

Federal Court



Cour fédérale

**Date: 20181121**

**Docket: IMM-125-18**

**Citation: 2018 FC 1172**

**Ottawa, Ontario, November 21, 2018**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**XUEFANG WANG**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Ms. Xuefang Wang (the “Applicant”) seeks judicial review of a decision of the Immigration and Refugee Board, Refugee Appeal Division (the “RAD”), confirming the decision of the Refugee Protection Division (the “RPD”) that she is neither a Convention refugee nor a person in need of protection pursuant to section 96 and subsection 97(1), respectively, of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 (the “Act”).

[2] The Applicant is a citizen of China. She sought protection on the basis of her practice of Falun Gong. Among other things, she challenges the RAD's conclusions that she was not sought by the Public Security Bureau (the "PSB"), that she was not a genuine Falun Gong practitioner in China and that she failed to establish a *sur place* claim on that basis in Canada.

[3] The Minister of Citizenship and Immigration (the "Respondent") submits that the RAD reasonably concluded that the Applicant was not credible and failed to show that she was in need of protection.

[4] The first issue to be addressed is the applicable standard of review.

[5] The appropriate standard of review for this Court when reviewing a decision of the RAD is reasonableness; see the decision in *Canada (Minister of Citizenship and Immigration) v. Huruglica* (2016), 396 D.L.R. (4th) 527 (F.C.A) at paragraph 35. Accordingly, the Court should not interfere if the RAD's decision is intelligible, transparent, justifiable, and falls within a range of outcomes that are defensible in respect of the facts and the law; see the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 at paragraph 47.

[6] The disposition of the *sur place* claim is a question of law and reviewable on the standard of correctness; see the decision in *Ejtehadian v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 158.

[7] I have reviewed the Certified Tribunal Record, including the documentary evidence submitted by the Applicant to the RPD, and considered the submissions of the parties.

[8] The RAD erred, in my opinion, in rejecting the *sur place* claim advanced by the Applicant. It did not address the risk to the Applicant if perceived by the Chinese authorities as a Falun Gong practitioner.

[9] In the result, the application for judicial review is allowed, the decision set aside and the matter remitted to a differently constituted panel of the RAD. There is no question for certification arising.

**JUDGMENT in IMM-125-18**

**THIS COURT'S JUDGMENT is that** the application for judicial review is allowed, the decision is set aside and the matter remitted to a differently constituted panel of the Refugee Appeal Division for re-determination. There is no question for certification arising.

“E. Heneghan”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-125-18

**STYLE OF CAUSE:** XUEFANG WANG v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** AUGUST 15, 2018

**JUDGMENT AND REASONS:** HENEGHAN J.

**DATED:** NOVEMBER 21, 2018

**APPEARANCES:**

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FOR THE APPLICANT

Ms. Aleksandra Lipska

FOR THE RESPONDENT

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