

Date: 20070906

Docket: IMM- 3664-06

Citation: 2007 FC 890

Montréal, Quebec, September 6, 2007

PRESENT: The Honourable Maurice E. Lagacé

BETWEEN:

HONG GE

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), Mrs. Hong Ge applies for judicial review of a decision of the Immigration and Refugee Board, Refugee Protection Division (the Board), dated June 8, 2006, which determined that she was neither a Convention refugee nor a person in need of protection.

Relief Sought

[2] The applicant requests that the Board's decision be referred to a differently constituted panel of the Board for redetermination.

Facts

[3] The applicant, Hong Ge, is a citizen of the People's Republic of China (China). She alleged having a fear of returning to China due to her involvement in an underground Falun Gong (also referred to as Falun Dafa) practice in China.

[4] The applicant's second child was born without a permit on June 21, 2001. As a result, the applicant and her daughter were detained by the Family Planning Office. Her husband paid a large fine in order to secure their release. Due to the shock and an infection, the applicant ran a high fever diagnosed as Retina Hyperaemia. She sought treatment from both western and Chinese doctors, but was unable to obtain relief.

[5] In September 2003, the applicant discussed her illness with a friend who told her about the practice of Falun Gong, and how it could help her health condition. The applicant decided to join the practice of Falun Gong in October 2003. She learned the five sets of exercises from Liu, and later joined the other practitioners in Liu's group. She borrowed a book entitled "Zhuan Falun" from Liu, in order to further understand the practice. The applicant allegedly felt much better after having practiced Falun Gong for six months.

[6] On April 10, 2005, the applicant waited for Liu at a fellow practitioner's home. They had planned to practice Falun Gong together that day. When Liu failed to appear, the applicant called her home and was told that she had been arrested by the PSB. Liu's husband advised the applicant to run away and never call their home again. The applicant then went into hiding at a friend's home. The PSB allegedly tried to arrest the applicant at her home on April 13, 2005, and threatened her husband in order to determine her whereabouts.

[7] The applicant entered Canada with the help of an agent on May 2, 2005. She claimed refugee status three days later. The applicant claimed that while in Canada, she learned that two other members of her group had been arrested. In addition, her husband was being visited by the Chinese authorities, who were asking about her whereabouts.

[8] The applicant's refugee hearing took place on April 11, 2006, and her claim for protection was refused by the Board.

Board's Reasons

[9] The Board determined that on a balance of probabilities the applicant was not a credible and trustworthy witness and was not a Falun Gong practitioner in China and is not being sought by the Chinese authorities to be arrested. The Board also concluded that the applicant had learned her story and some fundamental principles of Falun Gong in order to advance a refugee claim in Canada, but that the credibility of her claim was undermined by some central implausibility findings, especially the conviction and genuineness of her adherence to Falun Gong. The Board found that the applicant

did not face a serious risk of persecution should she return to China and that she was not a person in need of protection. Therefore, the Board refused her claim.

[10] The Board was guided by the following authorities to determine the applicant's credibility:

When an applicant swears to the truth of certain allegations, the allegations are presumed true unless there is a reason to doubt their truthfulness (see *Maldonado v. Canada (Minister of Employment and Immigration)*, [1980] 2 F.C. 302, (1979) 31 N.R. 34 (C.A.)).

Contradictions in evidence may be a valid basis for a negative credibility finding; however even where evidence is uncontradicted, it may not accord with known country conditions (see *Canada (Minister of Employment and Immigration) v. Dan-Ash* (1988), 93 N.R. 33, 5 Imm. L.R. (2d) 78 (F.C.A.)).

When assessing credibility, the Board is entitled to rely upon criterion such as rationality and common sense (see *Shahamati v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 415 (QL)).

A general finding of a lack of credibility on the part of the applicant may extend to all relevant information emanating from his testimony (see *Sheikh v. Canada (Minister of Employment and Immigration)*, [1990] 3 F.C. 238, (1990) 71 D.L.R. (4th) 604 (C.A.)).

A primary way of testing credibility is to compare what is contained in the applicant's PIF narrative and his testimony (see *Castroman v. Canada (Secretary of State)* (1994), 81 F.T.R. 227, 27 Imm. L. R. (2d) 129, (F.C.T.D.)).

[11] While that the applicant's testimony was consistent with her PIF narrative, the Board was not persuaded that the events described therein had taken place since it had plausibility concerns with respect to the applicant's evidence. The applicant demonstrated to the Board the degree of knowledge about Falun Gong that one might normally acquire as a practitioner since 2003 but the

Board was not persuaded that she was a practitioner of Falun Gong, as she did not have other knowledge that a true practitioner would have.

[12] When asked about the consumption of alcohol, the applicant answered that she did not drink because she could not tolerate alcohol and it made her dizzy. The Board found that a true practitioner of Falun Gong would state that she did not drink because Master Li had advised practitioners not to do so. The Board noted relevant documentary evidence in this regard. The Board found that this omission was fatal to the applicant's claim that she had practiced Falun Gong in Canada and in China.

[13] The Board found that the applicant's participation in Falun Gong events since her arrival in Canada merely bolstered her refugee claim. The applicant was asked about the goal of Falun Gong practitioners and she did not refer to the ability of the third eye, nor was she explicit with respect to the "Truth, Compassion and Forbearance" doctrine. Her testimony regarding these matters did not persuade the Board that she was a practitioner of Falun Gong.

[14] The Board had also plausibility concerns with respect to Liu's arrest. The Board did not find it plausible that Liu would be arrested prior to attending at the practice site. The applicant had suggested that Liu may have revealed the applicant's identity while being tortured. The Board did not find this explanation plausible. In addition, there was no evidence that Liu was in detention.

[15] The Board found that the letters from fellow practitioners in Toronto merely bolstered her refugee claim. In addition, the Board was not persuaded that the applicant's difficulties with her eyes caused her to begin practicing Falun Gong.

[16] Finally, the Board cited *Urbanek v. Canada (Minister of Employment and Immigration)* (1992) 17 Imm. L.R. (2d) 153 wherein Justice Hugessen found that the purpose of Canada's refugee system was not to give a convenient route to landed status for immigrants who could not or would not obtain it in the usual way.

Issues

[17] The issues submitted by the parties can be rephrased as follows:

1. Did the Board breach procedural fairness or natural justice?
2. Did the Board err in finding that the applicant lacked credibility?

Legislation

Immigration and Refugee Protection Act (S.C. 2001, c.27)

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

- (a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or
- (b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that

Loi sur l'immigration et la protection des réfugiés,

(L.C. 2001, ch. 27)

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

- a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
- b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa

fear, unwilling to return to that country.

résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

Standard of Review

[18] The Board's findings with respect to plausibility and credibility warrant a high level of deference, and are reviewable on the standard of patent unreasonableness (see *Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315 (F.C.A.) while breaches of procedural fairness or natural justice are subject to review on the standard of correctness (see *Ha v. Canada (Minister of Citizenship and Immigration)*, [2004] 3 F.C.R. 195, 2004 FCA 49).

[19] The Court notes that the applicant did not provide her own affidavit in support of this application for judicial review. Rather, the application included the affidavit of Jacqueline Lewis, a barrister and solicitor from the same law firm as applicant's counsel. In *Turcinovica v. Canada (Minister of Citizenship and Immigration)* (2002), 216 F.T.R. 305, 2002 FCT 164 (F.C.T.D.), the Court held that "where there was no evidence based on personal knowledge in support of an application for judicial review, any error asserted by the applicant must appear on the face of the record".

[20] Therefore the Court will proceed to determine whether the errors asserted by the applicant appear on the face of the tribunal record. The applicant relied upon an excerpt of an uncertified transcript contained in the affidavit of Ms. Lewis in support of her position that the Board had erred in drawing a negative inference from her answers regarding the consumption of alcohol but this excerpt does not demonstrate a reviewable error on the face of the record. The Board's reasons show that it was engaged in questioning and assessing the genuineness of the applicant's adherence to Falun Gong.

[21] Without any context, the excerpt relied upon by the applicant does not demonstrate an error on the face of the record. Therefore the affidavit of Ms. Lewis does not demonstrate a reviewable error on the face of the record.

[22] Did the Board breach procedural fairness or natural justice?

[23] The Board found that the applicant's failure to mention Master Li's views on the consumption of alcohol was fatal to her claim that she had practiced Falun Gong in China and in Canada. The Board noted documentary evidence from the National Documentation Package for China which set out Master Li's views on alcohol.

[24] The hearing transcript reveals that that the Board did not ask the applicant about Master Li's views with respect to the consumption of alcohol. However, the applicant was asked twice as to the reason why she did not drink alcohol. The Board "was under no obligation to alert the applicant at the time of her hearing of its concerns about the weakness of testimony giving rise to implausibilities" (see *Li v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 358 (F.C.T.D.)).

[25] Therefore the Board did not breach the principles of procedural fairness in failing to give the applicant an opportunity to address this concern and therefore the application for judicial review fails upon this issue.

[26] Did the Board err in finding that the applicant lacked credibility?

[27] The applicant failed to convince the Court that the Board erred in failing to set out the standard of knowledge of Falun Gong it expected of the applicant.

[28] In its decision, the Board noted that the applicant seemed to demonstrate the degree of knowledge of Falun Gong that a practitioner would have since 2003. However, the Board determined that the applicant had failed to demonstrate knowledge of other aspects of the practice that a true practitioner would know. Thus the Board noted that the applicant was not explicit with respect to the ability to obtain a third eye and the doctrine of “Truth, Compassion and Forbearance,” nor did she mention Master Li’s views with respect to the consumption of alcohol.

[29] As noted above, the Board found that the applicant’s failure to mention Master Li’s views on alcohol during the hearing was fatal to her claim. The Board cited documentary evidence in support of its finding. It was open to the Board to consider the applicant’s answer to its questions about alcohol consumption when assessing the applicant’s overall credibility.

[30] The Board also found that if the applicant was truly a practitioner of Falun Gong, she would have spoken about the ability to gain a third eye and been more explicit about the doctrine of “Truth, Compassion and Forbearance”, when asked about the goals and the tenets of the practice of Falun Gong.

[31] It was open to the Board to find that the applicant was not sufficiently explicit about certain aspects of Falun Gong doctrine; however it is clear from the hearing record that the applicant did mention the concept of the celestial eye and the “Truth, Compassion and Forbearance” doctrine in the context of Master Li’s book. While not necessarily agreeing with the Board’s finding in this regard, the Court does not believe that this finding can be characterized as patently unreasonable.

[32] The Board was not persuaded that the applicant was motivated to join Falun Gong due to problems with her eyes. But the Board acknowledged the applicant’s documentary evidence regarding the condition of her eyes and did not doubt that she had problems with them. The Board does not support its finding with any evidence, and merely asserts that “the panel does not find this persuasive that this is the reason why the claimant began Falun Gong.”

[33] While the Board’s reasoning with respect to this finding appears somewhat flawed, the Court does not believe that it affects as such its overall negative credibility finding.

[34] The Board found that the circumstances leading to Liu’s arrest lacked plausibility, as did the applicant’s statement that Liu may have revealed her name while being tortured. The Board noted that there was no explanation as to how Liu was discovered and found by the PSB. In addition, the arrest allegedly took place away from the Falun Gong practice site. The Board noted that had there been evidence that Liu was in detention, the claim that she might have revealed the applicant’s name under torture could have been plausible.

[35] In *Valtchev v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776, [2001] F.C.J. No. 1131 (QL), at paragraph 7, the Court stated the following with respect to plausibility findings:

A tribunal may make adverse findings of credibility based on the implausibility of an applicant's story provided the inferences drawn can be reasonably said to exist. However, plausibility findings should be made only in the clearest of cases, i.e., if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant. A tribunal must be careful when rendering a decision based on a lack of plausibility because refugee claimants come from diverse cultures, and actions which appear implausible when judged from Canadian standards might be plausible when considered from within the claimant's milieu. [see L. Waldman, *Immigration Law and Practice* (Markham, ON: Butterworths, 1992) at 8.22]

[36] The Court finds that the Board's plausibility findings were not supported by any documentary evidence. The findings were premised upon the Board's understanding that the circumstances of Liu's arrest were outside the realm of what would reasonably be expected, in that Liu was arrested prior to attending at the Falun Gong practice site, and the practice site was not raided. But given the lack of evidence provided by the applicant regarding the circumstances of Liu's arrest, the Court finds that the Board did not err in finding that the story was implausible.

[37] In any event, having reviewed the Board's decision and regardless of the Board's plausibility findings, the Court concludes that its overall negative credibility and plausibility findings were not patently unreasonable and were sufficient to properly dismiss the applicant's refugee claim.

[38] Therefore the application for judicial review will be dismissed. The parties have submitted no questions for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. The application for judicial review is dismissed.
2. No question is certified.

“Maurice E. Lagacé”

Deputy Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3664-06

STYLE OF CAUSE: HONG GE v. THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: July 26, 2007

**REASONS FOR JUDGMENT:
AND JUDGMENT:** LAGACÉ D.J.

DATED: September 6, 2007

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