

Federal Court



Cour fédérale

Date: 20161104

Docket: IMM-1990-16

Citation: 2016 FC 1237

Toronto, Ontario, November 4, 2016

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

**HAO WU
BINYAN CAO**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This application is for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board [the RPD] dated April 18, 2016 in which it concluded that the Applicants were not Convention refugees or persons in need of protection and that there was no credible basis for the Applicants' claim [the Decision]. This application is made pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 [the IRPA].

I. BACKGROUND

[2] Hao Wu [the Female Applicant] and her husband Binyan Cao [the Male Applicant] are both 30 year old citizens of China. They have one daughter. The Applicants claimed refugee protection on the basis of their practice of Falun Gong. They state that they began to practice Falun Gong in their home in August 2014. Then, in November of that year, they joined a practice group. They travelled on holiday to Canada from China on September 23, 2015 and on October 5 their practice group was raided by the Public Security Bureau [the PSB].

[3] On October 7 the female Applicant's mother [the Mother], who was at the Applicants' home caring for their daughter, was visited by the PSB. The PSB searched the house, stated that the Applicants were wanted for involvement in Falun Gong, and that they could not escape. The Mother told the PSB that the Applicants were abroad. The PSB visited the Mother twice more but did not leave any documentation, such as a summons. However they asked the Mother to have the Applicants contact the PSB on their return to China.

II. THE DECISION

[4] The RPD did not accept the Applicants' evidence that the PSB did not leave any papers for them. The RPD found that this ran contrary to country condition documentation which says that authorities issue summonses in criminal investigations, including those relating to membership in cults such as the Falun Gong. The RPD acknowledged that the practice of leaving documents was not always followed, but concluded that the three visits and the search of the

home showed that the PSB was very interested in the Applicants. In these circumstances the RPD concluded that a summons or warrant would have been left.

[5] The RPD also found it implausible that the PSB visited the Mother three times. The RPD noted that the PSB, given its access to the Golden Shield database, would have known that the Applicants left the country prior to their first visit to the Mother. The RPD therefore found that the PSB would not have asked where the Applicants were and would not have warned the Mother that they could not escape.

[6] For these reasons the RPD concluded that the PSB had never visited the Mother.

[7] The RPD also concluded that the Applicants had never participated in a Falun Gong practice group. The RPD found that the Male Applicants' testimony regarding safety precautions taken while practicing Falun Gong was "inconsistent and circular." He said that the group did not practice the fifth exercise because they would have had to remove their shoes and sit on the floor. This would have made it hard to flee if the session had been raided by the PSB. He also acknowledged that practicing at home was safe. The RPD did not accept that Applicants would take the risks associated with group practice when they could practice in safety at home.

[8] The Applicants produced a letter from the Mother, which was not sworn or notarized. It confirmed the information in their Basis of Claim form and their oral testimony. However, the RPD noted that the Mother was not called as a witness so it could not assess the credibility of her statements. The RPD therefore assigned the letter little weight. It is noteworthy that only the

Mother could have given firsthand evidence about the PSB visits. The testimony from the Applicants on this issue was all hearsay, based on the Mother's account of events.

[9] The Applicants also tendered a letter regarding their practice of Falun Gong in Canada. The writer indicated that he met the Applicants while practicing together in a park. He stated that soon after their arrival they appeared to be skilled genuine practitioners. The RPD assigned this letter little weight, because the author was not called to testify. The RPD concluded that the Applicants' Falun Gong practice in Canada was not genuine and was a fabrication to support their refugee claim.

[10] Finally, the RPD concluded that there was no credible basis for the claim.

III. DISCUSSION AND CONCLUSIONS

[11] The RPD concluded that the PSB had never visited the Mother and had no interest in the Applicants, because they had never participated in a practice group in China. It also found that the participation in such a group in Canada was not genuine. In my view the facts are capable of supporting these conclusions. It was not unreasonable to conclude that the PSB would have left documentation after a house search and three visits. As well, it was not unreasonable to doubt whether PSB ever visited. Given its access to the Golden Shield database the PSB would have known shortly after the raid that the Applicants' were not in China. As well the only reason the PSB would be interested in the Applicants' was because of their participation in the practice group. Once the RPD rejected that evidence because the Male Applicant could not coherently

describe why the Applicant's would take the risks of group practice, there was no reason for the PSB to have any interest in the Applicants.

[12] I have also concluded that the RPD's rejections of the letters from the Mother and the Falun Gong practitioner in Canada were reasonable. The Mother was the only witness capable of giving first hand evidence about the PSB's visits and the Toronto practitioner was presumably available to give evidence. The RPD was entitled to reject their unsworn letters when the Applicants failed to adduce their testimony.

[13] It follows that the finding that there was no credible or trustworthy evidence that could support the Applicants' claim was also reasonable.

IV. CERTIFICATION

[14] No question was posed for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

“Sandra J. Simpson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1990-16

STYLE OF CAUSE: HAO WU, BINYAN CAO v THE MINISTER OF
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