

Federal Court



Cour fédérale

Date: 20160210

Docket: IMM-630-15

Citation: 2016 FC 163

Ottawa, Ontario, February 10, 2016

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

**JIANPING HUANG
MIN YANG**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] This is an application under s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act] for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada [Board] dated January 14, 2015 [Decision], which rejected the Applicants' claims for refugee protection pursuant to ss 96 and 97(1) of the Act.

II. BACKGROUND

[2] The Applicants are citizens of the People's Republic of China. They are a husband [Principal Applicant] and wife [Female Applicant] and allege that they fear persecution for reasons relating to the Principal Applicant's practice of Falun Gong.

[3] The Principal Applicant is a General Manager of a Chinese construction company that has operations in Indonesia. He claims that he began to suffer from cervical spondylosis in 2009. His condition began to affect his daily life and did not respond to treatment.

[4] The Applicants travelled to Canada in December 2013, to visit their son, who held a student visa. During the visit, the Applicants allege that they were approached by an elderly woman promoting Falun Gong at the corner of Dundas Street and Spadina Avenue in downtown Toronto. After she directed them to a Falun Gong bookstore, the Principal Applicant bought a copy of the *Zhan Falun* and joined a nine-day study class. After two months of practicing Falun Gong in Canada, the Principal Applicant says he experienced a diminishment in his neck pain, improvement in his sleep and no longer had to take medication.

[5] The Female Applicant returned to China in January 2014 for approximately six months and the Principal Applicant returned to China for a one-week visit from March 31, 2014 to April 7, 2014. Following a private conversation with a former classmate, Li Jun, the Principal Applicant was invited to attend Li Jun's secret Falun Gong practice group in China. He alleges that he attended one meeting of the group and shared his experiences with its members.

[6] While in China, the Principal Applicant obtained a new visitor visa and returned to Canada on April 7, 2014.

[7] On June 19, 2014, the Principal Applicant learned in a telephone call from his mother that Li Jun had been arrested for Falun Gong activities and that the Public Security Bureau [PSB] wanted to interrogate the Principal Applicant. The Applicants subsequently made claims for refugee protection in Canada.

III. DECISION UNDER REVIEW

[8] The determinative issues in the claim were credibility and re-availment of the Applicants to China. The Board concluded that the Applicants were neither Convention Refugees nor persons in need of protection, as they lacked a subjective fear of persecution. Alternatively, they are not credible and the Principal Applicant's practice of Falun Gong in Canada does not give rise to a well-founded fear of persecution in China.

A. *Credibility*

[9] The Board did not find the Applicants to be credible or trustworthy witnesses owing to their failure to provide sufficient evidence with respect to their claim's central elements. In arriving at this negative credibility finding, the Board took into account many factors, including: cultural elements; the inherent stresses of the hearing process as well as the fact that the Principal Applicant is an educated man who runs a successful, international business and that he and his wife have previously travelled outside of China.

[10] The Board identified seven principal areas of concern related to the Applicants' credibility, subjective fear and whether the Principal Applicant did, in fact, practice Falun Gong.

[11] The Board looked first to the location in which the Principal Applicant practiced Falun Gong in China for one week from March 31, 2014 to April 7, 2014. The Principal Applicant stated that he simply practiced in his room. However, this contradicted an earlier narrative in his Basis of Claim [BOC] that indicated that he practiced in China once with Li Jun. The Principal Applicant addressed this discrepancy by stating that he *also* practiced in the basement of Li Jun's home. The Board nonetheless found this inconsistency to be unreasonable.

[12] The Board then questioned why the Applicants' son, who currently holds a visa for study at a Canadian high school, was not part of their claim for protection. The Applicants explained that because of their son's temporary status, he could always extend his visa to remain in Canada and would not face any possible consequence in China that might result from the Principal Applicant's practice of Falun Gong. The Board stated that there is no guarantee that the son will be able to receive permanent status in Canada, and the possibility remains that he will have to return to China upon the expiry of his temporary status. To protect their son from any repercussions in China, it would be reasonable to expect the Applicants to include him in their protection claim. The Board drew a negative inference from their failure to do so.

[13] Next, the Board addressed the Principal Applicant's explanation for his one-week trip to China, taking issue with his explanation that he had returned there to obtain a new visitor's visa because his language barrier made it difficult to do so in Canada, and that he wanted to see his

wife (who was at that time in China). The Board found that, given his awareness of Falun Gong's illegality in China, his previous experience in extending his visitor visa in Canada and his time spent working in Indonesia (where his native tongue is also not the common language), the return to China during a time when the Principal Applicant was practicing Falun Gong was not reasonable.

[14] As regards the Principal Applicant's choice to practice Falun Gong during his short visit to China despite awareness of the illegality of doing so and the serious repercussions that can result from such practice, the Board did not find his explanation (that he believed his friend's advice that he would be safe) to be reasonable. The Principal Applicant had only temporary status in Canada and had worked hard in order to be able to send his son abroad for school. It was not reasonable that he would risk so much in order to be able to practice Falun Gong one time while in China for one week.

[15] The Female Applicant returned to China for six months for the stated purpose of visiting family and to obtain a new visitor's visa, which was issued to her in January 2014. The Female Applicant was aware of the serious repercussions of her husband's practice of Falun Gong. The Board found that the Female Applicant's remaining in China for six months after being issued a new visitor's visa in January 2013 to be unreasonable.

[16] Next, the Board looked at the Principal Applicant's failure to make a claim for protection in Canada at the time when he knew his Temporary Residence Visa was to expire. The Board did not find reasonable the Applicants' explanation that the Applicants were not in danger at that

time as they were in Canada. Given that they only had temporary status in Canada it would have been clear that they would need to return to China at some point, and in fact both Applicants did visit in 2014.

[17] Finally, the Board considered the Principal Applicant's evidence about his cervical spondylosis, and his failure to receive a second opinion or medical treatment while in Canada. The Board notes that the Principal Applicant allegedly turned to a practice that is illegal in his home country prior to exhausting all other available, legal avenues to remedy his symptoms. Given the dire consequences that he and his family would potentially face were his practice found out in China, this was not a reasonable course of action and it undermines the nature and extent of his symptoms.

[18] On a balance of probabilities, the Board found the Applicants to be neither credible nor trustworthy as witnesses. Specifically, the Board found that: the Principal Applicant is not being pursued by the PSB, and that his claims that he began practicing Falun Gong as a result of his symptoms and that he attended a practice session while in China, are not true. These matters were fabricated for the sole purpose of bolstering the Applicants' claim for protection.

B. *Re-availment*

[19] Both Applicants returned to China on occasions that followed the date when the Principal Applicant allegedly took up Falun Gong (December 17, 2013). The Principal Applicant stated that he returned for a one-week visit at the end of March 2014, to see his wife, family members and to obtain a new visitor's visa, despite knowing at the time that there were potential serious

repercussions should he be caught practicing Falun Gong. The Female Applicant returned to China on January 1, 2014, to visit family and obtain a new visitor's visa. She remained there until June 2014, six months after the visa had been obtained.

[20] The Board did not find the Applicants' explanations for their returns to China to be reasonable. Returning to the country of alleged persecution can be determinative of a claim absent a reasonable explanation: *Caballero v Canada (Employment and Immigration)*, [1993] FCJ No 483. The Principal Applicant knew his wife would be returning to Canada and he had the option of making an application to extend his visitor's status from within Canada. His inaction in terms of informing himself while in Canada of his options to remain permanently and to continue to practice Falun Gong freely, coupled with the fact that the Applicants returned to China under perilous circumstances, undermines their subjective fear and renders questionable whether the Principal Applicant practices Falun Gong in Canada for the reason he states.

[21] The Board held that the re-availment to China by the Applicants was determinative of their claim.

C. *Falun Gong Practice in Canada and Refugee Sur Place*

[22] The Principal Applicant claimed to practice Falun Gong in Canada through participation in classes, by handing out promotional leaflets, by attending a Falun Dafa demonstration in front of the Chinese embassy and through publishing an article on his Falun Gong experience in a local Chinese language newspaper [the *Epoch Times*]. The Board stated that it needed to consider whether the Principal Applicant's actions in Canada have come to the attention of the

authorities in China and how they are likely to be viewed by those authorities: *Asfaw v Canada (Citizenship and Immigration)*, [2000] ACF No 1157; *Mostafa v Canada (Citizenship and Immigration)*, 2007 FC 158. The Board found that it is reasonable to expect that if the family of the Principal Applicant in China had been aware that the PSB knew of his Falun Gong practice in Canada, they would have warned him not to return to China. Furthermore, the Principal Applicant's article contained no identifiers that would link its contents directly back to him. The Board therefore concluded on a balance of probabilities, that the Principal Applicant had not come to the attention of the Chinese authorities as a result of his Falun Gong activities in Canada. The central element of the Applicants' claim – that the Principal Applicant is wanted by the PSB – was therefore not established.

[23] Based on the above, the Board found that the Principal Applicant is not a Falun Gong practitioner and the relevant events and details had not occurred as alleged. The claim, whether based on ss 96 or 97 of the Act, failed for lack of credibility.

IV. ISSUES

[24] The Applicants have raised the following issues in this proceeding:

1. Whether the Board erred in finding that the Applicants lack a subjective fear of persecution;
2. In the alternative, whether the Board made unreasonable credibility findings; and
3. Whether the Board erred in its assessment of the Applicants' *sur place* claim?

V. STANDARD OF REVIEW

[25] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[26] The standard of review applicable to the Board's factual findings regarding the Applicants' credibility and subjective fear of persecution and *sur place* claim is reasonableness: *Dunsmuir*, above; *Uyucu v Canada (Citizenship and Immigration)*, 2015 FC 404 at para 21; *Cornejo v Canada (Citizenship and Immigration)*, 2010 FC 261 at para 17; *Sanaei v Canada (Citizenship and Immigration)*, 2014 FC 402 at para 19 [*Sanaei*].

[27] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at para 47, and *Khosa v Canada (Citizenship and Immigration)*, 2009 SCC 12 [*Khosa*] at para

59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the “range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

VI. STATUTORY PROVISIONS

[28] The following provisions of the Act are applicable in these proceedings:

Convention Refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Person in need of protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of

Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d’être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques:

(a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

(b) soit, si elle n’a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement par son renvoi

nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of

vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée:

(a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes

protection.

auxquelles est reconnu par règlement le besoin de protection.

No credible basis

Preuve

107. (2) If the Refugee Protection Division is of the opinion, in rejecting a claim, that there was no credible or trustworthy evidence on which it could have made a favourable decision, it shall state in its reasons for the decision that there is no credible basis for the claim.

107. (2) Si elle estime, en cas de rejet, qu'il n'a été présenté aucun élément de preuve crédible ou digne de foi sur lequel elle aurait pu fonder une décision favorable, la section doit faire état dans sa décision de l'absence de minimum de fondement de la demande.

Rejection

Rejet

108. (1) A claim for refugee protection shall be rejected, and a person is not a Convention refugee or a person in need of protection in any of protection, in any of the following circumstances:

108. (1) Est rejetée la demande d'asile et le demandeur n'a pas qualité de réfugié ou de personne à protéger dans tel des cas suivants :

(a) the person has voluntarily reavailed themselves of the protection of their country of nationality;

(a) il se réclame de nouveau et volontairement de la protection du pays dont il a la nationalité;

VII. ARGUMENTS

A. *Applicants*

1. Subjective Fear of Persecution

[29] The Applicants claim that the determinative error in the Board's Decision is its finding that they lack a subjective fear of persecution merely because they returned to, or remained in, China prior to the events that precipitated their fear of persecution. A finding that the Principal

Applicant would not have returned to China for one week if he was truly afraid of persecution at the hands of the PSB is fundamentally misguided. At the time of his trip in March 2014 the Principal Applicant was not known or wanted by the Chinese authorities. His lack of subjective fear then does not mean that he lacks a subjective fear now.

[30] Similarly, while the Female Applicant may have remained in China until June 2014, this does not mean she currently lacks a subjective fear. The Applicants argue that it is well within the realm of reasonable expectations that she left the country once her husband's illicit activities were discovered by the PSB. The Federal Court has held that subsequent persecution after re-availment does not preclude an individual from making a successful refugee claim: *Gurusamy v Canada (Citizenship and Immigration)*, 2011 FC 990 at para 40.

2. Credibility Findings

[31] In an alternative argument, the Applicants say that, despite the deference owed to the Board's credibility findings, the Court can set such findings aside where the reasons are not supported by the evidence. The jurisprudence reveals that, in evaluating credibility, a refugee claimant's allegations must be presumed to be true unless there are reasons to doubt their truthfulness. Plausibility findings should only be made where the facts are presented outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant. The Board has a duty to consider that claimants come from different cultural backgrounds, and what might appear implausible by Canadian standards might be plausible when looked at from the perspective of the claimant: *Valtchev v Canada (Citizenship and Immigration)*, 2001 FCT 776 [*Valtchev*]; *Mohacsi*

v Canada (Citizenship and Immigration), 2003 FCT 429 at para 20; *Maldonado v Canada (Employment and Immigration)*, [1980] 2 FC 302 (CA).

[32] The Board's determination that the Applicants lacked credibility was principally based on several unreasonable plausibility findings, including finding that the Principal Applicant would not reasonably have practiced Falun Gong during his one-week trip back to China. The Applicants submit that this finding is speculative and cannot be sustained; the Principal Applicant's practice in China is actually strong evidence of his commitment and dedication to his faith. There was no reason to reject his evidence that he felt safe to practice after being told by his friend, a long time practitioner, that it was safe to do so.

[33] Furthermore, the Applicants submit that it was unreasonable for the Board to find that the Principal Applicant would not plausibly have turned to Falun Gong without exhausting alternative, legal avenues to treat his symptoms. First, when the Principal Applicant began his practice of Falun Gong, it was a "legal avenue" as he was living in Canada. Furthermore, it is well within the realm of reasonable expectations that he would decide to take up the practice.

3. The *sur place* claim

[34] The Applicants further submit that the Board erred in its assessment of the Principal Applicant's *sur place* claim. When the Board evaluated whether he is a genuine Falun Gong practitioner, the Board had already determined that he was not credible. As such, any findings made about the *sur place* claim were tainted by this earlier, flawed analysis.

[35] The finding that the Principal Applicant's activities in Canada (including demonstrations outside of the Chinese Embassy and the publication of an article on his Falun Gong experience) would not have put him at risk in China because no evidence suggested that the Chinese authorities are aware of such actions, is contradicted by the Board's own National Documentation Package which speaks of the strong motivation of Chinese officials to monitor Falun Gong practitioners in Canada. The Board's Response to Information Request [RIR] dated October 2, 2012 reveals that Chinese Consular staff in Canada will aggressively monitor Falun Gong activities by attending their events, taking photographs of participants and collecting information for "blacklists." Another RIR, dated July 2, 2009, indicates that Chinese security authorities use facial recognition technology to identify persons of interest. The Chinese authorities already have a photograph of the Principal Applicant from his Resident Identity Card. There is more than a mere possibility that they are aware of his participation in Falun Gong in Canada.

[36] Given the evidence, the Applicants submit that the Board erred in finding that they do not face a serious risk of persecution on account of the Principal Applicant's public participation in Falun Gong activities in Canada.

B. *Respondent*

[37] The Respondent submits that the Board's Decision to refuse the claims of the Applicants was reasonable. While the Applicants may seek to raise the Board's analyses of subjective fear and *sur place* as separate issues, credibility was the dispositive issue. As stated in *Sanaei*, above, at para 64:

... That is, it imported its overarching credibility finding into its implicit consideration of whether a *sur place* claim arose. The Board weighed the evidence and found that the Applicant was not credible and was not a genuine practitioner of the Christian faith. Having made that finding, and although the Board indirectly referred to the possible apostasy, it did not then have to further consider the *sur place*.

[38] Given that the entire basis of the Applicants' claim was the Principal Applicant's alleged practice of Falun Gong, the fact that the Female Applicant did not give any evidence of any problems in China was significant, as she remained there until June 2014, well after the date the Principal Applicant claimed he had attended the "secret practice group" which allegedly led to the PSB becoming interested in him. That she remained in China, without incident, for two months after the alleged pursuit of her husband began, undermines the credibility of the claim.

[39] As regards the inconsistency relating to the Principal Applicant's attendance at a Falun Gong practice session during his one-week visit to China, the fact that he did not even remember to mention it without prompting detracted from his credibility. This serious omission supported the Board's finding: *Kaur v Canada (Citizenship and Immigration)*, 2012 FC 1379 at para 33. The Respondent says that because there was no independent evidence of the Principal Applicant practicing Falun Gong in China, or of the PSB having any interest in him, little evidence is left to establish a "risk profile."

[40] The Principal Applicant's re-availment to China, after he allegedly began practicing Falun Gong, along with the failure to include his son in his attempts to make long-term arrangements to remain in Canada, further speak to a lack of subjective fear. Contrary to the claims of the Applicants, the Board did consider the explanation provided for re-availment. The

Principal Applicant knew his Falun Gong practice was illegal in China and that he could have sought to extend his visitor's visa without leaving Canada. His return to China is therefore inconsistent with a genuine fear of persecution in China. As held by the Federal Court in *Ortiz Garcia v Canada (Citizenship and Immigration)*, 2011 FC 1346 at para 8, re-availment is generally indicative of "an absence of risk or a lack of subjective fear of persecution. Absent compelling reasons, people do not abandon safe havens to return to places where their personal safety is in jeopardy."

[41] The Principal Applicant's sudden adoption of Falun Gong is not supported by credible evidence. He is a sophisticated and successful businessman, aware of the practice's illegality in his home country. He claims to have made no real efforts to obtain appropriate medical treatment for his condition. Rather than pursue recommended surgery, he turned to a practice based on the suggestion of an elderly woman he met on the street, who was not called at his hearing. The Respondent maintains that it was right for the Board to consider this explanation to be unpersuasive and one that undermines the sincerity of his practice.

VIII. ANALYSIS

[42] The principal basis of the Decision is a general negative credibility finding against the Applicants. This is made after a detailed examination of several areas of concern. The Applicants have chosen to question some of the Board's cumulative findings, but not all of them. The Court must take it, then, that where any finding of the Board is not questioned, it is accepted by the Applicants.

A. *Principal Applicant's Return to China*

[43] The Applicants argue that, while it is true that the Principal Applicant had been practising Falun Gong in Canada at the time when he returned to China for a week, this does not mean that he was afraid of returning to China then. At the time of his trip to China, he was not known to, or wanted by, the PSB. The Applicants say that the Board lacked a legitimate basis for finding that this lack of subjective fear back in March 2014 means that he currently lacks a subjective fear.

[44] This argument mischaracterizes the Board's findings on point, which are as follows:

[19] The principal claimant's evidence is that "In March 2014, I went back to China for a visit[.]" He stated in oral testimony that he travelled to China on March 31, 2014. He returned to Canada one week later on April 7, 2014. He explained that he returned to China for one week in order to obtain a new visitor visa as his visa had expired and he also wanted to see his wife, who was at that time in China. He was asked whether he made the effort to extend his visitor visa in Canada. He stated that he did not as he had a language barrier and there was too much work involved. Also his wife had returned to China for a few months and he wanted to see her.

[20] The Panel does not find this explanation reasonable. The principal claimant had already been practicing Falun Gong in Canada for a number of months. He was aware that this practice was illegal in China and was aware of the serious repercussions should his practice be found out. In testimony he stated that the Chinese authorities would arrest you, search your home, question you, torture you and make you attend brainwash classes; they would want you to give up the practice of Falun Gong. The principal claimant had the option of making an application to extend his visitor visa from within Canada, but did not do so. The Panel notes that the claimant had already been through the application process for extension of her visitor visa while in Canada and therefore this process would not have been new to the family. The Panel also notes that the principal claimant has lived and worked in Indonesia, where the claimant's national tongue is also not the common language. Furthermore, the principal claimant had the option to obtain Counsel in order to submit his application

for an extension of his visitor visa and being an international businessman would have had the acumen to do so. The claimant was also aware that the intention of his wife was to return to Canada and that his wife in fact obtained a visitor visa for Canada in January 2014. It was therefore not necessary for the principal claimant to return to China at the end of March 2014. The Panel finds that the return to China by the principal claimant at a time he was already practising Falun Gong and knew of the very serious consequences should his practice be found out undermines his subjective fear and undermines whether the principal claimant in fact turned to the practice of Falun Gong in Canada as a result of his medical diagnosis.

[footnotes omitted]

[45] The Board's point is that, even though the Principal Applicant may not have been wanted by the PSB at the time, he was already a Falun Gong practitioner when he returned to China, so he would be taking some risk if he was a true practitioner. This undermines his claim, but it was not rejected on this basis alone. This issue was one of many that the Board examined and it became part of a cumulative finding. Hence, it cannot simply be considered in isolation as the Applicants invite the Court to do.

B. *The Female Applicant's Return to China*

[46] The Applicants make a similar point in relation to the Board's treatment of the Female Applicant's return to China in 2014. However, the Female Applicant remained in China after the Principal Applicant had participated in the secret practice group.

[47] The Board's treatment of this issue is as follows:

[23] The claimant returned to China in order to see her family and also obtain a new visitor visa for Canada. She was in China for approximately 6 months and returned to Canada. She was asked

the reason she remained in China for approximately six months after the Canadian visa was issued. Her reply was that she spent time with her parents and mother in law in China.

[24] The Panel does not find this explanation to be reasonable. The principal claimant had started to practice Falun Gong in Canada 3 months prior and he had also attended a Falun Gong practice session in China on April 4, 2014. He returned to Canada on April 7, 2014, but the claimant continued to remain in China until June 2014. The claimant was aware of the serious repercussions of the practice of Falun Gong. Furthermore, the principal claimant had not only practiced Falun Gong in Canada but also in China, making it all the more immediate not to remain in China. The claimant had been issued a new visitor visa for Canada in January 2014, but did not leave China until June 2014. The Panel finds that this undermines her general credibility, undermines her subjective fear and undermines whether the principal claimant in fact practised Falun Gong in China.

[48] These paragraphs about the significance of the Applicants' return trips to China at a time when the Principal Applicant was actively practising Falun Gong, have to be assessed in the context of the whole Decision where the Board found it unconvincing that the Applicants would take any risks in light of what was at stake for their futures and livelihoods and, in particular, the future of their son. It is possible to disagree with the Board as to the weight that should be given to their return trips to China, but these have to be examined in the fuller context of the nature of the Applicants' family, their sophistication and success, and the position of their son. Given this fuller context it cannot be said, in my view, that the Board's conclusions on point were unreasonable. The Board asked itself why this particular family, which had so much to lose, would take any risks. Yet the Applicants say they returned to China after the Principal Applicant became a Falun Gong practitioner and that he actually practised Falun Gong while he was there.

[49] And, once again, the findings on re-availment were not decisive. They were simply part of a larger pattern of conduct that the Decision explores and which, looked at in general, was not convincing that the Principal Applicant was a Falun Gong practitioner wanted by the PSB.

C. *Practising Falun Gong in China*

[50] The Applicants say that the Board's determination that the Applicants were not credible was based, in large part, on several unreasonable and conjectural plausibility findings. For example, the Board found that the Principal Applicant would not plausibly have practiced Falun Gong during his one-week trip back to China. The Board found it inconceivable that the Principal Applicant would take such a risk given that he was aware that Falun Gong is illegal in China. On this basis, the Board made an adverse credibility finding regarding the genuineness of the Principal Applicant's Falun Gong practice. The Applicants say that this finding is speculative and cannot be sustained. Contrary to the Board's finding, that Applicants say that the Principal Applicant's participation in the Falun Gong activities while in China corroborates (rather than undermines) the genuineness of his beliefs. The fact that he was willing to participate in such activities is evidence of his commitment and dedication to his faith. Moreover, as stated in oral testimony, the Principal Applicant had been told by his friend, Li Jun, that Li Jun had been practicing Falun Gong for many years in China without any problems that his practice group was safe. Consequently, the Applicants say there was no reasonable basis for rejecting this sworn evidence.

[51] The Applicants are leaving out of account here the significant finding by the Board that the Principal Applicant presented contradictory evidence about his practice of Falun Gong in China that seriously undermined his credibility:

[15] There is an inconsistency in the location in which the principal claimant practiced Falun Gong while in China for one week from March 31, 2014 to April 7, 2014. The Panel asked questions in regard to the claimants [*sic*] temporary status in Canada and efforts made to remain in Canada permanently. The Panel was [*sic*] whether the principal claimant informed himself, while in Canada, of how he could remain in Canada permanently once he began his Falun Gong practice in Canada. He replied that it was not a problem because Falun Gong was legal in Canada. The Panel then asked whether he planned on continuing his Falun Gong practice in China. He replied that he simply practiced in his room in China. The Panel confirmed that this occurred when he returned to China for one week from Canada in March 2014. It was put to the claimant that his BOC narrative at lines 44 and 45 says he practised Falun Gong in China once with Li Jun, which appears to contradict that he practiced in his room while in China. He replied that they also practiced in the basement of Li Jun's home.

[16] The Panel does not find this explanation to be reasonable. The Panel notes that the principal claimant only responded that he also practised in the basement of Li Jun's home once the apparent inconsistency was put to him. The Panel notes that no reference is made in the BOC narrative or in other oral testimony that the principal claimant also practiced Falun Gong in his room while in China for that one week. The claimant's practice of Falun Gong in China is a central element of the claim. The Panel notes that the question put to the claimant was direct and simple. The Panel also takes into account that the principal claimant is an –educated [*sic*] businessman who has the acumen to be Project Manager for a company in China and run a business outside of China in Indonesia, the acumen to consider his son's education and enroll his son in a school abroad and the acumen to make applications for himself and his wife for visitor visas to Canada and provide all required supporting documents. The Panel finds that this inconsistency undermines his general credibility and undermines whether the principal claimant attended a Falun Gong practice session in his friend Li Jun's home while in China and also whether he practiced Falun Gong in his room while in China for that one week.

[footnotes omitted]

[52] Quite apart from this finding about a major inconsistency in the Principal Applicant's evidence, the Board also examined the Principal Applicant's claims that he practiced Falun Gong while in China on a visit against the Principal Applicant's testimony that he knew of the serious repercussions of being discovered and the magnitude of the risk that this represented:

[21] The principal claimant's evidence is that while in China for one week order [sic] to obtain a new visitor visa for Canada., [sic] he practiced Falun Gong on one occasion with the practice group of his friend Li Jun at the home of Li Jun. He was asked why he would do so in light of being in China for such a short period of time, only one week, and knowing that Falun Gong was illegal in China and the serious repercussions if caught practicing Falun Gong in China. The response was that he did not think of that; his friend had been practising Falun Gong for many years and told him it was safe and he believed his friend.

[22] The Panel does not find this explanation to be reasonable nor does the Panel find this course of action reasonable in these circumstances. The principal claimant stated he knew of the serious repercussions of the illegal practice of Falun Gong. Furthermore, his visa to Canada granted him temporary status in Canada, not permanent status. His son and his wife also only had temporary status in Canada. The possibility therefore existed that at one point he would have to return to China. The principal claimant also stated that he worked hard in order to be able to send his son abroad for school. In such circumstances the Panel does not find it reasonable that the principal claimant would risk everything he had worked for and put the future of his son at risk in order to practice Falun Gong one time while in China for one week. The Panel finds that the one-time practice in China by the principal claimant, knowing of the very serious consequences should his practice be found out to himself and his family undermines his subjective fear and undermines whether the principal claimant in fact practiced Falun Gong in China.

[53] The Board just did not believe that someone with the Principal Applicant's sophistication, and with so much to lose, would take this kind of risk. And this has to be taken in conjunction with the other credibility concerns, including the Principal Applicant's inconsistent

evidence on where he practiced in China, the Board's treatment of which the Applicants do not question.

D. *Motivation for Practicing Falun Gong*

[54] The Applicants also complain that the Board unreasonably found that the Principal Applicant would not plausibly have turned to Falun Gong in Canada without exhausting all other available legal avenues to remedy his health problems. They say that at the time when the Principal Applicant turned to Falun Gong, it was a "legal avenue," he was living in Canada where the practice of Falun Gong is legal. They say that, even leaving this aside, however, there is nothing implausible about the Principal Applicant's decision to practice Falun Gong. The Principal Applicant's testimony was well within the realm of reasonable expectation. The Applicants also point out that the Board failed to consider that, as stated in *Valtchev*, above, "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" (at para 9).

[55] The practice may have been legal in Canada, but the Board's main point was that the Principal Applicant and his family had no permanent status in Canada and so would eventually have to return to China. Given this reality, it just did not make sense that they would take such a risk. I cannot say that the Board's reasoning and conclusions were outside the range of possible, acceptable outcomes which are defensible in respect of the facts and the law.

E. *Other Findings*

[56] The general negative credibility finding is supported by other local findings that the Applicants do not challenge. These include important issues such as:

- The contradiction in the Principal Applicant's evidence as to where he practiced Falun Gong when he returned to China;
- Putting their son at serious risk by failing to include him in their refugee claims;
- The Applicants allegedly failing to consider how to remain in Canada permanently at the time that the Principal Applicant was practicing Falun Gong; and
- The sheer implausibility of someone in the position of the Principal Applicant resorting to a practice that put his whole family at risk after visiting Canada and meeting an elderly lady on the street when he knew he would be returning to China.

[57] The Applicants argue that any findings that the Board made about the *sur place* claim were tainted by erroneous credibility findings and analyses. The correlative of this argument is that if the previous findings are not unreasonable, then they bolster the *sur place* reasons and findings.

[58] The Applicants argue that even if they were not credible about the past situation in China, this does not automatically mean that the Principal Applicant is not now a genuine Falun Gong practitioner, and even if he is not genuine, this does not mean he is not at risk in China when his activities here in Canada may have been monitored.

[59] As the Board makes clear at paragraph 41 of the Decision, "the Panel finds that this general lack of credibility extends to all relevant evidence emanating from their testimony." In other words, the Applicants cannot be believed.

[60] The Applicants argue that, when dealing with the *sur place* aspect of their claim, the Board simply relied upon its credibility finding related to China and provided no real assessment of the genuineness of the Principal Applicant's Falun Gong faith as evidenced by his activities in Canada. However, the Board did indeed look at the evidence of activities in Canada but concluded that such evidence does not overcome the general credibility concerns:

[33] The principal claimant testified to practicing Falun Gong in Canada by attending classes, promoting Falun Gong by handing out leaflets, attending the May 13 Falun Dafa demonstration in front of the Chinese Embassy and writing an article about his Falun Gong experiences, which has been published in the local Chinese language newspaper.

[34] Having already found, as set out above, that the claimants are not credible and trustworthy witness [*sic*] in regard to events in the incident of attending one practice session while in China and the PSB is looking for him as a result, and having found their testimony not to be true as to the principal claimant's reason for turning to the practice of Falun Gong, the Panel finds that the principal claimant has pursued Falun Gong in Canada for the purpose of bolstering their claim for protection.

[footnotes omitted]

I cannot say this is an unreasonable conclusion.

[61] The Board obviously examined all the evidence produced and found that it was not sufficient to overcome its general credibility concerns. However, the Board realizes that it must still go further with its analysis:

[35] The Panel must nonetheless consider whether the principal claimant's actions in Canada have come to the attention of the authorities in the claimants' country of origin and how they are likely to be viewed by those authorities.

[footnotes omitted]

[62] I agree with the Applicants that the Board does speculate in paragraph 36 of the Decision when it says it would be reasonable to expect that if the family of the Principal Applicant in China became aware that the PSB also knew of his Falun Gong practice in Canada, “the family would have managed to somehow contact him in order to warn him and also to warn the claimants’ son not to return to China.” There is no evidence of what the PSB knows about the Principal Applicant’s Falun Gong activities in Canada, and no reason why they would tell the family in China if they did. Why would the PSB give the family information to pass on to the Applicants to support a possible refugee claim in Canada?

[63] However, the real point of the Decision on this issue is that the “claimants made no reference in oral testimony, their BOCs or supporting evidence that the PSB knows of the principal claimant’s Falun Gong practice in Canada” and “there is no evidence before the Board that would support that the PSB is looking specifically for the principal claimant as a result of his Falun Gong practice in Canada.”

[64] The Applicants argue that the Board is here leaving out of account the documentary evidence that speaks to the vigour and thoroughness with which the Chinese authorities monitor Falun Gong activities in Canada. The Applicants say there is no direct evidence that says the Principal Applicant has been monitored engaging in and/or supporting Falun Gong activities, but the Board does not ask the question whether, given the extent of the monitoring – particularly when it comes to demonstrations outside the Chinese embassy – it is more likely than not that the Principal Applicant has been, or could be, identified as a Falun Gong supporter. The Applicants say that the fact that there is no evidence to show that the Chinese authorities are actively

looking for the Principal Applicant, is not the issue. The issue is whether, because of their pervasive surveillance practices in Canada, Chinese authorities now know about the Principal Applicant and his support for, or participation in, Falun Gong.

[65] However, the Board's finding on this issue is as follows:

[38] The Panel therefore finds, on a balance of probabilities, that the principal claimant has not come to the attention of the Chinese authorities as a result of his Falun Gong activities in Canada.

[66] So the Board understands that the issue is not whether the Chinese authorities are looking for the Principal Applicant; the issue is whether the Principal Applicant has come to the attention of the Chinese authorities. And the Board finds, on a balance of probabilities, that the evidence does not establish this. There is nothing to suggest that the Board did not look at the evidence in question, and it specifically mentions the Principal Applicant's article in the *Epoch Times* and explains why it would not lead to his identification.

[67] The Applicants may disagree with the Board's conclusions on this point, but they have not established that the Board overlooked or misunderstood the relevant evidence. Furthermore, it is not the role of the Court to step in and re-weigh that evidence and come to a different conclusion. See *L(H) v Canada (Attorney General)*, 2005 SCC 25 at para 74; *Khosa*, above, at paras 59 and 61. The Applicants compare their own situation to the applicant in my decision in *Chen v Canada (Citizenship and Immigration)*, 2014 FC 749 [*Chen*], but in my view, the facts are significantly different. In *Chen*, I found that there was "no real assessment by the Board of whether the Applicant has become a genuine Falun Gong practitioner in Canada" (at para 58). In the present case, the Board considered the evidence of the Principal Applicant's Falun Gong

activities in Canada at paragraph 33 of the Decision and made a general finding of non-credibility – which in my view was reasonable given the evidence as a whole. However, it nonetheless then went on to consider whether “the principal claimant’s actions in Canada have come to the attention of the authorities in [China]” and if so, how they are likely to be viewed by those authorities.

[68] Counsel agree there is no question for certification and the Court concurs.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is dismissed.
2. There are no questions for certification.

“James Russell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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