

Federal Court



Cour fédérale

Date: 20160229

Docket: IMM-587-15

Citation: 2016 FC 258

Ottawa, Ontario, February 29, 2016

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**XINGCHANG LIANG
BAOYUAN LI
HAILIN LI**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms Xingchang Liang and her two children sought refugee protection in Canada based on their fear of persecution in China for being practitioners of Falun Gong. Ms Liang says that her husband, also a practitioner, was arrested and died in police custody. She suspects that his body was harvested for organs because it was cremated without the family's consent.

[2] A panel of the Immigration and Refugee Board dismissed the applicants' refugee claim based mainly on a lack of reliable evidence. The applicants contend that the Board's expectation that they should have been able to obtain documentary evidence to support their allegations was unreasonable. In addition, they maintain that the Board unreasonably discounted the other evidence in their favour. They ask me to quash the Board's decision and order another panel to reconsider their claims.

[3] I agree with the applicants that the Board's decision was unreasonable. I will therefore allow this application for judicial review.

[4] The sole issue is whether the Board's decision was unreasonable.

II. The Board's Decision

[5] The Board did not believe that the applicants were genuine Falun Gong practitioners. They presented no corroborating evidence showing that Ms Liang's husband turned to Falun Gong to address problems with his health, or that his health had improved as a result. Further, they had no proof that they had practiced Falun Gong in China. While the applicants displayed knowledge of Falun Gong, the Board concluded that this did not show a genuine belief since information about Falun Gong was widely available. In addition, the Board doubted the applicants' assertion that Chinese authorities would pursue them if they returned given that they had been allowed to leave the country without difficulty.

[6] The applicants had expressed concern that Chinese officials may be aware of their Falun Gong practices in Canada which would expose them to a risk of persecution if they returned to China. The Board found that there was no evidence that Chinese officials had attended or watched any of the events in which the applicants were involved. Further, the Board noted that only a small number of persons who practice Falun Gong discreetly experience problems in China.

[7] The Board found that the death and cremation certificates supplied by the applicants did not mention that Ms Liang's husband had been arrested or charged, that he had died in custody, or that the police had ordered his cremation. At the hearing, Ms Liang testified that she had tried to visit her husband while he was in custody. The Board noted that this information was not in her written narrative and, therefore, found that it was an embellishment.

III. Was the Board's decision unreasonable?

[8] The Minister argues that the Board's decision was not unreasonable. The Board was entitled, according to the Minister, to point out the lack of corroborating evidence and draw adverse inferences from it. Similarly, the Board's findings that the applicants had left China without difficulty and could easily have acquired some knowledge of Falun Gong in Canada were not unreasonable on the evidence. Further, the Minister submits that the risk to the applicants in China was merely speculative. There was no evidence that Chinese officials specifically targeted them.

[9] I disagree with the Minister's submissions.

[10] First, while the Board was entitled to draw an adverse inference from the absence of some corroborating documents (*eg*, relating to Ms Liang's husband's health), it unreasonably expected the applicants to obtain documentary proof of his arrest, detention and death in custody from Chinese authorities. The Board also failed to note suspicious information in the documents the applicants did provide – the place of death was unidentified (“other and out of town”), the cause of death was undetermined, and the cremation was carried out just three days after death even though the body was supposed to be stored for fifteen days.

[11] Second, the Board did not appear to take account of the fact that the applicants left China just over a week after Ms Liang's husband's death. It was not implausible that Chinese authorities had not yet flagged them for scrutiny on their exit from the country.

[12] Third, Ms Liang's children gave detailed answers about their knowledge of Falun Gong (Ms Liang was not asked). It is unclear why the Board concluded that this testimony did not support the genuineness of their beliefs. It simply stated that the evidence was insufficient in light of concerns about the applicants' credibility.

[13] Finally, the Board found that Chinese authorities in Canada had not specifically targeted the applicants. While the Board acknowledged the possibility that Chinese officials might have photographed or videotaped demonstrations that the applicants had attended, it appeared to overlook evidence that more than half the work done in Chinese consulates focussed on Falun Gong practitioners. It was more than speculative that the applicants might have been identified, raising the risk of their being targeted on return to China.

[14] Overall, therefore, in light of the evidence before it, I find that the Board's conclusion did not represent a defensible outcome.

IV. Conclusion and Disposition

[15] The Board unreasonably expected the applicants to provide documentary evidence that Ms Liang's husband had been killed for his Falun Gong practices. Further, it unreasonably discounted other evidence in the applicants' favour. Its negative conclusion did not represent a defensible outcome. I must, therefore, allow this application for judicial review and order another panel of the Board to reconsider their claim. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed, and the matter is returned to another panel of the Board for reconsideration.
2. No question of general importance is stated.

"James W. O'Reilly"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-587-15

STYLE OF CAUSE: XINGCHANG LIANG, BAOYUAN LI, HAILIN LI v
THE MINISTER OF CITIZENSHIP AND
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