himself. As the allegations about what happened in China have been found not to be credible, and as the Principal Appellant has been found not to be a genuine Falun Gong practitioner, his appeal also fails.

CONCLUSION

[37] Pursuant to s.111(1)(a) of the IRPA, the RPD's decision that the Appellants are neither Convention refugees nor persons in need of protection is confirmed. The appeals are dismissed. (signed) "T. Card" T. Card June 19, 2019 Date 1 Immigration and Refugee Protection Act, S.C. 2001, c. 27, as amended. 2 Elazi v Canada (M.C.I.) 2000 CanLII 14891 (FC). 3 Exhibit P-2, Appellants' Record, Pages 54-68. 4 Ibid., Pages 4-12. 5 Exhibit RPD-1, RPD Record, Exhibit 2, Pages 12-23. 6 Zhang v Canada (M.C.I.) 2007 FC 665. 7 Ibid., Paragraph 9. 8 Elazi v Canada (M.C.I.) 2000 CanLII 14891 (FC). 9 Exhibit RPD-1, RPD Record, Exhibit 4, National Documentation Package for China, Item 12.32, Immigration and Refugee Board of Canada (IRB), Response to Information Request (RIR), CHN33180.EX, 26 November 1999, Page 1.

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