

Federal Court



Cour fédérale

**Date: 20131010**

**Docket: IMM-10227-12**

**Citation: 2013 FC 1028**

**Toronto, Ontario, October 10, 2013**

**PRESENT: The Honourable Madam Justice Simpson**

**BETWEEN:**

**YINGZHI LIU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**  
**(delivered orally)**

[1] This application for Judicial Review of a decision of the Immigration and Refugee Board (the Board) dated October 18, 2012 deals with a refugee claimant who alleges that he practiced Falun Gong in China. It is not contested that the Board reasonably concluded that, as a result of serious problems with his testimony about events in China, his evidence on that subject was rejected and his general credibility was diminished.

[2] Against that background two issues are raised:

1. In deciding whether the applicant's practice of Falun Gong in Canada was genuine did the Board apply a standard of proof more onerous than a balance of probabilities?
2. In deciding whether the applicant's practice of Falun Gong in Canada was genuine did the Board prejudge the issue?

*Issue 1*

[3] At paragraph 12 of his decision the Board said:

[12] In the context of my finding regarding the claimant's alleged Falun Gong practice in China, I further find that his general credibility is in doubt. The Federal Court has indicated that it is reasonable if a claimant's testimony regarding events in China or that is in the claimant's home country, is found not to be credible, it is reasonable for the RPD to raise the bar regarding a judgment concerning the genuineness of practice in this country. I, therefore find, on a balance of probabilities, that it is reasonable to assume that a person who was not a Falun Gong practitioner in China when he arrived in this country would not become a practitioner upon arrival other than to support a fraudulent claim for protection.  
[My emphasis]

[4] The Board did not identify the Federal Court decision to which he referred and he paraphrased its conclusion. The question is what the Board meant by the phrase "raise the bar." The applicant says it means that he applied an improperly high standard of proof. However, in my view the Board was merely saying that, once an applicant is found to have lost general credibility it becomes more difficult for him to satisfy the Board on the proper standard of proof that his evidence is truthful. Because there is a reasonable way to interpret the Board's statement which does not involve an error, it is my view that such an interpretation should be accepted.

*Issue 2*

[5] The applicant acknowledges that Falun Gong was central to his claim and that the Board was therefore obliged to question him about his knowledge of its practices.

[6] However, once the Board found him lacking in general credibility the applicant says the questioning shows that it was a foregone conclusion that the refugee claim would be dismissed because:

- i) If his answers were poor the finding of a lack of general credibility would be reinforced.
- ii) If his answers were accurate the Board could nevertheless dismiss them as irrelevant given the finding of a general lack of credibility.

[7] The Board took the second approach in this case when it said at paragraph 11 of its decision:

[11] The claimant was asked a number of questions regarding Falun Gong theory and practice. He answered most of them correctly but his responses to questions regarding the nature of cultivation and attachments, were vague and only partial. Merely being able to answer a few basic questions regarding Falun Gong theory and practice is not in itself a satisfying basis for judging the genuineness of his Falun Gong identity.

[8] I have concluded that the Board was obliged to question the applicant about Falun Gong's practice and the simple fact that such questions were asked – without more – cannot be the basis for a finding that the Member prejudged the question of whether the applicant's practice in Canada was genuine. As well I do not accept the applicant's submissions that the claim would necessarily be dismissed. In my view, it was open to the Board to conclude that the applicant displayed such an in-

depth knowledge of Falun Gong and a commitment to the practice that, even though he had not practiced it in China he had become a genuine practitioner in Canada.

*Certification*

[9] No question was post for certification.

**ORDER**

**THIS COURT ORDERS that** for these reasons the application for judicial review is hereby dismissed.

“Sandra J. Simpson”

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Judge

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

**DOCKET:** IMM-10227-12

**STYLE OF CAUSE:** YINGZHI LIU V THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 10, 2013

**REASONS FOR ORDER AND  
ORDER:** SIMPSON J.

**DATED:** OCTOBER 10, 2013

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