

Federal Court



Cour fédérale

**Date: 20171215**

**Docket: IMM-2700-17**

**Citation: 2017 FC 1156**

**Ottawa, Ontario, December 15, 2017**

**PRESENT: The Honourable Madam Justice Kane**

**BETWEEN:**

**RONG GAO  
QIWEN WENG  
YUNCI WENG**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicants, a husband, wife and their daughter, all citizens of China, seek judicial review of the decision of the Refugee Appeal Division of the Immigration and Refugee Board [RAD] dated May 25, 2017, which confirmed the decision of the Refugee Protection Division [RPD] and refused their claims for refugee protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001 c 27 [the Act].

[2] For the reasons set out below, the Application for Judicial Review is dismissed.

I. Background

[3] The male Applicant arrived in Canada in February 2016 to visit his 15 year old son, who had arrived in Canada a month earlier as a student, and to assist his son in settling into student life. The female applicant and their daughter arrived in June 2016, also for the stated purpose of visiting their son and brother, respectively. The Applicants later made refugee claims alleging that their Falun Gong practice group in China had been raided in July 2016 and that they were at risk of persecution if they were to return. They claimed that their daughter, the minor applicant, would lose social benefits and suffer discrimination because of their Falun Gong practice. The Applicants also made a *sur place* claim based on their Falun Gong activities in Canada.

[4] The RPD refused the Applicants' claims under section 96 and 97 due to the Applicants' lack of credibility. The RPD's findings were based on the adult Applicants' responses to questions regarding the tenets of Falun Gong. The RPD noted that the female Applicant claimed to have practiced Falun Gong since August 2015 and claimed to have attended over 40 group practices in addition to her claimed Falun Gong practice in Canada, yet she did not convey sufficient knowledge as would be expected. The RPD similarly found that the male applicant's knowledge was insufficient, given that he had claimed to have practiced Falun Gong since October 2015, and attended 20-30 group practices in China and 10 in Canada. The RPD concluded that the adult Applicants had "acquired snippets of knowledge of the concept of Falun Gong for the purpose of forwarding refugee claims".

[5] The RPD gave little weight to a photocopy of a letter from the minor Applicant's school purporting to dismiss her due to the adult Applicants' Falun Gong practice because it was not an original copy, despite the Applicants having provided original copies of other pertinent documents, and further because the document contained no "security features". The RPD gave no weight to a letter from a fellow practitioner in Canada because it was not a sworn statement and could not account for the events alleged to have occurred in China.

[6] With respect to the *sur place* claim, the RPD found that there was insufficient evidence that their participation in Falun Gong activities in public spaces in Canada had been brought to the attention of Chinese authorities. Based on the credibility findings, the RPD found that the Applicants had engaged in Falun Gong for the purpose of forwarding refugee claims and not due to any genuine commitment.

[7] The RPD further found, based on the Applicants' own testimony that they came to Canada to be with their 15 year old son who was studying in Canada, and concluded that they had never intended to return to China.

## II. The Decision under Review

[8] The RAD conducted an independent assessment of the evidence on the record and agreed with the RPD's findings that the Applicants lacked credibility. The RAD found that both of the adult Applicants lacked knowledge of Falun Gong commensurate with their stated experience.

[9] The RAD addressed the Applicants' submissions that the RPD had erred in several ways, including: by not giving sufficient weight to the fact of their limited experience with Falun Gong, and not considering that their ability to practice was restricted in China; by making credibility findings without considering their limited experience; by failing to assess the raid on their practice group in China; and, by finding that their motivation for coming to Canada was to be with their son and that they had no intention to return.

[10] The RAD found that the Applicants had claimed to have practiced Falun Gong for substantial periods of time (13 months for the female Applicant and 11 months for the male Applicant). The RAD noted that the Applicants were not unsophisticated people and there was nothing to suggest any impairment in their ability to understand or learn the tenets of Falun Gong. The RAD found that it is reasonable to expect a person who claims to be a Falun Gong practitioner to demonstrate a fundamental knowledge commensurate with his or her experience and the Applicants did not do so.

[11] The RAD reviewed the RPD's credibility findings in detail and concurred with them. The RAD noted that it had considered the credibility findings, the individual profiles of the Applicants and all the information in the record. The RAD concluded that on a balance of probabilities the Applicants are not genuine practitioners of Falun Gong, and therefore, they were not part of a practice group that was raided by the Public Security Bureau [PSB], they are not wanted by the PSB and the minor Applicant (their daughter) will not lose social benefits or be discriminated against because of the adult Applicants' Falun Gong practice.

[12] The RAD gave little weight to the letter from the minor Applicant's school, noting it was not an original and had been faxed, with no indication of its origin. The RAD also gave no probative value to the letter from a fellow Falun Gong practitioner in Canada.

[13] The RAD found that the RPD did not err by failing to make a finding about the raid on the Applicants' practice group in China. The RAD noted that, according to their own evidence, the Applicants left China to visit their son in Canada. The alleged raid occurred after they departed. Moreover, since the RPD concluded that they were not genuine Falun Gong practitioners, it follows that the raid did not occur and they are not wanted by the PSB.

[14] The RAD concurred with the RPD's finding that the Applicants' motivation for coming to Canada was to be with their 15 year old son, but found that there was insufficient evidence to conclude that the Applicants never intended to return to China.

[15] With respect to the *sur place* claim, the RAD found that the RPD's credibility findings applied not only to the alleged activities in China, but also to their activities in Canada. The RAD concurred with the RPD that on a balance of probabilities, the Applicants' claims to be Falun Gong practitioners in China were made to establish fraudulent refugee claims. The RAD further found that on a balance of probabilities, the Applicants activities in Canada were also for the purpose of furthering a fraudulent refugee claim. The RAD added that there was no evidence that the Applicants claimed activities in Canada were observed or that they would be perceived to be genuine Falun Gong practitioners.

### III. Standard of Review

[16] In *Canada (Minister of Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 103, [2016] FCJ No 313 (QL) [*Huruglica FCA*], the Court of Appeal clarified that the RAD has an appellate role and that the RAD applies the standard of correctness when reviewing a RPD decision.

[17] The RAD conducts an appeal of the RPD's decision, whereas the Court conducts a judicial review of the RAD's decision. The Court applies the standard of reasonableness to issues of fact, including credibility, and mixed fact and law.

[18] The Court must therefore, determine whether the RAD's decision "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190 [*Dunsmuir*]). Deference is owed to the decision-maker and the Court will not reweigh the evidence.

[19] It is also well-established that boards and tribunals are ideally placed to assess credibility: *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 at para 4 (QL), 160 NR 315 (FCA). The decision-maker's credibility findings should be given significant deference: *Lin v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1052 at para 13, [2008] FCJ No 1329 (QL); *Fatih v Canada (Minister of Citizenship and Immigration)*, 2012 FC 857 at para 65, 415 FTR 82; *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at para 7, 228 FTR 43.

IV. The Applicant's Submissions

[20] The Applicants submit that the RAD erred by microscopically analyzing parts of their testimony with respect to their knowledge of Falun Gong, particular Falun Gong stances, and the authors of key Falun Gong literature. They further submit that the RAD was wrong to base their subsequent findings, including that the raid on their practice group in China did not occur, on these microscopic concerns.

[21] The Applicants submit that their level of knowledge of Falun Gong is immaterial to the PSB's interest in them, which arises from their participation in a practice group in China. The Applicants submit that their mere presence at such a group puts them at risk from the PSB. Therefore, the RPD should have assessed their evidence about the raid and made a finding, and the RAD erred in finding that the RPD did not need to do so.

[22] The Applicants submit that their testimony about the raid and the attendance of the PSB at their home should be taken as true. They submit that they could not provide other evidence because the raid occurred after they had departed China.

[23] The Applicants do not dispute the findings related to their *sur place* claim.

V. The Respondent's Submissions

[24] The Respondent submits that the RAD reviewed the RPD decision on the correctness standard in accordance with the guidance provided in *Huruglica* and conducted an independent assessment of the evidence to determine whether the RPD erred.

[25] The Respondent submits that the RAD made several determinative credibility findings that are dispositive to the claim. The Respondent points to the RAD's detailed assessment of the male Applicant's testimony about basic tenets of Falun Gong theory and about his practice of Falun Gong and his vague and/or erroneous answers. Similarly, the female Applicant's testimony revealed insufficient knowledge of Falun Gong. The Respondent submits that the RPD and the RAD did not impose an unduly high standard of knowledge; rather that the Applicants did not know or distinguish between tenets, exercises and books. The Respondent submits that these findings support the RAD's conclusion that the Applicants' claim that they were members of a Falun Gong practice group was fabricated.

[26] The Respondent adds that the only document tendered as corroborative evidence was reasonably given little weight because it was a photocopy with no security features and it could have been created by anyone.

[27] The Respondent adds that the record reveals that the Applicants left China to visit their son in Canada, not because of any raid on their practice group, noting that the alleged raid occurred after they left. There was no reason for the RPD to assess the raid, which was not even



believed to have occurred. The RAD correctly found that the RPD did not err. The Respondent notes that the RPD and RAD both concluded that the Applicants were not credible and were not Falun Gong practitioners, therefore they were not part of any practice group that would have been raided.

[28] With respect to the *sur place* claim, the Respondent submits that the letter from a fellow Falun Gong member in Canada was reasonably given no probative value. The Respondent adds that there was no evidence that the Chinese authorities were aware of, or interested in, the Applicants in China or in Canada.

#### VI. The Decision is Reasonable

[29] The RAD independently assessed the evidence and reasonably found that the Applicants were not credible. Their responses regarding their understanding and practice of Falun Gong were not sufficient when considered in the context of the period of time they claimed to have embraced and practiced Falun Gong. Contrary to the Applicants argument that the RPD and the RAD microscopically assessed their testimony without considering the period of time they had practiced and the conditions under which they practiced in China, the RAD clearly took this into account, noting that their knowledge was not “commensurate” with their experience.

[30] The RAD also noted the need to be cautious and respectful when questioning a refugee claimant about their religion or beliefs. In the present case, the RAD did not hold the Applicants to an unduly high level of knowledge, rather a more basic level as would be expected of the Applicants given they claimed to have studied for 13 and 15 months, respectively. The RAD

noted that they were “not unsophisticated” and there was no impediment to their ability to learn. The RAD found that their knowledge did not even rise to the level of a basic understanding.

[31] The RAD reasonably found that the Applicants were not credible. The RAD both confirmed the RPD’s findings, which were made based on hearing the testimony of the Applicants, and made their own credibility findings based on an independent and detailed assessment of the evidence. The credibility findings are well supported and are owed significant deference.

[32] The RAD reasonably found that the RPD did not err by not making a finding with respect to the alleged raid on the practice group in China. As the Respondent notes, the RPD and RAD both concluded that the Applicants were not credible and were not Falun Gong practitioners, and, therefore, they were not part of any practice group that would have been raided.

[33] The only evidence of this raid was the Applicants testimony to the RPD which was based on information provided to them by others, since the Applicants were already in Canada at the time of this raid. Given that the RPD had found the Applicants not to be credible, the RPD was not required to accept that their *viva voce* testimony recounting information provided by others as true in the absence of any corroboration.

[34] Although the Applicants have not raised the reasonableness of the RAD’s finding with respect to the *sur place* claim, the RAD’s finding is reasonable. Both the RPD and the RAD assessed the *sur place* claim. The RAD reasonably found that the Applicants are not genuine

Falun Gong practitioners, in either Canada or China, based on their lack of credibility, lack of knowledge and lack of corroborative evidence. The RAD was not required to do more to assess their *sur place* claim as there was no such credible claim to assess. Further, there was no evidence that the Applicant's activities in China had or would come to the attention of Chinese authorities (*Li v Canada (Minister of Citizenship and Immigration)*, 2012 FC 998 at para 32, 221 ACWS (3d) 939 [Li], *Jiang v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1067 at paras 27-28, [2012] FCJ No 1149 (QL)).

**JUDGMENT in IMM-2700-17**

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

1. The Application for Judicial Review is dismissed.
2. There is no question for certification.

"Catherine M. Kane"

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Judge

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

**DOCKET:** IMM-2700-17

**STYLE OF CAUSE:** RONG GAO, QIWEN WENG AND YUNCI WENG v  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** DECEMBER 12, 2017

**JUDGMENT AND REASONS:** KANE J.

**DATED:** DECEMBER 15, 2017

**APPEARANCES:**

Diane Coulthard FOR THE APPLICANT

Nadine Silverman FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Levine Associates FOR THE APPLICANT  
Barristers and Solicitors  
Toronto, Ontario

Deputy Attorney General of FOR THE RESPONDENT  
Canada  
Toronto, Ontario