

Federal Court



Cour fédérale

Date: 20111208

Docket: IMM-2307-11

Citation: 2011 FC 1436

Ottawa, Ontario, December 8, 2011

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

YONG BIN CAO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] For the reasons that follow, this application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board [Board] determining that the applicant was neither a Convention refugee nor a person in need of protection is dismissed.

Background

[2] The applicant is a citizen of the People's Republic of China [PRC]. In August 2007, his mother was diagnosed with cancer of the uterus. Uncle Lui, a neighbour of the applicant's family introduced the applicant's mother to Falun Gong in an attempt to help her with her health issues.

[3] Although the Falun Gong philosophy has been illegal in the PRC since 1996, the applicant's mother nevertheless began practicing it. With the applicant occasionally acting as a lookout, she would practice with Uncle Lui and his group on the weekends. She would also practice alone in her home during the week. The positive effects were noticeable by all, including the mother's doctor.

[4] In December 2007, the applicant joined his mother and the group and started practicing the philosophy. On September 7, 2008, after almost a year of practice, the Public Security Bureau [PSB] raided Uncle Lui's home while the group was practicing. Although the applicant managed to escape, his mother was arrested.

[5] There is no evidence that the PSB was looking for the applicant at the time, but at his father's request, he stayed with his aunt. The PSB went to the family's home and informed his father that his mother had been arrested and was being "rehabilitated." The PSB entered the home and seized Falun Gong books from the mother's room.

[6] On November 27, 2008, with the assistance of his father and a smuggler, the applicant came to Canada. On June 2, 2009, he learned that the PSB had again attended the family home; this time for the purpose of finding him. He filed for refugee protection on June 11, 2009.

[7] The Board determined that Mr. Cao was not credible and trustworthy regarding specific aspects of his testimony. It also found that the knowledge he had of Falun Gong was only acquired in Canada to support a fraudulent refugee claim. The following aspects of his testimony led the Board to conclude that he was not credible.

[8] The Board noted that the applicant had no knowledge of any proposed escape plan in the event that the practice site was raided. It noted that the escape plan had been outlined and explained to the applicant's mother, but that she had not shared the information with him. The Board found that it was unreasonable for the mother to not have shared this information in the ten months that he practiced with the group.

[9] The Board stated that although the applicant was given a number of opportunities to identify what other actions the PSB had taken when they went to the father's home on the days that followed the raid, it was only after several of these opportunities that the applicant stated that Falun Gong books had been seized. The Board found that since the seizure would have been evidence of the mother's direct involvement in Falun Gong, as well as justification of the mother's arrest, it was unreasonable that the applicant would have forgotten this.

[10] The Board cited documentary evidence that provides that "[i]f [Falun Gong] practitioners do not cooperate with the authorities, their family members are subject to punishment as well

....[that] includes harassment by the police (random visit by police to the home), arbitrary interrogation, losing [a] job, losing [the] chance of promotion, losing [a] pension/state housing, etc.” The Board noted that the PSB was aware of the applicant’s involvement in Falun Gong and that they allegedly attended at his home in search of him on June 2, 2009. The Board found that it was unreasonable and not plausible that there have been no repercussions at all for the applicant’s father.

[11] The Board also questioned the applicant’s knowledge of Falun Gong and determined that while he did have “a basic grasp of the history, concepts and beliefs” he was not “a genuine Falun Gong practitioner or supporter.”

[12] The Board noted that, when asked when Master Li, the founder of Falun Gong, left China, the applicant answered 1999 before correcting himself and saying it was in 1996. According to the Board, the correct answer was 1996. The Board also noted that the applicant failed to correctly identify in which city the founder of Falun Gong currently resides. Moreover, the applicant was not able to give significance to the events that occurred on January 23, 2001. The Board stated that on that date, a well publicized incident occurred when a number of Falun Gong followers set themselves ablaze in a protest attempt on Beijing’s Tiananmen Square. The Board determined that the applicant was not familiar with a number of the significant dates and events that one would expect a Falun Gong adherent to know.

[13] The Board found that the applicant’s definition of “evil cultivation” did not correspond with the one found in *Zhuan Falun* written by Master Li. The Board noted that the applicant

indicated that “evil cultivation” means ridding oneself of toxins and referenced “evil thinking” whereas Lecture Five of the *Zhuan Falun* describes “evil cultivation” as the pursuit of fame, interest and money by some people or that it is “karma”, a black substance of negative energy. The Board did note that the applicant was aware that “karma” was a black matter and that a person can accumulate a lot of it if the person does bad things.

[14] The Board found that although the applicant could correctly name the five elements discussed in *Zhuan Falun* he did not remember what would happen if one was able to transcend them.

[15] The Board then noted other aspects of the applicant’s testimony which correctly corresponded with the philosophy. He correctly identified all five Falun Gong exercises, he was aware that one of the exercises wants you to imagine yourself between two large empty barrels, and he knew the names of the movements associated with Exercise One.

[16] In an attempt to further explore the applicant’s knowledge, the Board asked the applicant to stand at the back of the room and perform the third of the five Falun Gong exercises. The Board observed that the applicant correctly performed all of the associated movements, but that during the first of the three required repetitions, he did not do one movement the correct number of times. The applicant admitted having missed one of the movements “due to stress.” The Board stated that it did not expect these errors from an experienced Falun Gong practitioner.

[17] Although the applicant came to Canada in November 27, 2008, he did not begin practicing with a group in Canada until May of 2009. The Board found that since Master Li indicates that practicing in groups is beneficial, it would be unreasonable for a true practitioner to not seek out a group for that length of time. The Board also noted that the applicant has only attended one Falun Gong event since his arrival, that event being the May 13, 2010 Parade in Toronto.

[18] For those reasons, the Board found that the applicant was not committed to the practice, beliefs and concepts associated with Falun Gong.

Issues

The applicant submits the following issues:

1. Did the Board err in its determination that the applicant was not being sought by the Chinese authorities for his participation in Falun Gong activities in China?
2. Did the Board err by applying too high a test for establishing knowledge of Falun Gong?
3. Did the Board err by basing its findings regarding the applicant's Falun Gong knowledge on information contained in a book that was not in evidence in the proceeding?

Analysis

[19] The first and second issues involve factual findings and are reviewable under the reasonableness standard. The third issue is a question of procedural fairness and is reviewable under the correctness standard.

[20] Under the first issue the applicant submits that, contrary to the Board's finding, his father did face repercussions for his wife's and son's involvement in Falun Gong. He refers to the documents cited in the Board's decision which states that "[t]he punishment [to family members of Falun Gong practitioners] includes harassment by the police (random visit by police to the home), arbitrary interrogation, losing [a] job..." and notes that his father was visited and questioned by the PSB. Therefore, he submits, that action amounts to a repercussion supported by the documentary evidence and the Board's conclusion otherwise was unreasonable.

[21] However, the record discloses that the applicant himself at the hearing before the Board gave evidence that his father experienced no repercussions.

MEMBER: Have there been any repercussions for your father?

CLAIMANT: No.

MEMBER: Nothing has happened to him, he has not been denied health or to attend medical --nothing has been denied of him any services at all?

CLAIMANT: No. Because my dad did not practice Falun Gong so they cannot penalize him.

[22] The Board can hardly be faulted by the applicant for taking him at his word. Its finding in this respect was not unreasonable.

[23] With respect to the second issue, the applicant submits that that the Board's decision contradicts its finding that "the claimant had a basic grasp of the history, concepts and beliefs associated with Falun Gong." The applicant's position is that in so finding the remainder of the Board's examination of his knowledge of the details of the Falun Gong practise and historical detail was irrelevant and unnecessary. I disagree.

[24] There is a significant distinction between having knowledge of the basic history, concepts and beliefs of a religion and being an adherent of that faith. For example, the Board Member in this case clearly has knowledge of the basic history, concepts and beliefs of Falun Gong, but one cannot deduce from that that he or she is a practitioner of Falun Gong. It was for this reason that the Member engaged in thorough questioning, including asking the applicant to perform Falun Gong exercises. This was relevant to the real issue in dispute – whether the applicant had been a Falun gong practitioner in PRC.

[25] The applicant submits that the errors or deficiencies in his evidence were "slight" and the Member overlooked the many areas where he was able to respond correctly to the Member's questions. I do not necessarily share the view that the errors and deficiencies were slight, nonetheless, there were more than a few and the applicant is really arguing with the weight the Member gave to certain aspects of his evidence. That is not a matter for the Court on review unless the Member's characterization was perverse or unless the record indicates that the Member emphasised microscopic errors in order to find fault and a lack of credibility. Reading the decision as a whole, I am unable to reach such a view of the Member's analysis. His concerns regarding the mother's failure to advise her son of the escape plan, the applicant's

failure to join a Falun Gong group for such a prolonged period, and his failure to know some of the fundamentals of the movement of which he claimed to be an adherent were sufficient bases to support the credibility finding that was reached.

[26] On the third and last issue, it is submitted that the Board erred by basing its findings regarding the knowledge of Falun Gong on a comparison between the oral testimony and the *Zhuan Falun* when the book was not part of the evidence and should therefore not have been relied upon.

[27] I agree with the submissions of the respondent that *Zhuan Falun* is the fundamental book of Falun Gong; the applicant's submission is equivalent to a Christian complaining that they were asked questions regarding the Bible.

[28] The Court has held that when evidence is available from public sources, there is no obligation for the Board to inform the applicant that it is going to be relied upon in the decision: *Mancia v Canada (Minister of Citizenship and Immigration)*, [1997] FCJ No 120. Given the context of the refugee claim, I do not think either the applicant or his counsel was taken by surprise with the Board's reference to this book. The applicant even admitted to having read the book prior to the hearing.

[29] Neither party proposed a question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed and no question is certified.

“Russel W. Zinn”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2307-11

STYLE OF CAUSE: YONG BIN CAO v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 21, 2011

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

DATED: December 8, 2011

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