

Federal Court



Cour fédérale

**Date: 20120418**

**Docket: IMM-6063-11**

**Citation: 2012 FC 452**

**Ottawa, Ontario, April 18, 2012**

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

**BETWEEN:**

**JING ZHAI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The Applicant, Jing Zhai, seeks to set aside a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) rendered orally on July 20, 2011 with written reasons following on August 10, 2011. The Board found she was neither a Convention refugee nor person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA).

[2] For the reasons set out below, the application is dismissed.

I. Facts

[3] The Applicant is a citizen of China. She filed a refugee claim based on her fear of persecution as a practitioner of Falun Gong.

[4] She initially came to Canada as a student at the University of Guelph on August 25, 2009. In her transition to the country, she fell into depression and developed physical and mental symptoms, such as anxiety. She claims that a friend suggested trying Falun Gong to deal with these issues in September 2009.

[5] She sent materials to her mother back in China regarding Falun Gong. When police searched the home following an unrelated incident, she alleges they found these materials. On May 4, 2009, the Applicant alleged receiving an email from a relative claiming that the Public Security Bureau (PSB) was looking for her.

II. Decision under Review

[6] The Board's assessment focused on credibility. Considering that the Applicant demonstrated little knowledge of business education, the Board concluded, on a balance of probabilities, that she did not possess any diploma in business studies from an advanced program in China and her application for a study permit on that basis was obtained through fraudulent misrepresentation.

[7] The Board noted that the Applicant was not aware of the entry requirements for the MBA program at the University of Guelph that she claimed she wanted to pursue following her language training. It rejected that she would not make inquiries in this regard or that she left all of these arrangements to an agent. As a consequence, the Board found that she never had any real intention of pursuing anything more than English as a Second Language courses.

[8] It was considered implausible for the Applicant to seek out Falun Gong as opposed to western medicine when she knew it was dangerous to do so in China. The Board emphasized that the friend she claimed introduced her to Falun Gong had not provided any corroborating reference letters. The Board was similarly puzzled by information that she practiced Falun Gong in Toronto as opposed to Guelph. It was also implausible that she would put her family at risk by sending Falun Gong materials that could lead to problems, irrespective of her mother's health difficulties.

[9] The Board gave little or no weight to the Applicant's documentation and determined there was "no credible and trustworthy evidence" put forth to advance her claim. The Board simply did not believe the Applicant was being sought by the PSB. It concluded:

[39] For all the foregoing reasons, based upon my analysis I find the claimant was never a genuine student in this country except in pursuing the ESL courses she had prepaid before coming here. She never, on a balance of probabilities, had any real or genuine intention of pursuing graduate management studies at an MBA level, and her student visa was obtained substantially to enter this country on any available basis.

[40] I lack credible or trustworthy evidence that she was ever a genuine Falun Gong practitioner. I do not believe that she would necessarily practice any Falun Gong were she to return to China today. On a balance of probabilities I find that the claimant has

participated in Falun Gong activities in this country in order to substantiate a manufactured claim to be a Convention refugee. [...]

### III. Issues

[10] The Applicant raises the following issues:

- (a) Did the Board err in its assessment of the Applicant's credibility?
- (b) Did the Board err by failing to address whether the Applicant was a genuine Falun Gong practitioner?

### IV. Standard of Review

[11] Questions of fact and credibility are reviewed according to the reasonableness standard (see *Aguirre v Canada (Minister of Citizenship and Immigration)*, 2008 FC 571, [2008] FCJ no 732 at para 14).

[12] Applying this standard, the Court will only intervene where the decision fails to demonstrate the existence of justification, transparency and intelligibility and falls outside the range of possible, acceptable outcomes (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

V. Analysis

[13] The Applicant contests the Board's negative credibility findings as based on details that do not go to the heart of her claim. In particular, the Board focused on the Applicant's education and unsatisfactory answers regarding her courses. According to the Applicant, it was unreasonable to expect that she would answer questions as to course content in detail and to compare Canadian and Chinese educational systems. It was also understandable that since the Applicant did not speak English she would rely on an agent.

[14] I am not persuaded, however, that this Court should interfere on that basis with the Board's credibility findings, an area in which it is entitled to significant deference. Although the Board conducted a rather probing examination of the Applicant's educational background and plans, it was reasonable to expect that she would be able to provide at least some further details and make negative credibility findings from her failure to do so. I note that these findings can be established on "implausibilities, contradictions, irrationality and common sense" (see *Mubiayi v Canada (Minister of Citizenship and Immigration)*, 2008 FC 562, [2008] FCJ no 719 at paras 21; *Shahamati v Canada (Minister of Employment and Immigration)*, [1994] FCJ no 415 (CA)).

[15] The Applicant's arguments amount to a disagreement with the Board's assessment of her situation and conclusion. In this respect, the Court cannot assist the Applicant.

[16] The Board's focus on the Applicant's educational background and plans may initially seem to distract from the overall claim. In this context, however, it was justifiable for the Board to place

emphasis on this issue as it was part of the series of events that led the Applicant to come to Canada and claim refugee status based on the practice of Falun Gong. The Board's overall assessment was that the Applicant sought any basis to enter the country and participated in Falun Gong "to substantiate a manufactured claim to be a Convention refugee."

[17] Moreover, this Court has previously accepted general lack of credibility findings based on discrepancies not directly related to a central aspect of a claim (see for example *Manoharan v Canada (Minister of Citizenship and Immigration)*, 2003 FC 871, [2003] FCJ no 1125 at para 14; *Qasem v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1182, [2002] FCJ no 1618 at para 48; *Feng v Canada (Minister of Citizenship and Immigration)*, 2010 FC 476, [2010] FCJ no 556 at para 13).

[18] The Applicant also takes issue with the Board's findings related to her participation in Falun Gong. According to the Applicant, it was unreasonable for the Board to imply that she would have sought western medical services before turning to Falun Gong when she explained she felt more comfortable with traditional Chinese medicine. Similarly, the Board rejected her explanation that she thought it would be safe to send materials to China based on assurances from a Canada Post employee. Any discrepancy in practicing Falun Gong in Toronto as opposed to Guelph did not represent a significant omission, particularly since the friend that introduced her to it practiced in Toronto.

[19] As with the Board's other credibility findings, I am prepared to accept that this approach was reasonable in the circumstances. The Applicant cited the case of *Kauser v Canada (Minister of*

*Citizenship and Immigration*), 2012 FC 259, [2012] FCJ no 283 in support of his position that the decision should be set aside. However, in my view, this case is clearly distinguishable on the facts from that decision.

[20] As the Respondent's submissions suggest, the Board justifiably questioned why the Applicant did not seek out other medical services, such as the university health services, prior to practicing Falun Gong that was considered dangerous in China. The failure to provide a corroborating letter from the individual who allegedly introduced her to Falun Gong could also lead to a negative inference as to credibility (see *Matsko v Canada (Minister of Citizenship and Immigration)*, 2008 FC 691, [2008] FCJ no 884 at para 14; *Bin v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1246, [2001] FCJ no 1717 at para 21). In addition, the Applicant's reliance on an assurance from a Canada Post employee that materials would not be opened and endanger her family reasonably seemed implausible.

[21] It was within the range of possible, acceptable outcomes for the Board to determine that the Applicant had not provided "credible and trustworthy evidence" in light of several issues associated with the details relating to her situation.

[22] For this reason, the second issue raised by the Applicants is irrelevant. Having found that the Applicant's practice of Falun Gong was not genuine, the Board implicitly addressed that the there was no serious possibility she would be persecuted on return to China.

VI. Conclusion

[23] Since the Board's credibility findings were reasonable in the circumstances, the application for judicial review is dismissed.



**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application for judicial review is dismissed.

“ D. G. Near ”

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Judge

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

**DOCKET:** IMM-6063-11  
**STYLE OF CAUSE:** JING ZHAI v MCI

**PLACE OF HEARING:** TORONTO  
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**REASONS FOR JUDGMENT  
AND JUDGMENT BY:** NEAR J.

**DATED:** APRIL 18, 2012

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