

Federal Court



Cour fédérale

**Date: 20150529**

**Docket: IMM-3167-14**

**Citation: 2015 FC 693**

**Ottawa, Ontario, May 29, 2015**

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

**BETWEEN:**

**XUWEN GAN  
LIFEI ZHU AND YUXI GAN**

**Applicants**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicants are a family from China. The mother, Lefei Zhu, is a Falun Gong practitioner. The Refugee Protection Division Member found that she was not credible and thus denied her claim and those of her family who had relied on her claim.

[2] The Member had more than one issue with her evidence leading him to the view that she was not a credible witness; however, the principal reasons for his finding was that “it is not

plausible that the female claimant would risk the consequences inherent in joining a Falun Gong practice group, rather than finding another solution to her alleged health problem.”

[3] I find this implausibility finding to be unreasonable, for the reasons that follow. Because this finding coloured the Member’s assessment of her remaining evidence, it is not safe to rely on the decision. The applicants’ claims must be re-examined.

[4] In 2004, Ms. Zhu suffered from headaches and insomnia. She testified that she came to believe that they were caused by her boyfriend leaving her and she was suffering from heartbreak. She sought assistance from a doctor who lived next door. He treated her with traditional Chinese medicines and Western medicines, but they did not help. Her aunt, who had been a Falun Gong adherent for many years, encouraged her to start practicing Falun Gong to purify her body and restore her health. Ms. Zhu began practicing Falun Gong secretly, even though she knew that it was a banned practice in China.

[5] On October 9, 2011, the Chinese Police [PSB] discovered one of their secret practicing sites and three members of their group were arrested, including Ms. Zhu’s aunt. Ms. Zhu was able to escape but went into hiding at the home of a friend. The police came to the home of her husband the next day and arrested him. He was beaten, interrogated and released the next day.

[6] The Member’s implausibility finding rested on other findings, as follows: (i) It was not believable that Ms. Zhu would join the Falun Gong given the risks involved; Ms. Zhu’s headaches and insomnia, are not uncommon health conditions, are easily treatable, and she only

made cursory attempts at solving these health problems; using Falun Gong to treat these health conditions is not sufficient motivation to compel a reasonable person to deliberately place herself and her family in jeopardy; and it was not credible that Ms. Zhu did not seek further medical attention at a hospital for her health concerns.

[7] The respondent submits that the Member's finding that it was not believable that Ms. Zhu would join the Falun Gong given the risks associated with joining and her motivating factor being common health conditions like headaches and insomnia was a reasonable finding open to him. The respondent submits that this case is akin to this court's decision in *Lin v Canada (Minister of Employment and Immigration)*, 2008 FC 1052 [*Lin*] at para 19, where Justice Teitelbaum wrote:

The applicant further takes issue with the Board's finding that given the likelihood of capture and severe punishment, it was implausible that the applicant would take up Falun Gong to reduce stress. The applicant argues that the fact that people are still being arrested in China for practising Falun Gong is prima facie evidence that people are still taking up the practice to create tranquility, despite fear of capture. It was not unreasonable for the Board to draw this negative inference. Firstly, the apprehension of Falun Gong practitioners is not prima facie evidence of the motivation of those practitioners. Secondly, as the respondent submitted, a negative inference can be reasonably drawn where it is implausible that a person would act in a way to put him and his family in harm's way (*Rani v. Canada*, [2006] F.C.J. No. 94, 2006 FC 73). Thirdly, when assessing credibility, the Board is entitled to rely upon criterion such as rationality and common sense (see *Shahamati v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 415). In the case at hand it was reasonable for the Board to draw a negative inference from the implausibility that a person would begin to practice Falun Gong to reduce stress when the risk associated with the practice would likely cause additional stress. (emphasis added)

[8] In my view, *Lin* is distinguishable and does not support the respondent's submission. In *Lin*, the court found it to be implausible that a person would commence a practice to reduce stress when that practice would most likely increase one's stress. Here, the Member found it implausible that the female claimant would undertake a practice that could put her family at risk, rather than further seeking out medical help.

[9] The respondent also relies on my decision in *Jiang v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1067 [*Jiang*] which reviewed a decision of a failed claimant who had taken to Falun Gong rather than seeking medical assistance for her depression. In addition to other findings, including embellishment, it seemed to the Board "reasonable that she would have investigated alternatives rather than simply accepting the risk of practicing Falun Gong." At paragraph 16, I observed: "I cannot say that the Member's view that a well-educated person would first try to address depression, a condition that is medically treated (a fact not challenged by the applicant), through legal means first before resorting to a practice that could subject her to arrest and imprisonment is unreasonable."

[10] *Jiang* is quite dissimilar to the facts before the court in this application. First, Ms. Zhu is not well-educated. The record shows that she attended school only to Grade 9. More importantly, unlike Ms. Jiang, Ms. Zhu did try both Chinese and Western medical treatment before she resorted to Falun Gong and then did so only because the medical treatments had not been effective.

[11] This court has frequently cautioned Members to resist implausibility findings except in well-defined situations. Justice Rennie in *Chen v. Canada (Minister of Citizenship and Immigration)*, 2015 FC 225 notes:

Caution must be exercised when rejecting evidence on the basis of plausibility; *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776, para 7. There are two reasons for this. First, it is inherently subjective. Second, as I noted in *Ndjavera v Canada (Citizenship and Immigration)*, 2013 FC 452 at para 11: "Refugee claimants come from diverse backgrounds and the events described in their testimony are often far removed from the ordinary life experience of Canadians. What appears implausible from a Canadian perspective may be ordinary or expected in other countries."

[12] The situation before the Member does not fall within an exception to this general principle. Here the Member had the evidence of a woman who was educated (but not well-educated), who was devastated by the loss of her boyfriend, who sought medical treatment from a doctor living next door, who tried both Chinese and Western medical treatments for some three months, whose conditions persisted, and who had an aunt who had practiced Falun Gong for many years without incident persuade her that it would help. In that scenario, I fail to see how trying Falun Gong could be said to be implausible, even knowing that it was outlawed and put her potentially at risk.

[13] I accept that some of the Member's other concerns regarding credibility of Ms. Zhu and her husband are reasonable; however, as the Member's main credibility finding was based on the unreasonable implausibility finding, I cannot say that the result would necessarily have been the same had it not been made. Accordingly, this application must be allowed.

[14] Neither party proposed a question for certification, and I see none.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application is allowed, the decision of the Refugee Protection Division is set aside and no question is certified.

"Russel W. Zinn"

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Judge

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

**DOCKET:** IMM-3167-14

**STYLE OF CAUSE:** XUWEN GAN ET AL v MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MAY 7, 2015

**JUDGMENT AND REASONS:** ZINN J.

**DATED:** MAY 29, 2015

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