

Federal Court



Cour fédérale

**Date: 20151116**

**Docket: IMM-4236-14**

**Citation: 2015 FC 1273**

**Ottawa, Ontario, November 16, 2015**

**PRESENT: The Honourable Mr. Justice LeBlanc**

**BETWEEN:**

**CHANGDE LI  
QUIYI ZHANG**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] The Applicants are a husband (Mr. Li) and wife (Ms. Zhang) from China. They seek judicial review of a decision by the Refugee Protection Division of the Immigration and Refugee Board of Canada (the RPD), dated May 5, 2014, which determined that the Applicants were

neither Convention refugees nor persons in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act).

[1] For the reasons that follow, their application is dismissed.

## **II. Background**

[2] The Applicants arrived in Canada in the spring of 2011, Mr. Li on March 26, 2011 and Ms. Zhang on June 4, 2011. The purpose of the trip was to visit their son who resides in Canada. The couple have another son who lives in China. On June 21, 2011, the Applicants filed for refugee protection claiming that they would both face a dangerous situation at the hands of China's Public Security Bureau (PSB) if they were to return to China because of Ms. Zhang's practice of Falun Gong.

[3] In particular, Ms. Zhang stated that she began studying Falun Gong in January 2010 on the recommendation of a friend, Yuanmei Wang (Ms. Wang), who convinced her that this ancient-root practice could alleviate the menopausal symptoms she had been suffering from during the preceding months. Ms. Zhang claimed that after three months of practice her health improved and she became dedicated to the practice. Ms. Zhang further stated that shortly after her arrival in Canada, she joined Falun Gong practitioners in Milliken Park in Toronto in their public practice of the exercises and on June 10, 2011, she telephoned fellow practitioners in China to share her Canadian experience. This is when, according to the Applicants' refugee protection claim, Ms. Zhang learned that Ms. Wang had been arrested by the PSB, PSB agents

had visited the Applicants' home, and neighbours had been questioned by the PSB about the Applicants' whereabouts.

[4] The Applicants claim that since they filed for refugee protection, they have heard that the PSB continues to search for them and that Ms. Zhang's Falun Gong instructor and one other practitioner have been arrested. They also claim that Ms. Zhang was photographed by two PSB spies while practising Falun Gong exercises in Canada.

[5] In a fairly long and detailed decision, the RPD held that Ms. Zhang, who gave the majority of the evidence at the two hearings held in connection with the Applicants' claim, failed to advance the claim with credible evidence. In particular, it noted a number of discrepancies between her oral testimony and her Personal Information Form (PIF), and found that she embellished the claim during the second hearing with testimony regarding actions of the PSB not provided in her PIF, amended PIF, or previous testimony. These discrepancies and embellishments include the alleged:

- a. number of phone calls Ms. Zhang made to fellow practitioners in China shortly after she arrived in Canada;
- b. PSB's visits to her other son's home in China;
- c. daily surveillance of her home in China by PSB agents;
- d. photographs taken of her by PSB spies while publicly performing her exercises in Toronto; and
- e. unawareness of the possible serious consequences of practising Falun Gong in China and precautions taken by her and fellow practitioners to hide their practice.

[6] Also, the RPD found that the alleged raids by the PSB at the Applicants' home and at Ms. Wang's residence just shortly after Ms. Zhang had arrived in Canada from China were "decidedly coincidental" and raised significant credibility concerns. It further drew a negative inference from the fact that no summons or arrest warrants were left with the Applicants' family living in China during the three years since the PSB allegedly first came to the Applicants' home to look for Ms. Zhang. The RPD also drew a negative inference from the absence of corroborative evidence of the arrest of Ms. Zhang's fellow practitioners and instructor.

[7] Finally, the RPD was not persuaded that Ms. Zhang was - nor is - a genuine Falun Gong practitioner as her answers with respect to her Falun Gong practice were found to be "vague, incorrect or *pro-forma*" and showed a lack of a rudimentary knowledge of Falun Gong. In this respect, the RPD gave "little evidentiary weight" to a letter from the Vice-President of the Falun Dafa Association of Toronto stating that Ms. Zhang was believed to be a genuine Falun Gong practitioner as (i) it was provided only two weeks prior to the second setting of the Applicants' refugee hearing, (ii) it contained inconsistent information as to why the letter was submitted, (iii) the author of the letter had no personal knowledge of Ms. Zhang and relied on second and third hand sources to arrive at his conclusion, and (iv) the letter only attests to Ms. Zhang's participation in Falun Gong activities, not of her motivation for doing so.

[8] The Applicants claim that the RPD's credibility findings relate to minor discrepancies and, as a result, are overly microscopic. They further claim that the adverse inferences drawn by the RPD with respect to the lack of corroborative evidence of the PSB's interest in Ms. Zhang

and of the arrest of fellow practitioners denote a fundamental misconstruction of country documentation and are therefore unreasonable.

[9] In its written submissions, the Respondent noted that the Applicants are not challenging many of the RPD's credibility and plausibility findings, including (i) Ms. Zhang's embellishment of the evidence at the hearing, such as the daily surveillance of her Chinese home by PSB agents, (ii) the implausibility of Ms. Zhang's alleged unawareness of the consequences associated to the practice of Falun Gong in China, (iii) the inconsistencies in her testimony regarding the precautions her group allegedly took when practising Falun Gong in China, (iv) the absence of medical evidence corroborating the menopause symptoms that prompted her to practice Falun Gong on the advice of Ms. Wang, and (v) Ms. Zhang's inability to describe a normal week of her Falun Gong practice in China.

[10] At the hearing of the present judicial review application, counsel for the Applicants indicated that the Applicants were no longer challenging the RPD's findings regarding Ms. Zhang's practice of Falun Gong in China and related allegations (arrest of fellow practitioners, PBS's interest in her, and the PBS visits at her son's home) and that the determinative issue was now whether the RPD erred in concluding that Ms. Zhang is not a genuine Falun Gong practitioner based on her Falun Gong activities here in Canada. Counsel claims that if she is, then she and her husband are now *sur place* refugees as it is more likely than not that they will face persecution if they were to return to China because of that country's policy towards Falun Gong and Falun Gong practitioners.

### III. Issue and Standard of Review

[11] The question raised by this application for judicial review is therefore whether the RPD, in concluding that Ms. Zhang is not a genuine Falun Gong practitioner, committed a reviewable error as contemplated by section 18.1(4) of the *Federal Courts Act*, RSC, 1985, c F-7.

[12] The RPD's assessment of whether Ms. Zhang is a genuine Falun Gong practitioner is predominantly fact-driven. As a result, the RPD's decision is owed significant deference and is reviewable on a standard of reasonableness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, at para 89, [2009] 1 SCR 339 [*Khosa*]; *Ming Lin v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1052, at para 13; *Yi Liang Lin v Canada (Minister of Citizenship and Immigration)*, 2012 FC 288, at para 22, 406 FTR 175; *Su v Canada (Minister of Citizenship and Immigration)*, 2013 FC 518, at para 7 [*Su*]). As is well-settled, reasonableness is concerned "with the existence of justification, transparency and intelligibility within the decision-making process" and with "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, at para 47).

### IV. Analysis

[13] The Applicants claim that the RPD erred in applying an overly stringent and microscopic examination of Ms. Zhang's knowledge of Falun Gong and assessed her testimony in this regard against its own misguided idea of what a person in Ms. Zhang's circumstances should know or understand. They further contend that the PRD erred by unreasonably discounting Ms. Zhang's

corroborative documentary evidence showing that she is believed to be a genuine Falun Gong practitioner by fellow practitioners here in Canada and by the only Falun Gong organization in Canada, the Falun Dafa Association.

[14] It is well established that the RPD is open to assess and consider a refugee claimant's motive for practicing a religion, including the sincerity in the religious belief, as a reason for rejecting the claim in cases such as this one where the essence of the refugee claim rests on the allegation that continuing a newly-acquired religious practice in the country of origin might place the claimant at risk (*Su*, above at para 18). In so doing, the RPD is entitled to assess the claimant's knowledge of the details of the religion, although such inquiry must be approached with caution given the highly subjective and personal nature of a person's religious beliefs (*Lin v Canada (Minister of Citizenship and Immigration)*, 2012 FC 288, at para 61).

[15] Ultimately, the RPD is tasked with determining if adherence to Falun Gong is motivated solely by a desire to support a refugee claim, in which case it is open to the RPD to find that the claimant's religious beliefs are not genuine, or if the claimant has developed faith to a point where he or she has become a true adherent to that religion, even if, initially, the adherence to that religion might have been motivated to support a refugee claim. This is not an easy task.

[16] If the claimant is found not to be a genuine practitioner, then it is open to the RPD to hold that the claimant would not practice his or her claimed religion if returned to his or her country of origin and to determine, as a result, that the claimant faces no risk upon return (*Hou v Canada (Minister of Citizenship and Immigration)*, 2012 FC 993, at para 62, 417 FTR 405 [*Hou*]).

Findings that the claimant lacks credibility, that he or she has fabricated stories about practising the claimed religion in the country of origin and that his or her knowledge of the details of the claimed religion is lacking, have been held by this Court to reasonably support a conclusion that the sincerity of the claimant's religious beliefs is not genuine (*Hou*, at paras 54-55).

[17] In particular, the Court has held that it permissible for the RPD to assess a claimant's genuineness, and therefore his or her *sur place* claim, in light of the credibility concerns relating to the original authenticity of the claim. In other words, the RPD is entitled to reasonably import its findings in relation to the fraudulent refugee claim into the assessment of the *sur place* claim (*Jiang v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1067, at para 28).

[18] In the case at bar, for the reasons outlined previously, the RPD was concerned with both Ms. Zhang's credibility and original authenticity of the refugee claim. She was found not to be a genuine Falun Gong practitioner before coming to Canada as the RPD found her story to be fabricated. As we have seen, this finding is, for all intents and purposes, not challenged. In any event, I am satisfied that there is no reason to interfere with it.

[19] I see no reason to interfere either with the RPD's finding that Ms. Zhang's motivation for practicing Falun Gong since her arrival in Canada is not genuine. One could say that the RPD's inquiry into Ms. Zhang's knowledge of Falun Gong was robust but I am not convinced that it was overly stringent and microscopic, as contended by the Applicants. Having found Ms. Zhang's story about her practise of Falun Gong in China not credible, it was not unreasonable for the RPD, in my view, to conduct its inquiry in the way it did.



[20] As to the actual findings that Ms. Zhang provided vague, limited, basic and sometimes incorrect answers about the basic philosophical underpinnings of Falun Gong and that she had to be prompted throughout her testimony in this respect, they cannot, in my view, be characterized as unreasonable. As I indicated previously, determining the sincerity of one's religious belief is predominantly fact-driven. An important principle of refugee law is that the RPD is best positioned to assess the evidence, gauge the credibility of an account and draw the necessary inferences (*Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315 (FCA) at para 4). Significant deference is owed to the RPD as it is within its jurisdiction to weigh the evidence and ascertain credibility (*Chen v Canada (Minister of Citizenship and Immigration)*, 2012 FC 95 at para 31; *Sinan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 87).

[21] As is well-established, the role of this Court is not to interfere with factual conclusions reached by the RPD, nor is it to reweigh the evidence before it and substitute its own findings (*Khosa*, above, at para 59; *Canada (Minister of Citizenship and Immigration) v Thanabalasingham*, 2003 FC 1225, [2004] 3 FCR 523 at para 102, *Selliah v Canada (Minister of Citizenship and Immigration)* 2004 FC 872, 256 FTR 53 at para 38). As long as such conclusions fall within the range of possible, acceptable outcomes which are defensible in respect of the facts and law, the Court ought not to interfere with them. Here, I find, on the basis of a review of the entire record, that it was reasonably open to the RPD to conclude that Ms. Zhang lacked a rudimentary knowledge of Falun Gong and to doubt, as a result, the sincerity of her religious beliefs. Therefore, I see no reason to interfere with this finding.

[22] It was also reasonably open to the RPD, in my view, to give limited weight to the Applicants' alleged corroborative evidence in this regard. It is well-established that a claimant's overall credibility may affect the weight given to the documentary evidence, including evidence from outside sources (*Jia v Canada (Minister of Citizenship and Immigration)*, 2014 FC 422, at para 19; *Huang v Canada (Minister of Citizenship and Immigration)*, 2011 FC 288, at paras 20-21). Here, with respect to the letter from the Vice-President of the Falun Dafa Association which the Applicants put much emphasis on as a reliable corroborative evidence of the genuineness of Ms. Zhang's Falun Gong practise, the RPD was also concerned with the fact that (i) the letter was only submitted two weeks prior to the second sitting of the hearing of the Applicants' claim, (ii) it contained inconsistent information as to why it was submitted late, and (iii) its author had no personal knowledge of Ms. Zhang and relied as a result on second and third hand sources to arrive at the conclusion that she is a genuine practitioner.

[23] In *Su*, above, Justice Mary Gleason, now a judge of the Federal Court of Appeal, refused to interfere with the RPD's finding regarding the evidence tendered by the applicant in that case in support of his assertion that he was a genuine Falun Gong practitioner in Canada, which consisted of photographs and letters from other Falun Gong adherents. Justice Gleason found that there was nothing unreasonable with the RPD's conclusion that this evidence was insufficient to establish the genuineness of the claimed practise, "especially when viewed in light of the determination that the applicant fabricated what had occurred in China" (*Su*, at para 17). She then endorsed the comment of Justice Yvon Pinard in *Jin v Canada (Minister of Citizenship and Immigration)*, 2012 FC 595, where he held that "[i]t would be absurd to grant a *sur place*

claim every time a pastor provides a letter attesting to an applicant's membership in his church' (*Jin*, at para 20).

[24] I see no reason to conclude otherwise in the present case.

[25] In sum, I find that the RPD did not err in considering Ms. Zhang's motive for practising Falun Gong in Canada nor in its assessment of the Applicants' overall refugee claim.

[26] No question of general importance has been proposed by the parties. None will be certified.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The judicial review application is dismissed;
2. No question is certified.

"René LeBlanc"

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4236-14

**STYLE OF CAUSE:** CHANGDE LI, QUIYI ZHANG v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MAY 13, 2015

**JUDGMENT AND REASONS:** LEBLANC J.

**DATED:** NOVEMBER 16, 2015

**APPEARANCES:**

Mr. Michael Korman FOR THE APPLICANTS

Ms. Aleksandra Lipska FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Otis & Korman FOR THE APPLICANTS  
Barristers and Solicitors  
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Toronto, Ontario