

Federal Court



Cour fédérale

Date: 20170501

Docket: IMM-4160-16

Citation: 2017 FC 420

Toronto, Ontario, May 1, 2017

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

YUNCHUN WU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Presently under review is the decision of the Refugee Appeal Division (RAD) dated September 6, 2016, in which the Applicant's claim for refugee protection as an adherent of Falun Gong in China and Canada was dismissed. The scenario at the base of the Applicant's claim is that, to improve his health, he was introduced to Falun Gong by a friend, became an adherent, and as a result was pursued by the authorities in China which caused him to flee to Canada.

[2] On appeal from a negative decision of the Refugee Protection Division (RPD), on its own independent evaluation of the evidence before the RPD, the RAD rejected the Applicant's claim on the basis of contested implausibility findings resulting in the conclusion that the Applicant did not begin the practice of Falun Gong in China (Decision, para. 44) and was not a Falun Gong practitioner in China (Decision, para. 58).

[3] However, as a central feature of the claim for protection, the Applicant also advanced the argument that, as a Falun Gong practitioner in Canada, he has a *sur place* claim of risk to more than a mere possibility of persecution should he be required to return to China. The RAD dealt with this argument by focussing on the Applicant's knowledge of Falun Gong. In the result, the RAD found that the Applicant is not "a genuine Falun Gong practitioner because of his lack of knowledge about the basics of Falun Gong" (Decision, para. 81), and therefore, would not be perceived to be a practitioner by "any authority in China", and "on a balance of probabilities could return to China without fear of persecution for the alleged practice of Falun Gong" (Decision, para. 83).

[4] At issue is the evidence from which the RAD has concluded that a certain level of knowledge is required before a person can be a "genuine" practitioner of Falun Gong and be perceived as a practitioner of Falun Gong. The evidence applied to reach the conclusion is stated in the decision at paragraph 68:

The foundation of Falun Dafa consists of a body of fundamental knowledge essential for the task of undertaking proper cultivation towards higher stages of attainment. It comprises Master Li's teachings collected in a number of books, the most important of which being *Zhuan Falun* (Revolving the Law Wheel); and *China Falun Gong* is a good summary of principle and exercise

recommended for the beginners. Much of the teachings are highly classified knowledge that are hitherto imparted exclusively from master to trusted disciples since antiquity in China (NDP for China (October 30, 2015).

[Emphasis added]

[5] The conclusion reached by the RAD on the basis of the evidence is stated in the decision at paragraphs 69 to 71:

As the foundation of Falun Gong is a body of fundamental knowledge, [Emphasis in the original] essential for the task of undertaking proper cultivation, it would be rather difficult for a purported Falun Gong practitioner to have little of this fundamental knowledge [Emphasis added]. In the RAD's view, the Appellant who claims to adhere to a knowledge-based practice may well be different than the expectations of someone who claims to follow a faith-based belief system. While this does not justify a microscopic analysis of an Appellant's evidence, it does create the expectation that the refugee Appellant who purports to be a Falun Gong practitioner be able to testify to that essential fundamental knowledge [Emphasis in the original].

The RAD has considered the totality of the evidence, and although the Appellant does possess some knowledge of Falun Gong, the RAD finds that his allegations of being a genuine Falun Gong practitioner are not credible. The RAD found above in this decision, that the Appellant was not a Falun Gong practitioner in China. Below, the RAD outlines its concerns regarding the Appellant's knowledge and his practice in Canada. According to his testimony, the Appellant had some knowledge about the speeches of Master Li. The Appellant has allegedly practiced Falun Gong since October 12, 2013 until his RPD hearing on May 4, 2016.

The RAD finds that his knowledge about the basic philosophies is either incorrect or weak. In order to be considered the [sic] genuine Falun Gong practitioner in China, this practice should have involved the study of the philosophies of Master Li Hongzhi.

[Emphasis added]

(Decision, para. 69 to 71)

[6] In my opinion, the evidence does not support the conclusion. The evidence establishes that to reach the higher stages of attainment, a body of fundamental knowledge is essential. The evidence does not establish that a person who is learning the knowledge cannot be a genuine practitioner and cannot be perceived as such as found by the RAD. As a result, I find the RAD's conclusion on the evidence is erroneous.

[7] The erroneous conclusion had an unwarranted detrimental impact on evidence produced by the Applicant. In addition to his own sworn evidence that he is a practitioner of Falun Gong in Canada, which was not accepted by the RAD as truthful, the Applicant introduced documentary evidence attesting to the fact that he is a practicing Falun Gong in Canada. That evidence was handled in the following manner:

In observing the documentation submitted by the Appellant, the RAD gives the letter no weight because of the finding above [that the Appellant would not be considered to be a genuine practitioner because of his lack of knowledge about the basics of Falun Gong (Decision, para. 81)], plus the fact that the letter was unsworn, a comment also made by the RPD. There was no corroborating evidence to support the author's expertise that would enable her to evaluate the Appellant's genuineness as a genuine practitioner (Decision, para. 82).

[8] The letter reads as follows;

Conformation [sic] Letter

My name is Li, Dongshu, and a Falungong practitioner. I went to Meilijing Garden to practice Falungong with team members on Saturdays and Sundays. I met Wu, Yunchun there on September 7, 2014, and it was his first time that he practiced Falungong with us in Meilijing Garden. Since then, we went to Meilijing Garden for practicing Falungong on Saturdays and Sundays. He practiced and studied Falungong with us and also attended other team activities. I confirm that Wu, Yunchun is a real Falungong practitioner.

Li, Dongshu
November 27, 2014

(Certified Tribunal Record, p.547)

[9] In my opinion the RAD viewed the letter with suspicion because it did not conform to the conclusion already made, and, as a result, it was dismissed out of hand. In my opinion, the RAD had no reasonable basis to do so. There was no reason to expect that the letter should have been “sworn” and the letter certainly was not filed as an expert opinion. The letter was filed as a statement corroborating the Applicant’s sworn evidence, and, as a result, it required proper consideration which it did not receive.

[10] As result, I find that the RAD’s rejection of the *sur place* claim was made in reviewable error of fact.

JUDGMENT

THIS COURT'S JUDGMENT is that the decision under review is set aside and the matter is referred back for redetermination by a differently constituted panel.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4160-16

STYLE OF CAUSE: YUNCHUN WU v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 20, 2017

JUDGMENT AND REASONS: CAMPBELL J.

DATED: MAY 1, 2017

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