

Federal Court



Cour fédérale

**Date: 20181220**

**Docket: IMM-663-18**

**Citation: 2018 FC 1297**

**Ottawa, Ontario, December 20, 2018**

**PRESENT: The Honourable Mr. Justice Ahmed**

**BETWEEN:**

**WEN LIN LIU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] Wen Lin Liu (the “Applicant”) is a 47 year old citizen of China. On October 11, 2011 she made a refugee claim under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2011, c 27 (the “IRPA”), alleging that she is wanted by the Public Safety Bureau (the “PSB”) for illegal Falun Gong practice and anti-government activities.

[2] On December 28, 2017 the Refugee Protection Division (the “RPD”) of the Immigration and Refugee Board of Canada rejected the refugee claim for reasons including the Applicant’s credibility and authenticity of her documents. On February 22, 2018, the Applicant applied for judicial review.

[3] For the reasons that follow, I will set aside the decision.

## II. **Facts**

[4] The Applicant, a citizen of China, suffered from health issues. Although Falun Gong is an illegal activity in China, she states that she began the practice in 2010 after a friend told her it might improve her health. Her friend also assured her that their practice group took precautions to avoid detection. Despite these precautions, on May 14, 2011 the PSB discovered the underground group practicing a Falun Gong session inside a home. The Applicant was able to escape out the back of the house and hide in a distant relative’s home. Two days later, the Applicant’s husband told her that the PSB had attended to their home to arrest her for participating in illegal Falun Gong practice, participating in anti-communist activities against the Chinese government, and being a member of an evil cult. He also said that the PSB returned the next day, issued a summons for her surrender, and then continued to look for her at other relatives’ homes.

[5] The Applicant says she was very scared. Leaving behind her husband and family, she used a smuggler to exit China. In September 2011, she travelled by bus to Hong Kong, and then took a plane to America using a fake passport and US Visa. She then travelled to Vancouver on foot. She arrived in Canada on October 7, 2011 and made a claim for refugee protection on October 11, 2011.

[6] The RPD heard the refugee claim on November 15, 2017 and its decision demonstrates that it doubted the Applicant's credibility for a number of reasons. For instance, the RPD noted that the summons submitted in evidence does not mention the accusations listed in the Applicant's Personal Information Form ("PIF"). The Applicant explained that the accusations are absent from the summons because they were made orally. However, the RPD also found that based on documentary evidence, a criminal summons would have included information about an interrogation.

[7] The RPD also doubted the Applicant's reasons for practicing Falun Gong. In the RPD's opinion, she would not have risked criminal prosecution by the Chinese Government just because Falun Gong would help her health and she liked the practice. In addition, since the documentary evidence states that family members often suffer mistreatment like detention and torture, the RPD questioned why the Applicant's husband and son did not face any mistreatment. The Applicant replied that the PSB officers "told her husband that their son will have problems in school." When asked why she did not include this information in her PIF, the Applicant did not know what to say. The RPD found that this lack of mistreatment supported its finding that she would not be identified as a Falun Gong practitioner in China.

[8] At the hearing, the RPD and counsel for the Applicant disagreed about the proper test for *sur place* claims and discussed the issue at length. At the RPD's request, counsel submitted post hearing submissions further explaining *sur place* claims and case law. However, the RPD was unconvinced by these submissions and determined that a genuine Falun Gong practice in Canada was not enough to establish a *sur place* claim. Since there was no evidence that her practice of

Falun Gong in Canada had come to the attention of Chinese authorities, nor would she be perceived to be a genuine practitioner upon her return, the RPD rejected her *sur place* claim.

III. **Issue**

1. Is the RPD decision reasonable?

IV. **Standard of Review**

[9] The reasonableness standard of review applies to the RPD's treatment of evidence and findings of fact (*Zuniga v Canada (Citizenship and Immigration)*, 2018 FC 634 at para 11).

V. **Analysis**

- A. *Is the RPD decision reasonable?*

[10] The Applicant argues that the RPD's decision is not based on the evidence. For example, the Applicant says there was no evidence to support the RPD's decision that her reasons for practicing Falun Gong in China (because it helped her health and she liked it) do not correspond to the level of risk she would face if caught by the Chinese authorities. Without evidence, the Applicant submits the RPD decision is based on conjecture and speculation.

[11] The Respondent, however, submits that the RPD determined that the Applicant's evidence is insufficient to support her refugee claim.

[12] I agree with the Applicant. A reasonable decision must be based on the evidence. In this case, the RPD's own opinion led to the conclusion that the Applicant is not someone who would defy the Chinese government by practicing Falun Gong. The RPD had no evidence whatsoever to conclude as it did:

[10] Besides, during the hearing, the [Applicant] explained the reasons why she was practicing Falun Gong, mainly because she had health problems and because she had a friend practicing Falun Gong. I have asked her why distributing leaflets then. She answered that it was because she likes Falun Gong and she wants more people to know about Falun Gong. I then asked her how it is related to her health problems. She answered that Falun Gong helped with her health. I find that the reasons why the [Applicant] was practicing Falun Gong in the PRC does not correspond to someone who would defy the authorities and placing herself in a very dangerous situation, since the Chinese authorities banned this group as an evil cult or an heretical sect and imposed various penalties to those practitioners from prolonged brain transformation class to criminal prosecution.

[Footnotes omitted.]

[13] This bizarre analysis is completely devoid of any evidence to support it. At the judicial review hearing, the Court asked the Respondent about the line of reasoning. The Respondent called this an unfortunate comment but argued that it was a red herring because the panel also had other reasons for finding the Applicant was not credible. The Respondent then pointed the Court to the summons and to the documentary evidence at 151 and 152 of the Certified Tribunal Record (the “CTR”) to argue the summons was questionable.

[14] The Respondent’s characterization of this as a red herring ignores the fact that the Applicant’s practice of Falun Gong in China is a central issue in this case. In addition, the Respondent’s argument about the summons must also fail because the RPD’s analysis is yet another example of it deciding without regard to the evidence. In particular, at paragraph 7 the RPD says it compares the summons to the declaration in the PIF—but as the Applicant points out, the PIF does not make a declaration about the summons’ contents:

[7] During the hearing, I mentioned to the [Applicant] that the content of the document she presented as this summons does not correspond to her declaration in her PIF. In this document, it is

written that, according to the No. 64 regulation of Criminal Procedure Law of the People's Republic of China, the PSB sent out the officer Shi, Shao Long & Yan, Hui Ping summons Liu, Wen Lin living at No. 3 Xi Yang Road, Wu Hang Town, Chang Le City, Fu Jian Province. In this document there is no mention of her activities as a Falun Gong practitioner. Her explanation was that the officers deliver the summons to her husband and they mentioned verbally the reasons why there were looking for her. I find that this explanation is not reasonable and that the content of this summons does not correspond to her declaration in her PIF.

[15] I add that the Applicant provided an abundance of evidence to support her claim, but it was not assessed by the RPD. For example, the transcript within the CTR contains the Applicant's detailed testimony about her Falun Gong practice, including her knowledge of the philosophy of Falun Dafa and various other activities she participated in with other Falun Gong practitioners. The Applicant also provided documents and testimony to establish her identity as a genuine Falun Gong practitioner who is fearful for her life in China if she were to return. Deference is owed to the RPD. But this Court will not give deference to findings not based on the evidence and most certainly not to findings based on speculation or opinion. This decision is outside a range of reasonable outcomes defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

#### VI. **Certified Question**

[16] Counsel for both parties was asked if there were questions requiring certification. They each stated that there were no questions arising for certification and I concur.

#### VII. **Conclusion**

[17] The application for judicial review is granted. The matter shall be reconsidered by a different decision maker.

**JUDGMENT in IMM-663-18**

**THIS COURT'S JUDGMENT is that:**

1. The application is granted and the matter referred back for redetermination by a differently constituted panel.
2. No question is certified.

"Shirzad A."

---

Judge

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

**DOCKET:** IMM-663-18

**STYLE OF CAUSE:** WEN LIN LIU v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 6, 2018

**JUDGMENT AND REASONS:** AHMED J.

**DATED:** DECEMBER 20, 2018

**APPEARANCES:**

Leonard H. Borenstein FOR THE APPLICANT

Alexis Singer FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Leonard H. Borenstein FOR THE APPLICANT  
Barristers and Solicitors  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario