

Federal Court



Cour fédérale

**Date: 20190212**

**Docket: IMM-2766-18**

**Citation: 2019 FC 185**

**Toronto, Ontario, February 12, 2019**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**JIN RONG KANG**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Mr. Jin Rong Kang (the “Applicant”) seeks judicial review of the decision of the Immigration and Refugee Board, Refugee Protection Division (the “Board”) dismissing his application for protection as Convention refugee or person in need of protection, pursuant to section 96 and subsection 97(1), respectively of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”).

[2] The Applicant, a citizen of China, sought protection on the basis of his status as a Falun Gong practitioner. The Board determined that he was not a genuine Falun Gong practitioner in China or in Canada and made other implausibility findings against him.

[3] The decision of the Board in this case is reviewable on the standard of reasonableness; see the decision in *Ye v Canada (Citizenship and Immigration)*, 2014 FC 647 at paragraph 18.

[4] According to the decision in *Dunsmuir v New Brunswick*, [2008] 1 S.C.R. 190, the standard of reasonableness requires that a decision be transparent, justifiable and intelligible, falling within a range of possible, acceptable outcomes that are defensible on the law and the facts.

[5] In my opinion, the decision of the Board does not meet this standard since it failed to reasonably assess the Applicant's *sur place* claim in Canada. It is not clear if the Board considered the evidence before it about the Applicant's practice of Falun Gong in Canada. This is a reviewable error and the application for judicial review will be allowed.

[6] It is not necessary for me to address the substantive arguments raised about the Board's credibility findings.

[7] In the result, the application for judicial review is allowed, the decision is set aside and the matter remitted to another panel of the Board for re-determination. There is no question for certification arising.

**JUDGMENT in IMM-2766-18**

**THIS COURT'S JUDGMENT is that** the application for judicial review is allowed, the decision is set aside and the matter remitted to another panel of the Board for re-determination.

There is no question for certification arising.

"E. Heneghan"

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Judge

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

**DOCKET:** IMM-2766-18

**STYLE OF CAUSE:** JIN RONG KANG v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 12, 2019

**JUDGMENT AND REASONS:** HENEGHAN J.

**DATED:** FEBRUARY 12, 2019

**APPEARANCES:**

Nkunda I. Kabateraine FOR THE APPLICANT

Catherine Vasilaros FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Nkunda I. Kabateraine FOR THE APPLICANT  
Barrister and Solicitor  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT