

CANADA / JUDGMENT

## TB8-11806

COURT

Refugee Appeal Division

DECIDED

25 February 2020

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RAD File / Dossier de la SAR: TB8-11806 TB8-11807 Private Proceeding / Huis clos Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXXXXXXXX XXXX Personnes en cause Appeal considered / heard at Toronto, ON Appel instruit / entendu à Date of decision February 25, 2020 Date de la décision Panel J. Pollock Tribunal Counsel for the persons who are the subject of the appeal John Savaglio 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 OVERVIEW

- [1] XXXX XXXX (the Principal Appellant) and her adult son, XXXX XXXX (the Associate Appellant), are citizens of China. They allege a fear of persecution upon return to China as Falun Gong practitioners. They appeal a decision of the Refugee Protection Division (RPD) rejecting their claim for refugee protection.
- [2] This is the Appellants' second time before the Refugee Appeal Division (RAD). The first RPD panel found the Appellants not credible and denied their claim in February 2014. Then, the first RAD panel granted their appeal in June 2014 and referred the matter back to the RPD for redetermination. Three years later, in 2017, the Principal Appellant wrote a letter to the Board stating that the earlier allegations of past persecution in China were false. The second RPD panel found the Appellants not credible and denied their claim in April 2018. The RPD found that the Appellants failed to credibly establish that they are sincere Falun Gong practitioners or that they would be perceived as such by Chinese authorities. The Appellants argue that this finding is in error. I disagree. Having independently assessed all of the evidence, including the RPD hearing audio-recording, I find that the RPD did not err and that the Appellants' claims are not credible. DECISION
- [3] I dismiss the appeal. The RPD was correct in finding that the Appellants are neither Convention refugees nor persons in need of protection.

## BACKGROUND

- [4] The Appellants' first Basis of Claim (BOC) narrative was prepared in 2013 with the assistance of Counsel.<sup>1</sup> The Principal Appellant alleged that she began her Falun Gong practice in 1997. She alleged that she went into hiding after police raided her practice group in 2013. The Associate Appellant alleged that he faced discrimination at school after teachers and

classmates learned that his mother was a Falun Gong fugitive. The Appellants alleged that a smuggler helped them leave China. However, in her XXXX 2017 letter to the Board, the Principal Appellant stated that her Falun Gong practice had in fact never come to the attention of the authorities in China.<sup>2</sup> She also alleged that she first began her Falun Gong Practice in 2003, not in 1997, as she had earlier claimed. She filed a BOC amendment reflecting these changes on XXXX 2018, one month before the second RPD panel re-heard her claim in XXXX 2018.<sup>3</sup>

- [5] In submitting a false BOC narrative, the Principal Appellant lied about her history of Falun Gong practice in China, the raid of her practice group, a police pursuit, discrimination faced by her son, physical assaults on her husband, and police searches of her own home and the homes of multiple family members in China. Specifically: \* She did not begin practicing Falun Gong in 1997, as first alleged; \* She did not practice Falun Gong in secret at home or at fellow practitioners' homes as of 1999, as first alleged; \* She was not discovered by the police at a practitioner's home in XXXX 2013, as first alleged; \* She was not sought by police at her own home and no arrest warrant was left behind, as first alleged; \* Her husband was not punched and kicked by Chinese police and he was not threatened with arrest, as first alleged; \* Her son, the Associate Appellant, did not face discrimination at school after teachers and classmates learned that his mother was a Falun Gong fugitive, as first alleged; \* Her family computer was not seized by the police in China, as first alleged; \* The police did not visit and search the homes of her brother and brother-in-law, as first alleged; \* Her husband did not learn of the arrest of two members of her underground church, as first alleged; \* The police did not return to her home to beat and threaten her husband after she fled China, as first alleged; \* The police did not return to her parent's home, her brother's home, and her brother-in-law's home, after she fled China, as first alleged; and \* Her husband did not go into hiding, as first alleged.
- [6] The Principal Appellant alleged that she provided a false story in her first BOC because she was told by a consultant, whose name she could not recall, that it would be very difficult to obtain protection in Canada if she had never been sought by police, even though she was a true Falun Gong practitioner. She continued to rely on this false story during her first RPD hearing and in her first RAD appeal in 2014, only correcting the record in 2017, three years later. She explained that she waited to tell the Board that her BOC was false because she was fearful and only came to know that Canada was a country that emphasized credibility after listening to XXXX XXXX statements about Falun Gong method.<sup>4</sup> She further alleges that she mailed a criminal indictment to a court in China to sue XXXX XXXX XXXX for Falun Gong repression and participated in protests outside the Chinese consulate in Canada. The Associate Appellant alleges that his injured knee healed in Canada after he began practicing Falun Gong. NO NEW EVIDENCE AND NO JURISDICTION TO HOLD AN ORAL HEARING
- [7] The Appellants have not submitted new evidence in support of their appeal. Having admitted no new evidence, the RAD has no jurisdiction to convene an oral hearing.<sup>5</sup>

## ANALYSIS

- [8] I am reviewing the RPD's decision on the standard of correctness as I do not find the RPD enjoyed a meaningful advantage. I have conducted an independent assessment of the evidence to determine whether, as submitted by the Appellants, the RPD erred.<sup>6</sup> In conducting my independent assessment of the evidence I am mindful that the responsibility rests with the Appellants to raise any potential grounds of appeal that arise from the RPD decision.<sup>7</sup> Issues on appeal
- [9] The Appellants argue that the RPD erred, as follows: \* In penalizing the Appellants for having "come clean" about the false allegations without regard to the United Nations High Commissioner for Refugees (UNHCR) Handbook; \* In unjustifiably rejecting the Principal Appellant's explanation for providing false information in her first BOC and assigning no weight to the amended BOC; \* In finding it implausible that the Principal Appellant only came to the realization in 2017 that she needed to tell the truth; \* In finding that the Principal Appellant is not a genuine Falun Gong practitioner despite not having challenged the accuracy of any of the Principal Appellant's answers in regard to her Falun Gong practice; \* In imposing an unduly onerous standard of Falun Gong knowledge without properly considering the Principal Appellant's six years of education in China; \* In failing to properly assess the Appellants' documentation, in particular, two 2013 letters of support corroborating the Principal Appellant's Falun Gong activities in Canada; \* In microscopically examining the evidence and relying on the omission of the Associate Appellant's second leg injury to doubt his credibility; \* In requiring the Associate Appellant to provide corroboration of his second leg injury and in drawing and adverse inference on this basis without confronting him at the hearing; \* In making a speculative finding that the Appellants' Falun Gong activities in Canada, and the mailing of the criminal indictment, are not indicative of sincere Falun Gong belief, but rather of an intention to increase the likelihood of a successful claim; and \* In setting an unduly onerous standard of proof by requiring the Principal Appellant to provide corroboration that the criminal indictment she alleges that she mailed to a court in China has been delivered.
- [10] After listening to the entire RPD hearing audio-recording and independently assessing all of the evidence, I find that material credibility concerns were not reasonably explained and that the presumption of truthfulness has been rebutted. While I have found that the RPD erred in one of its findings, I do not find that this error is fatal to the RPD decision. I find that the RPD was correct in its overall determination that the Appellants failed to credibly establish that they are sincere Falun Gong practitioners or that they would be perceived as such by Chinese authorities. The RPD correctly found that the false BOC narrative undermines credibility

- [11] Counsel argues that in rejecting the Principal Appellant's explanation for providing a false story in her first BOC, the RPD erred. Specifically, that the Principal Appellant's decision to "come clean" with the Board of her own volition "support[s] rather than undermine[s] her credibility."<sup>8</sup> I disagree. For the following reasons, and having independently assessed all of the evidence, I find that Counsel's argument is without merit. The RPD did not err. The RPD's decision is in line with the principles of the UNHCR Handbook
- [12] The UNHCR Handbook indicates that persons who fear authorities in their own country may be afraid to speak freely and give a full account of their case, noting that "untrue statements by themselves are not a reason for refusal of refugee status" as such statements must be evaluated "in the light of all the circumstances of the case."<sup>9</sup> Counsel argues that in rejecting the Principal Appellant's explanation for providing a false story in her BOC, the RPD failed to take these principles into account and penalized the Appellants for having "come clean." I disagree.
- [13] The Principal Appellant's false BOC narrative was just one of many reasons which led to the rejection of the claim. Moreover, the RPD was careful to consider all of the circumstances of the claim, including the facts surrounding the dishonesty. The RPD correctly noted that the Principal Appellant had the benefit of Counsel in the preparation of her first BOC and she was represented by Counsel before the first RPD panel and before the first RAD panel. It is also not the case that the Principal Appellant simply took time to disclose all of the details of her allegations, made a minor amendment to her claim, or lied about a peripheral detail. Rather, she put forward and relied on false allegations of past persecution, including having lied about when she began practicing Falun Gong and inventing a police pursuit in China that never took place, which goes to the very core of her claim.<sup>10</sup> It is trite law that a Claimant's material change to their BOC without a reasonable explanation may lead to an adverse credibility inference.<sup>11</sup>
- [14] Moreover, it is not the case that the Principal Appellant came forward at the first available opportunity. She repeatedly relied on the false story, misleading two Board members. Even after receiving the first negative RPD decision on credibility grounds, the Principal Appellant failed to amend her story before the first RAD panel. She waited three years after her first RAD appeal had been granted to correct the record. The Principal Appellant has demonstrated the willingness and ability to intentionally mislead the Board on material issues in order to secure immigration status in Canada. Her dishonesty undermines her general credibility with respect to her allegations, rebutting the presumption of truthfulness. The RPD did not err. The RPD's plausibility finding is correct
- [15] The RPD found it implausible that the Principal Appellant only came to the realization in 2017 that Canada emphasized credibility and that she must be truthful. Counsel argues that this finding is in error. Specifically, Counsel argues that it is not outside the realm of possibility that the Principal Appellant only understood the importance of telling the truth in 2017. I disagree.

- [16] While I am cautious about making plausibility findings, and I am mindful that such findings should be made only in the clearest of cases as directed by the Federal Court in Valtchev, I find that the circumstances support such a finding in this particular case.<sup>12</sup> Based on my independent assessment, the Principal Appellant's allegation that she only came to the realization in 2017 that Canada emphasized credibility and that she must be truthful, after being asked multiple times over several years to confirm that her evidence was truthful, is "outside the realm of what could reasonably be expected."<sup>13</sup>
- [17] In signing her BOC with the assistance of Counsel in 2013, the Principal Appellant confirmed that the entire contents were true. In appearing before the first RPD panel while represented by Counsel in 2013, the Principal Appellant swore during those proceedings that she would tell the truth. She was told on multiple occasions that her credibility was at issue and the whole basis for the first RPD denial and the first RAD panel decision in 2014 were on the grounds of credibility. It is simply outside the realm of what could reasonably be expected that the Principal Appellant would only come to know that she must be truthful in 2017. Indeed, in the Principal Appellant's own letter to the Board where she discloses her false allegations, she herself writes that she initially rejected the unnamed consultant's suggestion that she provide false allegations to the Board: "I told him this is a fake, contrary to my belief, I could not do it and I walked away."<sup>14</sup> The RPD did not err.
- [18] The RPD also found it unreasonable that the Principal Appellant would not know the importance of truth as an eleven-year alleged practitioner of Falun Gong in 2014, and that she only fully understood this following further study of Master Li's theory and method. The Principal Appellant herself testified that truth is one of the main elements of Falun Gong.<sup>15</sup> The Appellants do not challenge this finding on appeal. I also note that the Principal Appellant alleges that she joined Falun Gong specifically because she felt she had "an obligation to tell the truth."<sup>16</sup> Having undertaken my own independent assessment, I find that the RPD did not err. The RPD's rejection of the Principal Appellant's explanation is correct.
- [19] I do not agree with Counsel that the RPD "unjustifiably" rejected the Principal Appellant's explanation and therefore erred in placing no weight on her amended BOC. As I have found above, the RPD provided multiple reasons for rejecting the Principal Appellant's explanation and assigning her BOC amendment no weight. Having undertaken my own independent assessment of the evidence, I find the RPD was correct to reject the Principal Appellant's explanation for providing false allegations in her first BOC and presenting these allegations as truthful to two Board members over multiple years. Having properly rejected the Principal Appellant's explanation, it was open to the RPD to accord the BOC amendment no weight. The RPD did not err. Principal Appellant's Falun Gong knowledge is inconsistent with alleged length of practice.
- [20] The RPD found that the Principal Appellant provided a degree of detail about her Falun Gong knowledge and practice that was inconsistent with the length and nature of the practice, having alleged that she studied Zhuan Falun every week for fifteen years.

Specifically, that her testimony about how she would explain Falun Gong teachings and beliefs to people who knew nothing about the faith was general and insubstantial in nature and therefore inconsistent with her alleged history of spreading Falun Gong teachings to non-believers. Counsel argues that these findings are incorrect and the RPD expected too much of her testimony. I am unpersuaded by Counsel's arguments. The RPD's description of the testimony is fully supported by the RPD hearing audio-recording. For the following reasons, I do not agree that the RPD expected too much of the Principal Appellant. I find that the RPD did not err. The RPD did not impose an unduly onerous standard of Falun Gong knowledge

- [21] The RPD acknowledged that the Principal Appellant was able to perform an exercise at the hearing and that she provided some information about the contents of Zhuan Falun. Specifically, the RPD acknowledged that the Principal Appellant was able to provide the following information: the first talk relates to guiding people up to high levels; different levels have different laws; there is one standard for determining whether someone is good or bad; Chi Gong is about cultivation, and cultivation exercises don't increase gong; and the second talk is about the third eye, the ability of remote wishing and knowing fate.<sup>17</sup> Having listened to the RPD hearing audio-recording, I note that this testimony emerged only after multiple questions were posed by the RPD and after significant redirection.<sup>18</sup>
- [22] Counsel argues that because the Principal Appellant was not inaccurate in her answers, the RPD erred in finding that she is not a genuine Falun Gong practitioner. I do not agree. As the RPD correctly noted, a person may have knowledge of Falun Gong beliefs without being a genuine Falun Gong believer. Counsel also argues that the RPD imposed an unduly onerous standard of Falun Gong knowledge and failed to properly consider the Principal Appellant's six years of education in China. I do not agree. The RPD Member specifically noted during the proceedings that the hearing is not meant to be a religious test.<sup>19</sup> I also acknowledge that inquiry into the sincerity of religious beliefs must be approached with caution because of their subjective nature.<sup>20</sup> This is not a case where the RPD engaged a microscopic examination of the Principal Appellant's knowledge of Falun Gong.<sup>21</sup> Rather, it was the Principal Appellant's inability to testify about how she would proselytize to non-believers, an alleged core of her Falun Gong practice, that undermined her credibility.
- [23] The RPD found that the Principal Appellant provided only generalities about Falun Gong content when asked how she would explain Falun Gong to non-believers. Having independently assessed the evidence and listened to the entire RPD hearing audio-recording, I agree with the RPD's characterization of the testimony. The RPD patiently questioned the Principal Appellant, attempting to draw out what exactly the Principal Appellant would tell non-believers about Falun Gong during her many years of alleged proselytizing. At first, she answered that she would open up an informational leaflet. The RPD asked the question again. She then testified that Falun Gong improves health. The RPD again asked her for more information. The Principal Appellant then testified that her cousin's health improved after practicing Falun Gong, and that Falun Gong's rejection of

Communist associations would get rid of evil.<sup>22</sup> The RPD found that the Principal Appellant's answers are inconsistent with the length and nature of her alleged practice. Specifically, the RPD found that it is reasonable to expect a fifteen-year Falun Gong practitioner who proselytized from house to house in China and then continued to spread Falun Gong teachings in Canada to provide more substantive information about how she would explain Falun Gong to persons who knew nothing about the faith - a task in which she allegedly had considerable experience. I find the RPD's determination is correct. Associate Appellant's account of becoming a Falun Gong practitioner is not credible

- [24] In the amended BOC adopted by the Associate Appellant, it is alleged that he fell off of his bike and injured his knee while riding to his factory job in Canada. After Chinese medicine and hospital treatment were unable to cure him, the Associate Appellant allegedly began attending Falun Gong classes in XXXX 2016 and his knee was fully healed.<sup>23</sup> However, in testimony before the RPD the Associate Appellant alleged that he had in fact broken his leg twice in Canada, the first time when he fell off of his bicycle in XXXX 2016, and the second time while working at the factory on a lift truck.<sup>24</sup> However, this second broken leg injury was not mentioned in the amended narrative. When asked for an explanation the Associate Appellant explained that breaking his leg was what brought him to Falun Gong, despite there being other worldly attractions, and that practicing Falun Gong is not easy. The RPD did not accept this explanation as reasonable, finding it to be unresponsive. The RPD found that rather than explain the inconsistency, the Associate Appellant embellished his testimony with a second leg injury that he had omitted from his BOC. Counsel argues that in drawing an adverse inference based on this BOC omission, the RPD erred by microscopically examining the evidence. I do not agree.
- [25] The leg injury goes to the very core of the Associate Appellant's claim. It is because of his alleged injury that he began practicing Falun Gong. Concerns related to his decision to practice Falun Gong are of central importance in the evaluation of his credibility. The RPD did not err in raising its concerns about this at the hearing, or in relying on these concerns in its credibility analysis. As the RPD properly found, where two major injuries and two miraculous recoveries were central to his decision to begin his Falun Gong practice, both incidents should appear in the narrative. Moreover, I note that it is the second injury - the same injury that he omitted from his BOC - that he alleged crystalized his need to practice Falun Gong. As the Associate Appellant testified: "after the second time I break my leg I realized I need to be into Falun Gong."<sup>25</sup> This makes the omission of the second injury from the BOC all the more material and unreasonable.
- [26] Counsel also argues that the RPD erred by drawing an adverse credibility inference based on the Associate Appellant's failure to provide medical corroboration without confronting him at the hearing. Having listened to the entire RPD hearing audio-recording, I concur with Counsel that the RPD did not confront the Associate Appellant with its concerns about the lack of medical documentation, thereby depriving him of his right of response. I find that the RPD erred in this finding.<sup>26</sup> However, I do not find that this error is fatal to the RPD

decision as the remaining credibility findings are correct. The RPD correctly found the Appellants' Falun Gong practice is not genuine

- [27] In light of its negative credibility findings, the RPD found that the Appellants are not genuine Falun Gong practitioners. Specifically, the RPD found that the Principal Appellant and Associate Appellant did not practice Falun Gong, as alleged, and that their Falun Gong activities in Canada are not indicative of sincere Falun Gong belief but rather of an intention to increase the likelihood of a successful refugee claim. Counsel argues that the RPD erred by engaging in speculation. Counsel also argues that the RPD erred by failing to properly assess the Appellants' documentation, in particular, two 2013 letters of support corroborating the Principal Appellant's Falun Gong activities in Canada, and a 2018 letter of support for the Associate Appellant corroborating his Falun Gong activities in Canada. I do not agree. Having independently assessed all the evidence, I find that the RPD did not err.
- [28] As the Federal Court found in *Su*, the Board may consider a Claimant's motive for engaging in religious practice in Canada.<sup>27</sup> Moreover, it is open to the Board to assess the genuineness of a Claimant's religious practice in light of credibility concerns relating to the original authenticity of a claim.<sup>28</sup> The Principal Appellant's false BOC narrative was filed with the Board for the very purpose of securing immigration status in Canada. Considered in light of the particular circumstances of this case, the RPD was correct to find that the Appellants' activities in Canada are not indicative of sincere Falun Gong belief but rather of an intention to increase the likelihood of a successful refugee claim. The RPD did not err.
- [29] The RPD specifically considered the supporting documents but found that in the particular circumstances of the claim, and given the weighty negative credibility inferences drawn, the evidence is insufficient to establish that they are sincere practitioners or that they would practice Falun Gong in China. I have independently assessed the evidence that Counsel argues was ignored, as follows:
- a. XXXX XXXX XXXX 2013 letter of support from XXXX XXXX XXXX XXXX XXXX:<sup>29</sup> This letter indicates that the Principal Appellant practiced Falun Gong on the weekends starting late XXXX 2013 with XXXX XXXX XXXX XXXX XXXX XXXX Falun Gong group and that she is "very capable of practicing Falun Gong and her Falun Gong movements are already very standardized when she first began to practice with us." I accept that XXXX XXXX XXXX XXXX XXXX XXXX was accepted as a Convention refugee in Canada, although without the full reasons in her claim I have no evidence before me establishing the basis for her claim. I also accept that the Principal Appellant practiced Falun Gong with XXXX XXXX XXXX XXXX XXXX XXXX from late XXXX 2013 to XXXX 2013 and that she did so with standardized movements. However, this does not establish the genuineness of the Principal Appellant's practice, especially when considered in light of the fact that she had already demonstrated a willingness to lie and mislead about her Falun Gong practice by submitting a false BOC in XXXX 2013, the very same month that she joined XXXX XXXX XXXX XXXX XXXX XXXX XXXX Falun Gong group.

- b. XXXX XXXX XXXX 2013 letter of support from XXXX XXXX XXXX XXXX XXXX XXXX<sup>30</sup> This letter indicates that the Principal Appellant is the author's friend and a Falun Gong practitioner that "joins XXXX XXXX XXXX XXXX activities in Toronto. Such as go to distribute the XXXX XXXX XXXX and so on [sic]." Even accepting this as credible, this does not establish the genuineness of the Principal Appellant's practice, especially when considered in light of her willingness to lie and mislead about her Falun Gong practice by submitting a false BOC in XXXX 2013.
- c. Documentation corroborating the Principal Appellant's participation in the XXXX XXXX waist drumming group and the Appellants' participation in protests and Falun Gong activities:<sup>31</sup> These documents indicate that the Principal Appellant participated in the XXXX XXXX waist drumming group and that the Appellants participated in protests and Falun Gong activities. However, accepting that the Appellants engaged in these activities does not establish the genuineness of the Appellants' practice, especially when considered in light of the weighty adverse credibility findings.
- d. XXXX XXXX XXXX 2018 letter of support from XXXX XXXX XXXX XXXX<sup>32</sup> This letter indicates that the Associate Appellant "studied very seriously" at Falun Gong training classes in XXXX 2016 and participated in Falun Gong group activities. Even accepting this as credible, this does not establish the genuineness of the Associate Appellant's practice, especially when considered in light of the weighty adverse credibility findings.
- [30] I accept that the Appellants represented themselves as genuine Falun Gong practitioners in their Falun Gong activities and interactions with Falun Gong members in Canada. However, I find that the Appellants' self-reporting and representation of the genuineness of their beliefs not to be credible. The Appellants' supporting evidence is insufficient to establish that their practice is genuine and does not outweigh or overcome the cumulative credibility concerns related to the Appellants' testimony and evidence. It is well-established that a Claimant's overall credibility may affect the weight given to supporting evidence.<sup>33</sup> This is especially the case where a Claimant has already been found to have fabricated material allegations or events.<sup>34</sup> As the Federal Court found in Jiang: "The Board here found that the applicant had fabricated her story to claim refugee protection. A reasonable inference from that premise is that her current knowledge, appearance in photos, and letters of support were fostered in the intervening two years to support that fraudulent claim."<sup>35</sup> Having independently assessed the evidence, I find that the RPD did not err in finding that the Appellants' are, on a balance of probabilities, not genuine Falun Gong practitioners. Insufficient evidence that Chinese authorities would identify the Appellants as Falun Gong
- [31] The RPD found that there is insufficient evidence that Chinese authorities would identify the Appellants as Falun Gong practitioners. Counsel argues that the RPD erred as follows: \* In making a speculative finding that the Principal Appellant's mailing of the criminal indictment is not indicative of sincere Falun Gong belief, but rather of an intention to increase the likelihood of a successful claim; and \* In setting an unduly onerous standard of proof by requiring the Principal Appellant to provide corroboration that the criminal

indictment she alleges that she mailed to a court in China has been delivered.

- [32] Having independently assessed all of the evidence as follows, I find the RPD did not err.
- [33] The question to be asked for a sur place claim is whether a Claimant's activities are "likely to come to the attention" of the authorities in the Claimant's home country and whether this gives rise to a serious possibility of persecution.<sup>36</sup> The determination of whether a Claimant's activities in Canada would come to the attention of authorities in their home country is a factual determination made on a balance of probabilities.<sup>37</sup> Canadian activities must be considered even if the motivation behind the activities is non-genuine.<sup>38</sup>
- [34] The Principal Appellant provided a XXXX 2018 open letter she wrote to Chinese employees working at a cosmetic factory.<sup>39</sup> This letter is pro-Falun Gong and anti-Communist. However, she provided no corroborating evidence about how this open letter was sent. The Principal Appellant also provided a criminal indictment she wrote for former XXXX XXXX XXXX XXXX XXXX XXXX accusing him of engaging in Falun Gong persecution.<sup>40</sup> She alleges that she mailed this indictment to China. In testimony, she alleged that she sent this indictment because she cannot be quiet about Falun Gong persecution.<sup>41</sup> This letter includes: her Resident Identity Card number; her addresses in Canada and China; and a Canada Post Xpresspost international receipt addressed from her to the Supreme People's Court in Beijing, China. However, besides her own testimony that she checked online and the package had been delivered, although she could not recall when or whether the delivery notice stated who had received the package, the Principal Appellant did not provide any corroboration that the package had been delivered.<sup>42</sup>
- [35] The RPD found that without corroboration that the indictment had been received, the Principal Appellant failed to establish that she was, on a balance of probabilities, likely to come to the attention of Chinese authorities. The RPD also noted that, even had the indictment been delivered, this is an insufficient basis to conclude that the letter has been read, that its contents have been shared with law enforcement officials, and that officials have identified the Principal Appellant as the same person who signed the letter.
- [36] As the RPD had already drawn negative inferences related to the Principal Appellant's credibility, her failure to provide corroborating documentation that this criminal indictment had been delivered to a Court in China, as alleged, without a reasonable explanation is a proper consideration.<sup>43</sup> In view of the fact that the Principal Appellant had already fabricated her first BOC, and relied on this document before two separate Board Members, I do not find that the RPD's requirement for corroboration to be incorrect or onerous in the particular circumstances of this case. While the Principal Appellant testified under oath that she confirmed the indictment was received by tracking the package online, I am also mindful that she lied to the first RPD panel and relied on her false BOC, also while under oath. The RPD did not err. With the Principal Appellant's willingness and ability to lie to the Board in mind, I find that she has not credibly established, on a balance of probabilities, that the indictment was included in the package that she mailed or connected to the

Xpresspost receipt that she provided.

- [37] I further find that the RPD was correct in finding that the Principal Appellant presented the indictment for the sole purpose of increasing the likelihood of a successful refugee claim, and that her testimony about sending the letter to protest Falun Gong persecution was not truthful. I do not agree with Counsel that such a finding is speculative. When assessing a sur place claim, the RPD and the RAD may consider a Claimant's motivation for engaging in the activities in question and assess the sur place claim in light of its credibility concerns.<sup>44</sup> The RPD did not err.
- [38] The RPD also found that the Appellants' activities in Canada, including attendance at Falun Gong events, distribution of flyers, and attendance at Falun Gong protests on the street and in front of the Chinese consulate, are insufficient to establish that Chinese authorities would identify the Appellants as Falun Gong practitioners. The Appellants do not challenge this finding on appeal. The RPD found that there is insufficient credible evidence to conclude that the Appellants' names and identity are likely to come to the attention of Chinese authorities by virtue of these activities in Canada, and that the Appellants do not have a profile leading to more than a mere possibility of persecution in China for perceived Falun Gong associations. The Appellants have not alleged that anyone in China has been approached by Chinese authorities because of their activities in Canada. Having undertaken my own independent assessment, I find that the RPD did not err. SUMMARY
- [39] After independently assessing all of the evidence, I find that the Appellants' allegations are, on a balance of probabilities, not credible. The presumption of truthfulness has been rebutted. The RPD was correct in finding that the Appellants failed to credibly establish that they are sincere Falun Gong practitioners or that they would be perceived as such by Chinese authorities. I find that the Appellants have not credibly established that they face a serious possibility of persecution or a personal risk to life, or a risk of cruel and unusual treatment, or a danger of torture, upon return to China.

## CONCLUSION

- [40] I dismiss the appeal and confirm the decision of the RPD that the Appellants are neither Convention refugees nor persons in need of protection.<sup>45</sup> (signed) "J. Pollock" J. Pollock February 25, 2020 Date 1 Exhibit RPD-1, RPD Record, Exhibit 2, at p. 14-26; Exhibit 3, at p. 27-39. 2 Exhibit RPD-1, RPD Record, Exhibit 10, at p. 141-147. 3 Exhibit RPD-1, RPD Record, Exhibit 11, at p. 40-47. 4 RPD hearing audio-recording, April 12, 2018, at timestamp 01:37:22. 5 Immigration and Refugee Protection Act (IRPA), SC 2001, c 27, as amended, at ss. 110(6). 6 Canada (MCI) v. Huruglica, 2016 FCA 93, at para. 103. 7 Ilias v. Canada (MCI), 2018 FC 661, at para. 39; Kanawati v. Canada (MCI), 2020 FC 12, at para. 23. 8 Exhibit P-2, Appellants' Record, Appellants' Memorandum, at p. 21, at para. 6(d). 9 The United Nations High Commissioner for Refugees (UNHCR) Handbook On Procedures And Criteria For Determining Refugee Status And Guidelines On International Protection Under The 1951 Convention And The 1967 Protocol Relating To The Status Of Refugees, HCR/1P/4/ENG/REV. 4, at paras. 198, 199.

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Prepared on 29 October 2026 · Esheria