

**Date: 20071204**

**Docket: IMM-5376-06**

**Citation: 2007 FC 1274**

**Ottawa, Ontario, December 4, 2007**

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

**BETWEEN:**

**JUAN ZHENG**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**INTRODUCTION**

[1] When reading the transcript of the hearing, it becomes clear that a disconnect exists between that which was seen and heard by the panel and that which was specified in the decision (e.g. corroborative pictures were said to be non-existent when, in fact, they were produced; subsequent to a request for a demonstration of knowledge of Falun Gong practice, Falun Gong movements exhibited before the panel were ignored.)

[2] It is the inherent logic of the tribunal, the first instance decision-maker, that is sought, not that of the Court; however, inherent logic, must be evident even if it is at odds with that of the Court; otherwise, a decision is considered to be patently unreasonable.

## **JUDICIAL PROCEDURE**

[3] This is an application for judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), of a decision of the Refugee Protection Division of the Immigration and Refugee Board (IRB), dated September 1, 2006, wherein, it found the Applicant not to be a Convention refugee or a person in need of protection, pursuant to sections 96 and 97 of the IRPA.

## **FACTS**

[4] The Applicant, Ms. Juan Zheng, is a twenty year old citizen of China. She claims a well founded fear of persecution at the hands of the state authorities due to her perceived political opinion as a Falun Gong member (with a political opinion contrary to that of the state).

[5] Ms. Zheng claimed refugee protection on the basis of her parents being Falun Gong practitioners in China. In addition, since her arrival in Canada, she has become a practitioner of Falun Gong. (Exhibit "A" to the Affidavit of the Applicant, Application Record, pp. 25, 26, 27 and 28; Para. 6 of the Affidavit of the Applicant, Application Record, pp. 15a and 15b.)

[6] Ms. Zheng's father became a Falun Gong practitioner in May of 2003, on the recommendation of a friend that he practice Falun Gong in order to relieve his arthritis. Six months later, Ms. Zheng's father began to practice Falun Gong. Significant improvement to his arthritis had influenced Ms. Zheng's mother, who, then, herself, began the practice of Falun Gong, in September

of 2003. The latter's motivation for practicing Falun Gong was to ameliorate her back condition. (Exhibit "A", above, p. 25.)

[7] Ms. Zheng's parents practiced at home but also took part in underground group sessions which were held once a week at the residence of a fellow practitioner. Ms. Zheng learned to understand that Falun Gong was not an "evil cult" and obtained knowledge of Falun Gong practice from her parents' experience. (Exhibit "A", above.)

[8] On one particular occasion, in April 2005, Ms. Zheng assisted her parents in distributing Falun Gong leaflets. (Exhibit "A", above, p. 26.)

[9] On June 25, 2005, Ms. Zheng received a call from her parents explaining that they would hide at a friend's home for several days; and they requested that she take care of her brothers and sisters during that period. Although frightened, Ms. Zheng told her parents not to worry as she would do whatever was asked of her. (Exhibit "A", above.)

[10] On June 27, 2005, representatives of the Public Security Bureau (PSB) went to Ms. Zheng's home to arrest her parents. The PSB accused her parents of being part of an evil cult. They asked about the whereabouts of her parents and ordered Ms. Zheng to assist them, otherwise, she, herself, would be arrested. (Exhibit "A", above, pp. 26 and 27.)

[11] On July 3, 2005, representatives of the PSB revisited Ms. Zheng's home, repeated that which they had said previously and, this time, ransacked her home. As a result, Ms. Zheng, her brothers and sisters, left home to reside with an uncle. Ms. Zheng, afraid of being arrested, gave thought to leaving China. With the assistance of her parents, she was smuggled out of China to Canada where she claimed refugee protection. (Exhibit "A", above, pp. 27 and 28.)

## **ISSUE**

[12] Based on the evidence of the Applicant, did the panel err in drawing a negative credibility inference?

### **Falun Gong Identity**

[13] The panel found that there was insufficient, credible and trustworthy evidence that Ms. Zheng would face persecution based on her perceived political opinion as a Falun Gong member. (Reasons, Application Record, p. 10.)

[14] In arriving at its finding that Ms. Zheng would not face persecution or a risk to her life based upon her perceived political opinion as a Falun Gong member, the panel noted that there were no letters from the Falun Dafa Organization confirming her participation in group sessions or her having provided financial support to the organization. The panel also noted that Ms. Zheng did not provide any pictures of practice sites, nor did she provide any witnesses to confirm that she practiced Falun Gong. (Reasons, above, pp. 10-11.)

[15] The panel's finding, with regard to whether or not Ms. Zheng would face persecution as a result of her being a Falun Gong practitioner, was erroneous. The lack of corroborative evidence, in and of itself, cannot sustain a negative credibility determination. (*Ahortor v. Canada (Minister of Employment and Immigration)* (1993), 65 F.T.R. 137, [1993] F.C.J. No. 705 (QL).)

[16] Ms. Zheng answered questions concerning the Falun Gong movement. She, also, performed Falun Gong exercises at her Refugee Protection Division (RPD) hearing; however, the panel did not comment on the claimant's answers, nor did the panel discuss the Falun Gong exercises Ms. Zheng performed as requested. (Affidavit of the Applicant, above, Para. 7, p. 15b.)

[17] With regard to the panel's finding that Ms. Zheng failed to produce pictures of practice sites; this is an erroneous finding on the part of the panel. During the course of the hearing, Ms. Zheng did produce pictures which the panel entered into evidence on the day of the hearing, itself. (Affidavit of the Applicant, above, para. 3, p. 15a; Exhibit "B" to the Affidavit of the Applicant, above, pp. 31, 32 and 33.)

[18] The panel clearly ignored evidence in arriving at its conclusions as it categorically stated that there were no pictures of the actual practice, when, in fact, there were.

### **Failure to Produce Flyers**

[19] The panel drew an adverse credibility inference based on Ms. Zheng's not having produced any of the Falun Gong flyers which she had distributed in China. The panel found that, in the

absence of such key documentary evidence, there was insufficient, credible or trustworthy evidence to support her claim for refugee protection. (Reasons, above, p. 11.)

[20] The absence of corroborative evidence does not, in and of itself, form the basis of a negative credibility finding, when, no other reason is stated to doubt the testimony of an Applicant. No reason was provided by the panel to doubt Ms. Zheng's testimony, other than the lack of corroborative evidence. (*Ahortor*, above.)

[21] To draw a negative inference from Ms. Zheng's failure to produce a Falun Gong flyer which she would have distributed in China, defies the inherent logic of her narrative. By the very nature of her activity, if she "distributed" flyers during a crackdown, it is unlikely that she would have kept any of the flyers.

### **Living with Uncle**

[22] The panel, in its reasons, questioned why Ms. Zheng could not now continue to live with her uncle's family. (Reasons, above, p. 11.)

[23] This finding appears to ignore, without adequate explanation, discussion or contention, that Ms. Zheng had become a Falun Gong practitioner in Canada; and, as a result, she would not be able to reside with her uncle's family in China and still continue to practice Falun Gong without being under the threat of serious harm. The panel simply ignored this key evidence in making its finding.

### Statement at POE

[24] The panel made the following finding concerning statements that Ms. Zheng made at the POE:

... The panel believes that the claimant's motivation for claiming refugee status was based on her desire for more personal freedom and financial security, as opposed to being motivated by a well-founded fear of persecution. In the Port of Entry Notes (POE), the claimant testifies that:

I am the oldest and I feel this pressure to support my siblings and to get a job. I loose faith in China. I am embarrassed to live with my uncle. I do not have any fear of returning to China...but people gossip because I live with my uncle.

This testimony is in direct contradiction with later testimony that she feared being arrested. When asked to explain the inconsistency, the claimant testified that:

I was extremely nervous when speaking with the Immigration Officer and did not know why I made those statements, but I am nervous to go back.

(Reasons, above, p. 12.)

[25] In addition to the answer transcribed by the panel in its reasons, when Ms. Zheng was questioned at the RPD hearing regarding her statement at the POE, she testified that she became very nervous in front of the Immigration Officer upon her immediate arrival, as he had put a pair of handcuffs on the table during the questioning session, itself. (Affidavit of the Applicant, above, para. 8, p. 15b.)

[26] In *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35, [1998] F.C.J. No. 1425 (QL), it was held that, when important and relevant evidence,

specific to actual findings, is not even mentioned in a panel's reasons, the findings, then, are considered to have been made without due regard to the evidence itself.

### **Perception as Falun Gong Supporter in China**

[27] The panel found that Ms. Zheng would not be considered a Falun Gong supporter because there was no evidence before the panel that someone had told authorities that her parents were Falun Gong supporters and that the authorities were in fact looking for them. (Reasons, above, p. 13.)

[28] This finding ignores that Ms. Zheng had become a Falun Gong practitioner in Canada and would, therefore, be considered a Falun Gong practitioner, upon return to China. Again, it may be that the panel did not consider this aspect of Ms. Zheng's testimony in making its finding as it did not believe that she had become a Falun Gong practitioner in Canada; however, this finding of the panel appears erroneous as explained above, when discussing the issue of Falun Gong identity.

[29] The panel's finding that there was no evidence that the authorities had been told that Ms. Zheng's parents were Falun Gong supporters and that the authorities were in fact looking for them, is a clear error. In Ms. Zheng's Personal Information Form (PIF), the following is stated:

... On June 27, 2005, the P.S.B. suddenly showed up at my home, wanted to arrest my parents. They accused my parents of being members of the evil-cult, recruiting its member. They questioned their whereabouts, whether there was anyone comes to look for my parents. The P.S.B. ordered us must not conceal my parents' whereabouts, or otherwise, they would arrest us too. They P.S.B. also accused my parents opposing government's ban and disturbing social stability.

(Exhibit "A", above, pp. 26 and 27.)



[30] To the contrary, it appears from evidence on the record that the authorities were looking for Ms. Zheng's parents. Therefore, together with other findings specified above, this constitutes a patently unreasonable finding as it is clearly apparent on the face of the record, itself.

## **CONCLUSION**

[31] It is evident that significant portions of the evidence were either overlooked or inadequately discussed in the reasons. Conclusions, in respect to findings, must be adequately motivated, if reasons are to be considered sufficient.

[32] Due to all of the above, the application for judicial review is allowed and the matter is remitted for redetermination by a differently constituted panel.

**JUDGMENT**

**THIS COURT ORDERS that** the application for judicial review be allowed and the matter be remitted for redetermination by a differently constituted panel.

“Michel M.J. Shore”

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Judge

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

**DOCKET:** IMM-5376-06

**STYLE OF CAUSE:** JUAN ZHENG v.  
THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** November 27, 2007

**REASONS FOR JUDGMENT  
AND JUDGMENT:** SHORE J.

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