

**Date: 20081010**

**Docket: IMM-1459-08**

**Citation: 2008 FC 1153**

**Ottawa, Ontario, October 10, 2008**

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

**BETWEEN:**

**LIJUAN WANG**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] This is an application for judicial review of a decision made by Diane L. Tinker, a member of the Immigration and Refugee Board, Refugee Protection Division (the Board) on March 5, 2008, wherein it was determined that the applicant is neither a Convention Refugee nor a person in need of protection (the impugned decision).

[2] The applicant, Lijuan Wang, is a citizen of the People's Republic of China. She claims to have a well-founded fear of persecution at the hands of the Communist regime, and in particular the Public Security Bureau (PSB), by reason of her political opinion as a Falun Gong practitioner. The

applicant alleges that she started practising Falun Gong in August 2005 on the advice of a friend who was concerned about the applicant's health following the applicant's divorce and diagnosis with angina. The applicant submits that on April 7, 2006, she was advised that two fellow practitioners had been arrested while distributing Falun Gong leaflets. As a result, the applicant immediately went into hiding at a relative's home. On April 9, 2006, while in hiding, the applicant learned that the PSB had been to her home on April 9, 2006, looking to arrest her for being involved in illegal Falun Gong activities. The applicant therefore made arrangements to be smuggled out of the country. She arrived in Canada on July 24, 2006. The applicant alleges having learned that the PSB, subsequent to her departure, was still trying to locate her and that the fellow practitioners who had been arrested were still in jail. Thus, the applicant filed for refugee protection a few days after her arrival in Canada. The applicant asserts that she has been practising Falun Gong on a daily basis while in Canada. She has also found a practising centre at Milliken Park in Toronto.

[3] On March 5, 2008, the Board rejected the applicant's claim as it found the applicant to be non credible. The Board concluded that the applicant is not, and never has been, a Falun Gong practitioner. First, the Board found that the applicant's failure to file a summons for her arrest, which she claimed was actually left by the PSB at her home in China, was fatal to her claim, and that her explanations for not producing it were unsatisfactory. Second, the applicant's story of departing China without going through security check points, and boarding an Air Canada plane without a boarding pass, was said to be implausible and inconsistent with the documentary evidence.

[4] Prior to the decision of the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9 (*Dunsmuir*), this Court had held that the Board's findings of fact and credibility, and its assessment of the evidence are within its specific expertise and therefore attract a highly deferential standard of review, in line with the former patent unreasonableness standard (*Aguebor v. (Canada) (Minister of Employment and Immigration)*, [1993] F.C.J. No. 732 at para.4, 160 N.R. 315). The standard is now "reasonableness," meaning that this Court will only intervene if the impugned decision is said to be unreasonable, in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir* at para. 47. See also *Da Mota v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C. J. No. 509 at para.14, 2008 FC 386; *Diazgranados v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 822 at para. 6, 2008 FC 617.

[5] In *Chen v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 480, [2002] F.C.J. No. 647 (QL) (*Chen*), the Court overturned the Board's decision where it failed to make a determination in clear language on whether or not the claimant, since her departure from China, was a Falun Gong practitioner. In doing so, the Court stated:

[19] I have reviewed the Board's decision and I have come to the conclusion that the Board did not make any finding with respect to whether the applicant was a member of the Falun Gong group. The Board did not believe the applicant's story with respect to her persecution in China but it did not address whether she was a member of the group. This finding was necessary in order to determine whether or not the applicant was a Convention refugee. The decision does not address the Falun Gong activities in Toronto. This evidence should have been considered (see *Jian Jiang v. M.C.I.* 2002 FCT 64; [2002] F.C.J. No. 84 (QL)). It was a reviewable error for the Board not to make this determination.

[...]

[21] The Board in this case made a finding that it did not believe that the applicant herself had been persecuted but that is not the end of the matter. The applicant can show that the fear the applicant has is based on the acts committed or likely to be committed against others who belong to the same group as does the applicant. There is evidence in the record that members of the Falun Gong group have been persecuted in China. The applicant's refugee claim could succeed based on her membership in the Falun Gong if the Board was to find that members of the Falun Gong group were or were likely to be persecuted. This is why it was so important to determine in clear language whether or not the applicant was a member of Falun Gong. The Board did not complete the analysis with respect to persecution due to the applicant's membership in Falun Gong as it did not determine whether or not she was a member of Falun [sic] Gong. This was a reviewable error by the Board.

[6] The *Chen* decision was recently applied in *Huang v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 164, 2008 FC 132 (*Huang*) and in *Li v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 338 (QL), 2008 FC 266 (*Li*). These three decisions, although not identical to the present case, are somewhat analogous with regards to the alleged perverse reasoning and capricious character of the impugned decision. In the case at bar, the essence of the whole reasoning of the Board to deny the applicant's claim is expressed in the following passage: "In summary, I find that the claimant is not, nor has ever been, a Falun Gong practitioner in the People's Republic of China, due to her ability to leave the country without incident". Nowhere in the impugned decision has the Board analysed the evidence pertaining to the Falun Gong activities of the applicant in China or in Canada except to suggest that "[a]ny knowledge that the claimant has learned about Falun Gong could easily have been acquired here in Canada in order to manufacture this claim".

[7] Based on *Chen, Huang* and *Li*, and having closely reviewed the tribunal's record, including the transcripts, overall, I find the Board's conclusion unreasonable. There is evidence in the record that members of the Falun Gong group have been persecuted in China. The Board's finding that the applicant was able to leave China without incident does not necessarily lead to the conclusion that the applicant is not, and never has been, a Falun Gong practitioner either in China or in Canada. Indeed, despite the fact that the Board had some credibility concerns with respect to the particular means by which the claimant left China, an assessment of the applicant's Falun Gong activities, both in China and in Canada, was nevertheless necessary considering the documentary evidence on record and the elaborate testimony of the applicant on this very central issue of her claim. The Board's failure to perform such an assessment constitutes a reviewable error and justifies a redetermination of the applicant's claim.

[8] Accordingly, the present application must be allowed. The impugned decision is set aside and the matter is referred back for redetermination by another member of the Board. Counsel agree that this case does not raise a question of general importance for certification, and none is stated.

**ORDER**

**THIS COURT ORDERS that** the application for judicial review be allowed. The decision rendered by the Board on March 5, 2008 is set aside and the matter is referred back for redetermination by another member of the Board. No question is certified.

“Luc Martineau”

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Judge

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

**DOCKET:** IMM-1459-08

**STYLE OF CAUSE:** LIJUAN WANG v. MCI

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AND ORDER:** MARTINEAU J.

**DATED:** October 10, 2008

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