

Federal Court



Cour fédérale

Date: 20181022

Docket: IMM-1022-18

Citation: 2018 FC 1057

Ottawa, Ontario, October 22, 2018

PRESENT: The Honourable Madam Justice McDonald

BETWEEN:

**ZEXUAN LIN
SHUIGEN ZHENG
JINJIA ZHENG (A MINOR)
ZIUYUN ZHENG (A MINOR)**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants are a family from China who seek refugee protection for fear of persecution in China because of the Principle Applicant's ("PA") practice of Falun Gong which is outlawed in China. The Refugee Appeal Division [RAD] denied their appeal from the

Refugee Protection Division [RPD] who found that the claim for refugee protection could not be maintained as the PA was found not to be a genuine Falun Gong practitioner.

[2] For the reasons that follow this judicial review is dismissed as the RAD did not err in its approach to, or its assessment of, the PA's Falun Gong knowledge.

Background

[3] The applicant family consists of the PA, Zexuan Lin; her husband, Shuigen Zheng ("Male Applicant" or "MA"); and their children, Jinjia and Xiuyun Zheng (the "Minor Applicants").

[4] The MA travelled to Canada in July 2015.

[5] The PA claims to have started practicing Falun Gong in April 2016 to ameliorate menopausal symptoms. In September 2016, the PA and MA brought the Minor Applicants to Canada to canvass the possibility of the children attending school in Canada.

[6] In January 2017, the Applicants arrived in Canada on visitor visas. Shortly after their arrival in Canada, the PA's mother called to inform them that the Police Security Bureau had arrested several of the PA's fellow Falun Gong practitioners and were looking for her.

[7] The Applicants made refugee claims on February 22, 2017. The RPD denied their claims and the RAD dismissed their appeal on February 6, 2018.

RAD Decision

[8] On appeal to the RAD the Applicants did not file new evidence and they did not request an oral hearing. The central issue for the RAD was whether risk in China was established as a result of the PA's Falun Gong practice. In its decision, the RPD found that the PA was not credible regarding her Falun Gong practice because she made numerous mistakes in describing the five fundamental exercises of Falun Gong.

[9] The RAD concluded that the PA's knowledge of Falun Gong was not commensurate with her alleged practice. She claimed that she attended group practice twice per week in China from April 2016 until January 2017. In Canada, she claims to have continued her twice per week group practice and claims to have practiced daily from February 2017 until the RPD hearing (May 2017). Based upon this, the RAD estimated that she would have engaged in approximately 120 at home practices and over 100 group practices in Canada.

[10] Despite the frequency of her practice, the RAD noted that the PA made numerous errors about Falun Gong in her testimony before the RPD. The errors included difficulty naming three of the five fundamental exercises of Falun Gong, misidentifying the purpose of three exercises, and failing to provide the three central tenets of Falun Gong.

[11] The RAD did find that the PA demonstrated some knowledge of Falun Gong as she correctly explained the process of replacing black karma with white virtue and she was able to identify and provide limited details about some exercises.

[12] In its review, the RAD found that the RPD made two errors in its assessment of the claim. First, the RPD's questioning concerning the PA's frequency of practice in Canada was overly microscopic. A simple misunderstanding of the questions explains her apparently inconsistent answers. Second, the RPD erred in its identification of the purpose of the first exercise.

[13] Despite this, the RAD found that the PA still did not possess "a level of religious knowledge that would be expected of someone in [her] position" (*Gao v Canada (MCI)*, 2015 FC 1139 at para 26). The errors and difficulty she experienced in her testimony were not in line with the extent of her alleged practice and could not be solely attributed to nervousness and forgetfulness.

[14] The RAD also considered the photographs submitted by the PA. One photo showed a group practicing Falun Gong however the PA was not clearly shown in the picture. Another photograph showed the PA in front of a Falun Gong banner in Toronto. The RAD concluded that this photograph only establishes that she once stood in front of a banner. Thus, the RAD found that the photographs did not establish that she is a Falun Gong practitioner.

[15] As there were no allegations that the PA's practice of Falun Gong in Canada is likely to come to the attention of Chinese authorities, the RAD concluded that there is no *sur place* claim.

[16] Overall, the RAD held that the RPD did not err in rejecting the Applicants' claims.

Issue and Standard of Review

[17] The sole issue on this judicial review is if the RAD erred in its assessment of the PA's credibility on her Falun Gong knowledge.

[18] The standard of review for the RAD's findings and assessment of evidence is reasonableness (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59; *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47 – 49).

Analysis

[19] The Applicants argue that the RAD's assessment of the PA's level of Falun Gong knowledge was unduly onerous. They argue that the level of knowledge the RAD expected of the PA was too onerous considering she had only been practicing Falun Gong for a short time and the majority of her practice was in China, where her ability to practice was limited.

[20] The Federal Court has been clear that the depth of religious knowledge required to substantiate a claim is at the low end, and the focus of the decision maker should be on the sincerity of belief rather than the depth of knowledge (see *Huang v Canada (Citizenship and Immigration)*, 2012 FC 1002 at paras 10 – 17 [*Huang*]). An overly microscopic analysis of a claimant's religious knowledge comparing her knowledge to misguided idea of what a person in the claimant's circumstances should understand or know is unreasonable (*Lin v Canada (Citizenship and Immigration)*, 2012 FC 288 at para 61).

[21] The RAD's assessment of the PA's knowledge of Falun Gong is best reflected in their own words as follows:

[11] I do not find the Appellants' arguments in this regard to be persuasive. The Principal Appellant alleges that she began practicing Falun Gong regularly in early April 2016. While at first she practiced twice a week at home, after a month she alleges that she joined a group practice twice a week in China. She further alleges that since she arrived in Canada in January 2017. She practices daily at home, and twice a week with a group as of approximately February 2017 (after her alleged practice was known to authorities). This amounts to nearly fourteen months of practice by the time of the refugee hearing on May 29, 2017 - roughly 120 days of daily practice in Canada and over 100 group sessions. She testified that, though practice is restricted in China, she was able to read the Zhuan Falun, a seminal Falun Gong text, and to discuss her experiences with fellow practitioners in China.

[12] Falun Gong is a knowledge-based practice that combines certain key tenets with the physical practice of five exercises; "the foundation of Falun Dafa [Falun Gong] consists of a body of fundamental knowledge essential for the task of undertaking proper cultivation towards higher stages of attainment."

[13] Despite alleging an established and frequent practice, the Principal Appellant testified about Falun Gong with difficulty:

a. When first asked the name of the first exercise, she stated the second exercise. She later corrected herself.

b. Asked to describe the purpose of the first exercise, she testified that it was to turn the law wheel to absorb good things from the outside, and later added to open energy channels inside the body and absorb energy from outside. Conversely, according to Falun Gong's texts, the law wheel does not turn during this exercise.

c. The Principal Appellant also stated that the purpose of the second exercise was also to absorb energy into the body, done via the law wheel turning at the abdomen. She testified this was the only place the law wheel turned. By contrast, the purpose of the second exercise is not to absorb energy, but to open the body and increase wisdom and strengthen supernatural powers by holding the Law Wheel, which turns between the arms in four different positions around the body.

d. I further note that though she was able to name the third exercise and its purpose in broad terms, she made no mention of the law wheel. It is during this exercise that the law wheel is specifically turned at the abdomen by the practitioner.

e. The Principal Appellant also had some difficulty naming the fourth exercise.

f. Finally, asked about the fifth exercise, she stated that the purpose was to absorb energy into the body from outside. As noted by the RFD, this is “more properly characterized as the purpose of the third exercise,” and the fifth is rather to strengthen supernatural powers and the energy field around the body.

g. Overall, the Principal Appellant’s testimony about Falun Gong was relatively vague and lacking in specific detail. She was asked both by the RPD and counsel about Falun Gong’s central tenets or teachings, and gave various answers such as that practitioners are to practice mercy, protect the Dafa, practice consistently, and not give up. Falun Gong has three central tenets: Truth, Compassion and Forbearance. Only when these were specifically listed by counsel did the Principal Appellant agree that these were central ideas. She made no mention of Falun Gong’s recognized practice of meditating to send forth Righteous Thoughts.

[22] A reading of the RAD decision demonstrates that the RAD considered the question of the PA’s knowledge of Falun Gong in detail.

[23] The Applicants rely upon *Huang* where the Court found that the RPD erred by holding the claimant “to an unrealistically high standard of knowledge of Falun Gong and imposed its own understanding of Falun Gong” (*Huang* at para 17). However the applicant in *Huang* claimed to have significantly more experience (4 years) compared to the PA here (14 months). Moreover, the RPD in *Huang* found the applicant to possess “better than average knowledge of

Falun Gong”, and to have only struggled with questions about the philosophies of Falun Gong rather than its practices. In contrast, the RAD in this case, as demonstrated above, found that the PA struggled to answer basic questions about fundamental Falun Gong practices.

[24] In fact the PA’s situation here is most comparable to that of the applicant in *Gao v Canada (Citizenship and Immigration)*, 2017 FC 1156. The applicants in both cases were deemed by the RAD to be “not unsophisticated” and alleged to have practiced Falun Gong for similar amounts of time. In both cases, the RAD noted “that their knowledge was not ‘commensurate’ with their experience” even “considering the period of time they had practiced and the conditions under which they practiced in China”.

[25] Finally, the Applicants’ argument that the RAD failed to assess the PA’s credibility beyond her Falun Gong practice testimony is unsustainable. The RAD specifically addressed and rejected three negative credibility inferences drawn by the RPD regarding other aspects of the PA’s testimony.

[26] In this case it is clear that the RAD independently assessed the evidence and in fact overturned the RPD findings on a number of issues.

[27] In my view, the RAD reasonably doubted the credibility of the PA’s Falun Gong practice. The assessment of her knowledge was not done without considering the surrounding circumstances as noted in paragraph 17 of the RAD decision as follows:

[17] Her explanations for the above errors, namely that she was nervous in some instances and forgot in others, do not reasonably

explain the sheer amount of errors and the degree of difficulty she experienced when speaking about a practice that she risked herself and her family to undertake. I find, as did the RPD, that the Principal Appellant's knowledge of Falun Gong was not commensurate with the level of practice that she alleged. While not highly educated, the Principal Appellant had nine years of education and finished junior high, and over 23 years' work experience as a staff administrator and then office clerk. She travelled alone with her children to Australia, and does not appear to be an unsophisticated individual. She testified that she had had the opportunity to read the Zhuan Falun, and alleged a significant group component to her practice – over 100 group sessions.

[28] Overall the RADs assessment was reasonable and in keeping with the evidence. The Applicants have not identified any reviewable errors therefore this judicial review is dismissed.

JUDGMENT in IMM-1022-18

THIS COURT'S JUDGMENT is that

1. This application for judicial review is dismissed; and
2. There is no question for certification.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1022-18

STYLE OF CAUSE: ZEXUAN LIN, SHUIGEN ZHENG, JINJIA ZHENG (A MINOR), ZIUYUN ZHENG (A MINOR) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

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APPEARANCES:

Elyse Korman FOR THE APPLICANTS

David Joseph FOR THE RESPONDENT

SOLICITORS OF RECORD:

Korman & Korman LLP FOR THE APPLICANTS
Barristers and Solicitors
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario