

Federal Court



Cour fédérale

**Date: 20120820**

**Docket: IMM-497-12**

**Citation: 2012 FC 1002**

**Ottawa, Ontario, August 20, 2012**

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

**BETWEEN:**

**CUIXIA HUANG**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The Applicant applies for judicial review of the December 2, 2011 decision of the Refugee Protection Division of the Immigration and Refugee Board (RPD) that refused the Applicant's claims for refugee protection pursuant to section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act (IRPA)*.

[2] The Applicant is a citizen of the People's Republic of China (China). She says she was introduced to Falun Gong in 2006 by her grandmother who had been practicing since 1995. The Applicant's grandmother thought that Falun Gong would help to alleviate the Applicant's intense

menstrual discomfort. The Applicant had previously sought medical treatment for her condition, but to no avail.

[3] The Applicant came to Canada to study in May, 2009. On October 30, 2009, the Applicant received a telephone call from her mother informing her that the Public Security Bureau (PSB) attended her family home to arrest her for participating in Falun Gong activities. The Applicant filed a claim for refugee protection November 4, 2009.

[4] The RPD found that the determinative issue in this case was the Applicant's credibility. The RPD based its assessment on the Applicant's Personal Information Form (PIF) narrative and her oral testimony concerning the Falun Gong discipline and the reported actions of the PSB. The RPD found that the Applicant was not a credible witness and that she was not wanted by the PSB on account of Falun Gong activities in China. The RPD also found that should the Applicant return to China, there is not a serious possibility that she would be persecuted.

[5] The issue in this application is whether the RPD made unreasonable credibility and plausibility findings. More specifically, was the RPD's conclusion that the Applicant was not a genuine Falun Gong practitioner reasonable?

[6] The Supreme Court of Canada held in *Dunsmuir v New Brunswick*, [2008] 1 SCR 190 (*Dunsmuir*) that there are only two standards of review: correctness for questions of law and reasonableness involving questions of mixed fact and law and fact. *Dunsmuir* at paras 50 and 53. The Supreme Court also held that where the standard of review has been previously determined,

a standard of review analysis need not be repeated. (*Dunsmuir*) at para 57. This Court has held that implausibility and credibility determinations are factual in nature. The appropriate standard of review applicable to credibility and plausibility assessments is that of reasonableness with a high level of deference.

[7] The Applicant submits the RPD erred in finding that the Applicant is not a genuine practitioner of Falun Gong. The Applicant argues this finding was based in large part on the RPD's unreasonable assessment of the Applicant's knowledge of Falun Gong. The Applicant submits the RPD applied an overly stringent and microscopic examination of the Applicant's religious knowledge. Moreover, the Applicant submits the RPD erroneously weighed the Applicant's testimony on this issue against its own misguided idea of what a person in the Applicant's circumstances should or would know or understand.

[8] The Respondent submits this Court has previously recognized that the RPD is entitled to make its own assessment about the genuineness of a claimant's faith where it has provided detailed reasons for finding the claimant's faith was not genuine or concluded that the claimant's religious knowledge was acquired to support a fraudulent claim. The Respondent submits that in keeping with these principles, it was not unreasonable for the RPD to expect the Applicant, as an alleged Falun Gong member who has been practicing for five years, to know the history, principle and practices of Falun Gong.

[9] Courts have indicated that it is the sincerity of the belief that matters, not whether the belief or practice is required in the opinion of the religious officials and the Court is qualified to inquire into this sincerity as a question of fact.

[10] This Court has had several opportunities to address the very issue at stake here. In *Dong v Canada (Minister of Citizenship & Immigration)*, 2010 FC 55 at para 20, Justice Kelen held:

In assessing a claimant's knowledge of Christianity, the Board should not adopt an unrealistically high standard of knowledge or focus on a "few points of error or misunderstandings to a level which reached the microscopic analysis": *Attakora v. Canada (Minister of Employment and Immigration)* (F.C.A.), (1989), 99 N.R. 168, [1989] F.C.J. No. 444 (QL), and subsequent cases: *Huang v. Canada (MCI)*, 2008 FC 346 (CanLII), 2008 FC 346, 69 Imm. L.R. (3d) 286, per Justice Mosley at paragraph 10; *Chen v. Canada (MCI)*, 2007 FC 270 (CanLII), 2007 FC 270, 155 A.C.W.S. (3d) 929, per Justice Barnes at paragraph 16.

[11] More recently in *Lin v Canada (Minister of Citizenship & Immigration)*, 2012 FC 288 at para 61, Justice Russell stated:

Given the low bar this Court has set for claimants seeking protection to demonstrate religious knowledge, it is my view that, as in *Huang*, the RPD in this case engaged in an overly stringent and microscopic examination of the Applicant's knowledge of Falun Gong. It erroneously weighed his testimony on this issue against its own misguided idea of what a person in the Applicant's circumstances should or would know or understand. I agree with the Applicant that, in so doing, the RPD based its finding that he is not a Falun Gong practitioner on unattainable and unreasonable requirements for knowledge of the practice. The RPD also failed to consider the fact that, as Justice Francis Muldoon said in *Valtchev v. Canada (Minister of Citizenship & Immigration)*, [2001] F.C.J. No. 1131 (Fed. T.D.), "refugee claimants come from diverse cultures, and actions which appear implausible when judged from

Canadian standards might be plausible when considered from within the claimant's milieu."

[12] The inquiry by courts (and tribunals) into religious belief is to be approached with caution given the very subjective and personal nature of a person's religious belief. In *Syndicat Northcrest v. Amselem*, 2004 SCC 47(*Amselem*) the Supreme Court of Canada stated that claimants seeking to invoke freedom of religion should not need to prove the validity of their beliefs are objectively recognized as valid. The Supreme Court indicated that a person must show sincerity of belief and not that a particular belief is "valid":

**50** ... Accordingly, courts should avoid judicially interpreting and thus determining, either explicitly or implicitly, the content of a subjective understanding of religious requirement, "obligation", precept, "commandment", custom or ritual. Secular judicial determinations of theological or religious disputes, or of contentious matters of religious doctrine, unjustifiably entangle the court in the affairs of religion.

**51** That said, while a court is not qualified to rule on the validity or veracity of any given religious practice or belief, or to choose among various interpretations of belief, it is qualified to inquire into the sincerity of a claimant's belief, where sincerity is in fact at issue: see *Jones, supra*; *Ross, supra*. It is important to emphasize, however, that sincerity of belief simply implies an honesty of belief: see *Thomas v. Review Board of the Indiana Employment Security Division, supra*.

...

**53** Assessment of sincerity is a question of fact that can be based on several non-exhaustive criteria, including the credibility of a claimant's testimony (see *Woehrling, supra*, at p. 394), as well as an analysis of whether the alleged belief is consistent with his or her other current religious practices. It is important to underscore, however, that it is inappropriate for courts rigorously to study and focus on the past practices of claimants in order to determine whether their current beliefs are sincerely held...

[emphasis added]

[13] The RPD conducted a rigorous and microscopic investigation of the Applicant's knowledge of Falun Gong. This is demonstrated in the transcript of the hearing and the RPD's decision. After reviewing the Applicant's responses to the questioning on Falun Gong practices and philosophies, the RPD stated:

**36** The panel finds the claimant has learned some concepts associated with Falun Gong. The panel notes the claimant had identified the term karma in earlier testimony, but through her response to these questions she has demonstrated an inability to apply aspects she has learned to daily activities.

**37** The panel notes the claimant has fifteen years of education. As discussed earlier the panel would realistically expect the claimant to have a better than average working knowledge of the contexts of this text, most of its substance and understand its application in daily life.

**38** The panel notes that a failure to understand the philosophies of Falun Gong makes practicing Falun Gong exercises no more beneficial than practicing any other qigong exercises. Given the claimant's failure to demonstrate an understanding of many of the principles and philosophies associated with Falun Gong and relate some of the key concepts in Zhuan Falun, the panel finds on a balance of probabilities that the claimant has not studied Zhaun Falun and is therefore not a genuine practitioner. The panel draws a negative inference from the claimant's limited knowledge of Falun Gong and her action of attaching very little significance to understanding and embracing the philosophy of Falun Gong.

[emphasis added]

[14] The RPD found the Applicant does have some knowledge of Falun Gong concepts but she has failed to apply aspects to her daily life. The RPD held the Applicant to a better than average knowledge of Falun Gong. These assertions point to the RPD assessing the Applicant's

knowledge against a high standard of knowledge of Falun Gong philosophies of instead of assessing the Applicant's sincerity of belief.

[15] The RPD goes further to find the Applicant is not a member of the Falun Gong discipline and declares "Any knowledge that the claimant has learned about Falun Gong could easily have been acquired in Canada in order to advance a fraudulent refugee claim." A finding of fraud necessarily requires a high standard of proof since it involves a question of intent to deceive. The RPD suggestion of fraudulent intent on the part of the Applicant supports the inference the RPD is holding the Applicant to a high standard of religious knowledge well beyond the relatively low standard of religious knowledge necessary to ground sincerity of belief.

[16] Finally, the RPD discounted the Applicant's Falun Gong exercises as no better than qigong exercises. In doing so, the RPD transgresses on the Supreme Court of Canada's guidance in *Amselem* at para 50 that "courts should avoid judicially interpreting and thus determining, either explicitly or implicitly, the content of a subjective understanding of religious requirement."

[17] In result, I conclude the RPD held the Applicant to an unrealistically high standard of knowledge of Falun Gong and imposed its own understanding of Falun Gong upon the Applicant. I find the RPD's conclusion that the Applicant was not a genuine practitioner of Falun Gong is unreasonable. Since this finding underpins other findings of the RPD that the Applicant was not sought by the PSB in China, the RPD decision cannot be sustained.

[18] The application for judicial review succeeds.

[19] Neither party has proposed a question of general importance for certification and I find none arises in this application.



**JUDGMENT**

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

1. The application for judicial review is allowed, the decision of the RPD is quashed and the matter is referred to a differently constituted panel for redetermination.
2. No question of general importance is certified.

“Leonard S. Mandamin”

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-497-12

**STYLE OF CAUSE:** CUIXIA HUANG v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JULY 23, 2012

**REASONS FOR JUDGMENT  
AND JUDGMENT:** MANDAMIN J.

**DATED:** AUGUST 20, 2012

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