

Federal Court



Cour fédérale

Date: 20240703

Docket: IMM-7717-23

Citation: 2024 FC 1045

Toronto, Ontario, July 3, 2024

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

**CHAOFENG YU
SHUHAO CHEN**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision of the Refugee Appeal Division [RAD] dated May 34, 2023 [Decision], in which the RAD confirmed the decision of the Refugee Protection Division [RPD] that the Applicants are neither Convention refugees nor persons in need of protection.

[2] As explained below, this application is dismissed, because the Applicants' arguments do not undermine the reasonableness of the Decision.

II. Background

[3] The Principal Applicant and her son, the Associate Applicant, are Chinese citizens. The Principal Applicant and the Associate Applicant's father divorced in 2012. The Applicants' claim for refugee protection is based on the following allegations.

[4] In 2018, the Applicants were working in restaurants for long hours and little pay. This left them feeling fatigued. A friend suggested that the Associate Applicant try Falun Gong, crediting the practice for his own better outlook on life. The Associate Applicant took up the practice a few months later. Shortly thereafter, the Principal Applicant also began to practice Falun Gong.

[5] On September 9, 2019, the Associate Applicant received a call from his Falun Gong group leader who informed him that the Chinese government's Public Security Bureau [PSB] had sought him out at his home and that he was now in hiding. On September 15, the PSB came to the Applicants' home. They denied Falun Gong involvement.

[6] In the fall of 2019, the Applicants had a smuggler help them obtain visitor visas, after which they left China for Canada. The Associate Applicant arrived in December 2019, and the Principal Applicant in February 2020.

[7] The Applicants say they have continued to practice Falun Gong in Canada. Specifically, they cite their pre-pandemic attendance at in-person meetings in a Toronto-area park, and they claim they later attended virtual meetings. When their Falun Gong group resumed in-person meetings in April 2022, the Applicants did not join. However, they claim to still practice on their own, at home.

[8] The Applicants filed their refugee claims in October 2020. As support for these claims, they offered their narratives as well as supporting evidence. This evidence included: a letter from the Principal Applicant's ex-husband discussing the Applicants' Falun Gong practice in China; pictures of the Applicants practicing Falun Gong at a Toronto-area park and distributing Falun Gong pamphlets; a letter from a Toronto-area Falun Gong practitioner discussing the Applicants' Falun Gong involvement in Canada; and documents from the National Documentation Package on the treatment of Falun Gong practitioners in Canada as well as their monitoring overseas by the Chinese government.

[9] The RPD rejected the Applicants' claim, with the determinative issue being credibility, and the Applicants appealed to the RAD.

III. The Decision under Review

[10] In the Decision under review in this application, the RAD concluded that the RPD correctly found the Applicants to be neither Convention refugees nor persons in need of protection.

A. *Falun Gong Practice in China*

[11] While the Applicants argued that the RPD erred in requiring corroborating evidence of their Falun Gong practice in China, the RAD agreed that their testimony was vague and failed to demonstrate their attendance at Falun Gong sessions. Although the Principal Applicant's education was minimal, the RAD concluded that she would have picked up more about Falun Gong than she demonstrated, had she actually attended sessions with the frequency and duration claimed.

[12] The RAD also disagreed with the Applicants' argument that the RPD should have asked the Associate Applicant questions about the content of practice sessions in China. The RAD found that there was no requirement that the RPD pose every question to each applicant. Moreover, the claims were joined.

[13] The RAD pointed out that the ex-husband's letter made no reference to at-home Falun Gong practice in China. Rather, it stated only that they joined the group via introduction by the friend, that the PSB came after the group leader, that it then came after the Applicants, and that they used a smuggler to flee to Canada. Importantly, the RAD noted that the ex-husband's letter principally did not relate facts to which he had first-hand experience.

[14] Beyond the RPD's findings, the RAD noted a further inconsistency: in their Basis of Claim narrative [BOC], the Applicants stated that they practiced Falun Gong at home every night, while the Principal Applicant testified that they practiced at home once a week. The

Applicants argued that the son was confused about the question. The RAD was unconvinced, as the Associate Applicant's testimony was very specific they practiced every Sunday and the RPD's question was clear and unambiguous. There was also no indication that he did not understand the question.

[15] The RAD also addressed an inconsistency in the evidence as to whether the Applicants were in hiding in China. The Applicants suggested that the inconsistency in testimony on the question was partly due to translation difficulties, *i.e.*, that the Applicant understood the dissolution of the Falun Gong practice group in China and their going into hiding as meaning the same thing. However, the RAD was not convinced by this explanation and drew an adverse inference because the BOC narrative did not mention the Applicants' having gone into hiding, which ought to have been a significant event in their narrative.

B. *Falun Gong Practice in Canada*

[16] The Applicants submitted to the RAD that their credibility should not suffer due to their sporadic in-person Falun Gong practice in Canada. They argued that the RPD erred in failing to consider the impact of the pandemic, and moreover that in-person attendance is not required to indicate genuine practice. They also argued that the RPD unreasonably disregarded a letter submitted by a Toronto-area Falun Gong practitioner and failed to consider how their poor English held them back from in-person attendance.

[17] The RAD was not persuaded by these arguments. It found that lack of in-person attendance did detract from the Applicants' credibility. The Applicants' argument in relation to

the pandemic would have been more persuasive if the meetings were not held outside and the photographs of the Applicants at the one meeting did not show them wearing masks. The Applicants' alleged transportation difficulties made little sense to the RAD in light of their ability to connect with Falun Gong practitioners shortly after coming to Canada. Finally, the RAD concluded that the RPD did not expect the Applicants to have immediately found connections in Canada, as they had been in this country for two and a half years at the time of the RPD hearing.

[18] The RAD was also not persuaded by the Applicants' claims that the RPD engaged in an impermissible religious knowledge test and failed to consider their lack of education. The RPD noted several times that it did not expect comprehensive answers to its substantive questions about Falun Gong practice. Despite this, answers given by the Applicants were vague. The RAD also highlighted other related credibility concerns. When the RPD asked the Principal Applicant whether she read the Zhuan Falun, she said she had read it the night before. When asked what from it she read, she replied "the five sets of exercises". However, the RAD noted that the five exercises are not contained in the Zhuan Falun.

[19] The RAD also agreed with the RPD's assignment of little weight to the supporting documents: the letter from the Toronto-area Falun Gong practitioner and the photo of the Applicants practising Falun Gong in a park. Those documents did not overcome the credibility concerns and they established only sporadic involvement in Falun Gong activities in Canada.

C. *Sur Place Claim*

[20] The RAD also determined that the Applicants' *sur place* claim was not established. The RPD found that the Applicants were not genuine Falun Gong practitioners and that there was no indication that their involvement in Canada was known to the Chinese authorities. The RAD agreed. The Applicants had not established their Falun Gong practice in Canada. Furthermore, the RAD found it unlikely that Chinese authorities would have noticed the Applicants' limited practice in Canada.

IV. Issues

[21] The Applicants raise the following issues for the Court's determination:

- A. Was the RAD's assessment of the Applicants' credibility and religious identity unreasonable?
- B. Did the RAD unreasonably import its erroneous findings as to the Applicants' credibility into its assessment of their supporting documents and *sur place* claim and unreasonably assess the *sur place* claim?

[22] As is implicit in the above articulation of the issues, they are subject to review by this Court against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65).

V. Analysis

- A. *Was the RAD's assessment of the Applicants' credibility and religious identity unreasonable?*

[23] The Applicants raise a number of arguments in support of their position that the RAD unreasonably assessed their credibility and religious identity.

(1) Associate Applicant's father's letter

[24] The Applicants take issue with the RAD placing limited weight on the letter written by the Associate Applicant's father, based on its failure to reference the Applicants practising Falun Gong at home in China. They argue that this analysis is inconsistent with the caution in *Belek v Canada (Citizenship and Immigration)*, 2016 FC 205 [*Belek*] at paragraph 21, that documents that corroborate some aspects of a claimant's narrative cannot be discounted merely because they do not corroborate other aspects.

[25] However, as the Respondent submits, the RAD also found that the father's letter was entitled to little weight because, other than the PSB visit to his home, he did not have first-hand knowledge of the information set out in his letter or indicate how he came to know it. As such, I agree with the Respondent's position that the RAD's analysis does not conflict with the principle explained in *Belek*. The letter was of little probative value because it did not identify the basis for the father's evidence that might otherwise have corroborated the Applicants' narrative.

[26] The Applicants submit that there are common sense explanations for how the father may have acquired the information set out in his letter. For instance, the Associate Applicant may have shared this information with him. However, the Applicants have not identified any evidence in the record before the RAD to support this explanation. I find no basis to conclude that this aspect of the RAD's analysis is unreasonable.

(2) Frequency of practice at home in China

[27] The RAD drew a negative credibility inference because the Associate Applicant testified that he practised at home in China on Sundays, which was inconsistent with the BOC narrative that he practised every night. The Applicants argue that it is plausible that he misunderstood the question, thinking that the question to which he responded at the RPD hearing was about how often he practised in a group. However, there is no evidence supporting that assertion. The fact that there might be a plausible explanation for the inconsistency does not undermine the reasonableness of the RAD's adverse conclusions based on that inconsistency, particularly in the absence of any evidentiary support for the explanation.

[28] The Applicants also point out that, later in his testimony, the Associate Applicant did refer to practicing every day. However, the answer by the Associate Applicant upon which the Applicants rely was in response to a question as to whether he continues to practice at home. This evidence clearly relates to the period the Applicants have been in Canada and therefore does not assist the Applicants' effort to undermine the reasonableness of the RAD's analysis.

(3) Hiding in China

[29] As explained earlier in these Reasons, the RAD drew an adverse inference from the Associate Applicant's testimony that the Applicants went into hiding after the group leader advised that the PSB was looking for members of the group, because the BOC made no mention of being in hiding before leaving China. The Applicants submit that, particularly with the vagaries of interpretation during the hearing, it is plausible that the Associate Applicant

interpreted the question about being in hiding as referring to having suspended the Falun Gong group's practice.

[30] However, as the Respondent submits, while this argument was raised before the RAD, the Applicants provided no evidentiary support to the RAD for the submission that the Associate Applicant was confused as to the meaning of the question about being in hiding. The RAD rejected the explanation for the inconsistency, and I find nothing unreasonable in that analysis.

(4) Practice in Canada

[31] The RAD also drew an adverse inference as to the credibility of the Applicants' assertion that they were genuine Falun Gong adherents, because of their lack of attendance at practice sessions in Canada. The Applicants submit that the RAD erred in discounting the letter from a fellow practitioner in Canada that confirmed that the Applicants joined a Falun Gong practice group in Canada and frequented that group in person before the pandemic and online during the pandemic, as well as a corroborating photograph.

[32] However, as I read the Decision, the RAD was concerned about the Applicants' sporadic practice. In particular, in the context of the Applicants' allegation that they came to Canada so that they could practice Falun Gong, their failure to practice in a group since April 2022 and to participate in other Falun Gong activities demonstrated a lack of commitment to Falun Gong. The RAD did not accept the Applicants' explanation that their lack of group practice was due to the pandemic, as they testified that group practices were held outside and the photograph showed them practising outside and wearing masks. Moreover, the RAD agreed with the RPD that the

letter and photograph, while demonstrating participation in Falun Gong activities, did not overcome the credibility concerns or establish on a balance of probabilities that the Applicants' practice was genuine.

[33] I find nothing unreasonable in this aspect of the RAD's analysis.

(5) Knowledge of Falun Gong

[34] The RAD agreed with the RPD's assessment that the Applicants' knowledge of Falun Gong was not commensurate with their alleged duration of practice. As they argued before the RAD, the Applicants argue before the Court that they were subjected to an impermissible religious knowledge test. The Applicants refer the Court to *Zeng v Canada (Citizenship and Immigration)*, 2021 FC 318, in which Justice Barnes explained that immigration decision-makers must be very cautious about drawing firm credibility conclusions on the authenticity of a person's religious beliefs based on weakness in their knowledge of relevant doctrine. This is because a legitimate devotee may lack the capacity to deeply understand, interpret or articulate a complex religious doctrine (at paras 6-7).

[35] The principle upon which the Applicants rely is sound. However, having reviewed the record before the Court including the Decision, I am not convinced that the RPD's questioning or the RAD's resulting analysis falls afoul of this principle. As the Respondent emphasizes, the RAD expressly noted the Applicants' limited education and lack of sophistication. I do not read the questions as related to complex doctrinal matters. Indeed, some of the questions that led to the adverse credibility conclusion, based on vague responses, focused upon matters such as what

the Applicants observed during Falun Gong group practice and the relevance of Falun Gong in the Applicants' daily lives. While the Applicants argue that the RAD should have been satisfied with their answers, that submission amounts to a request that the Court reweigh the evidence, which is not its role in judicial review.

(6) Conclusion on credibility and religious identity

[36] The above analysis canvases the principal arguments raised by Applicants in oral and written submissions. Having rejected those arguments, I find the RAD's conclusions with respect to the Applicants' credibility and religious identity to be reasonable.

B. *Did the RAD unreasonably import its erroneous findings as to the Applicants' credibility into its assessment of their supporting documents and sur place claim and unreasonably assess the sur place claim?*

[37] The Applicants argue that the RAD erred by importing its negative credibility findings, largely related to the Applicants' Falun Gong practice in China, into its assessment of their *sur place* claim arising from their practice in Canada. I find no merit to this argument, as this Court has held that such reasoning is permissible (see, e.g., *Zhou v Canada (Citizenship and Immigration)*, 2015 FC 5 at para 23).

[38] Similarly, the Applicants argue that the RAD erred by importing its negative credibility findings into its assessment of their supporting documents. Again, I find no reviewable error. The RAD did not reject the supporting documents (the letter and photograph referenced above) because of other credibility determinations. Rather, it held that those documents did not

overcome the credibility determinations. As previously noted, while that evidence demonstrated participation in Falun Gong activities, it did not establish that the Applicants were genuine practitioners.

[39] Finally, the Applicants submit that, regardless of the adverse credibility findings, the RAD erred in assessing their *sur place* claim, because it failed to recognize that their religious activities in Canada may have come to the attention of Chinese authorities through their overseas spies.

[40] This submission is doctrinally sound, in that a *sur place* claim may develop through religious practice in Canada, even if that practice is not genuine. However, the RAD's reasons demonstrate that it understood this point and analysed the *sur place* claim based on whether the Canadian activities had come to the attention of Chinese authorities or were likely to in the future. The RAD agreed with the RPD's reasoning that there was no credible evidence of this. Notwithstanding the country condition evidence on which the Applicants rely, in the context of the Applicants' sporadic Falun Gong practice in Canada, the RAD's analysis is reasonable.

VI. Conclusion

[41] Having considered the Applicants' arguments and finding the Decision to be reasonable, this application for judicial review must be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-7717-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. No question is certified for appeal.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7717-23

STYLE OF CAUSE: CHAOFENG YU and SHUHAO CHEN v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 27, 2024

JUDGMENT AND REASONS: SOUTHCOTT J.

DATED: JULY 3, 2024

APPEARANCES:

Bilal Gul FOR THE APPLICANTS

Teresa Ramnarine FOR THE RESPONDENT

SOLICITORS OF RECORD:

LEWIS & ASSOCIATES LLP FOR THE APPLICANTS
Barrister & Solicitor
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario