

Federal Court



Cour fédérale

**Date: 20141023**

**Docket: IMM-4321-13**

**Citation: 2014 FC 1010**

**Toronto, Ontario, October 23, 2014**

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

**BETWEEN:**

**YUAI LIANG**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**ORDER AND REASONS**

[1] The Applicant, a citizen of China, applies for refugee protection in Canada for herself, her husband, and their daughter, as a past Falun Gong practitioner in China, and as a current practitioner in Canada. The Applicant's claim is based on subjective and objective fear that, should she be required to return to China, she will suffer more than a mere possibility of persecution under s. 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27, or probable risk under s. 97.

[2] By a decision dated June 3, 2013, the Refugee Protection Division of the Immigration and Refugee Board (RPD) rejected the Applicant's claim on a negative finding of credibility with respect to the evidence tendered by the Applicant. I find that, with respect to the present Application, the following findings of the RPD are key:

Having found that the claimant was not a practicing Falun Gong practitioner in China, the panel must consider whether the claimant is a genuine practicing Falun Gong practitioner in this country. Having previously found the claimant's testimony with regard to her Falun Gong affiliation in China not credible, the panel finds, on a balance of probabilities, and in the context of all of the findings and negative inferences drawn above, that her claim that she was a Falun Gong practitioner in China was fraudulent. The claimant has alleged that her desire to initiate the practice of Falun Gong took place in China. She alleges her continued practice of her alleged belief system in Canada is based on her adherence to the practice in China.

Having found that she was not a Falun Gong practitioner in China and having no evidence of conversion in Canada, the panel finds, on a balance of probabilities, and in the context of the findings noted above, that the claimant joined a Falun Gong group in Canada only for the purpose of supporting a fraudulent refugee claim. In the context, as noted above, and on the basis of the totality of evidence disclosed and in the context of the claimant's knowledge of Falun Gong, the panel finds that the claimant is not a genuine adherent of Falun Gong, nor would she be perceived to be in China.

[Emphasis added] (Decision, paras. 48 and 49)

[3] A key feature of the Applicant's claim is expressed in the following *sur place* claim argument advanced before the RPD:

With respect to the claimants' affiliation with Falun Gong in Canada, it is submitted that even if the Panel were to have concerns with respect to the claimants' testimony concerning the events in China, the member has to consider whether or not the claimants are genuine Falun Gong practitioners in Canada and would therefore face persecution based on their identities as a Falun Gong practitioner. In this respect, it is my submission that

the Board needs to be forward looking and that the claimants have provided evidence in support of their ongoing practice of Falun Gong in Canada and their continued adherence to their belief system.

The claimants provided corroborative evidence of their practice of Falun Gong in Canada, such as an abundance of photographs of the claimants at Falun Gong events.

When you look at the totality of the evidence presented, I would submit that there was enough credible evidence before the Panel to find that they are in fact a Falun Gong practitioner as of today's date.

Further, I would submit that there is sufficient credible and consistent evidence before the Panel for it to find that these particular claimants are of somebody who is of interest to the PSB and should they return to China.

With respect to the claimants' objective fear, it is submitted that the documentary evidence easily resolves this issue. The documentary evidence is unequivocal in terms of the treatment of Falun Gong practitioners in China and the fact that the PSB does actively pursue them for arrest and that they are sentenced. As such, the claimants would face more than a mere possibility of persecution should they return to China today.

(Tribunal Record, p. 116)

[4] But for the last phrase emphasised above in paragraph 49 of the decision, which is a finding unsupported by the evidence and is, therefore, speculative, the RPD rejected the Applicant's claim without addressing the Applicant's *sur place* argument. In my opinion, the Applicant's *sur place* claim was vitally important, and as a result, I find that the RPD's decision was rendered in breach of the duty of fairness owed to the Applicant.

**ORDER**

**THIS COURT ORDERS** that the decision under review is set aside, and the matter is referred back for redetermination by a differently constituted panel.

There is no serious question to certify.

“Douglas R. Campbell”

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Judge

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

**DOCKET:** IMM-4321-13

**STYLE OF CAUSE:** YUAI LIANG v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 22, 2014

**ORDER AND REASONS BY:** CAMPBELL J.

**DATED:** OCTOBER 23, 2014

**APPEARANCES:**

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