

Federal Court



Cour fédérale

**Date: 20141014**

**Docket: IMM-4606-13**

**Citation: 2014 FC 972**

**Toronto, Ontario, October 14, 2014**

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

**BETWEEN:**

**BAOPING LIU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**ORDER AND REASONS**

[1] The Applicant, a citizen of China, claims refugee protection in Canada as a Falun Gong practitioner because of subjective and objective fear that, should he be required to return to China, he 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] The present Application concerns the rejection of the Applicant's claim by the Refugee Protection Division of the Immigration and Refugee Board (RPD) on the core issue of the credibility of the Applicant's evidence with respect to two separate features: his practice of Falun Gong in China which caused him to flee to Canada; and his practice in Canada which grounds his *sur place* claim that, if he were required to return to China, he will suffer more than a mere possibility of persecution (see Personal Information Form, Tribunal Record, p. 27).

[3] The following passages of the decision under review disclose the RPD's treatment of the Applicant's evidence of the key event in his practice of Falun Gong in China:

The claimant alleges that he was at his regular Falun Gong group practice when it was raided by the PSB on November 14, 2010. The claimant was asked to describe what occurred. The claimant's description was vague and lacked specificity. I had to pose probing questions to elicit details of the raid. I find it reasonable to expect that, given the traumatic circumstances of the alleged raid by the PSB, the claimant would have a vivid memory of the events and would be able to provide a fulsome description without hesitation or difficulty of any kind. In this regard, I draw a negative inference.

The claimant testified that the group was alerted about the raid by the lookout in front of the house who notified the organizer by phone. The organizer told them to run quickly out of the back door and that they ran out in a panic. The claimant testified that he did not see or hear anything after running out the back door. The claimant stated that he did not see or hear the PSB and he did not see the other seven fellow practitioners because he was running in the front and did not turn around. I find it is reasonable to expect that such an event would evoke strong memories of chaos and fear. It would be natural for the claimant to turn around to see if he was being followed by the PSB, and also to see if he was alone or if he was being followed by his fellow practitioners. It would also be natural that the claimant would have ensured that no PSB member was following him before hailing a taxi on the main road, but the claimant did not describe taking any such precautions. His description of the events of the raid and its aftermath appeared rehearsed, and did not seem to be a genuine recollection of events

arising from having lived through the experience himself. I draw a negative inference. [Emphasis added] (Decision, paras. 23 and 24)

[4] I find that the implausibility findings emphasised in the passage quoted are capricious because they are based in sheer conjecture, and, thus, do not meet the well established standard required for the making of implausibility findings (see: *Vodics v Minister of Citizenship and Immigration*, 2005 FC 783 at paragraphs 10 – 11).

[5] With respect to the Applicant's practice of Falun Gong in Canada, which grounds his *sur place* claim, at the hearing the RPD questioned the Applicant in detail about his knowledge of Falun Gong law. The Applicant correctly answered the many questions posed. In addition, he described his practice and produced letters from two fellow practitioners as supporting evidence.

In dismissing this evidence, the RPD made the following findings:

While it is difficult to make a judgment regarding the genuineness of a claimant's beliefs, it is necessary in this case. In doing so, I have considered the totality of the evidence available. Although it is true the claimant does possess some knowledge of Falun Gong, it does not necessarily mean that he is a genuine practitioner. Merely having or lacking some information regarding basic teachings and practice does not necessarily reflect genuine or false practice. The claimant tendered two letters of support which he alleges are from fellow practitioners in Canada together with some photographs of Falun Gong activities. These documents can only attest to the claimant's participation in Falun Gong activities; they do not attest to his motivation. In this regard, recent case law indicates that a pastor's assessment of the genuineness of a person's faith cannot be substituted for the assessment that the panel is required to make [footnote omitted]. In the same regard, I find that the assessment of a Falun Gong practitioner cannot be substituted for the assessment the Board is required to make. I give little evidentiary weight to these documents. The claimant alleges that he practiced Falun Gong for about five months in China. The claimant has testified that he has been studying and practicing Falun Gong since he has been in Canada. Thus I find that all the knowledge he possesses could easily have been gained in Canada.

Therefore, I give no weight to the claimant's ability to answer questions about Falun Gong. [Emphasis added] (Decision, para. 34)

[6] It is clear that the RPD came to the conclusion that the Applicant's motivation was to make a fraudulent claim. As a result, the RPD applied the finding that the Applicant lied about the raid in China to the Applicant's *sur place* claim evidence that he is a Falun Gong practitioner in Canada:

Having previously found that the claimant's Falun Gong group practice was not raided and that he is not being pursued by the PSB, I find that the claimant was not a genuine practitioner in China as he alleges. I also find, on a balance of probabilities and on the basis of the findings and negative inferences noted above, that the claimant's allegation that he was a genuine Falun Gong practitioner in China is not credible, and was only created for the purpose of supporting a fraudulent claim. I also find that this credibility finding raises a significant doubt about the claimant's general credibility. (Decision, para. 35)

The RPD then proceeded to state the following conclusion:

Having found that the claimant was not a practicing Falun Gong practitioner in China, I have considered whether the claimant is a genuine practicing Falun Gong practitioner in Canada. I have found the claimant's testimony with regard to his Falun Gong practice in China not credible, and that the claimant was not a Falun Gong practitioner in China. The claimant's practice of Falun Gong in Canada is based on his adherence to his practice in China, as he allegedly began the practice shortly after his arrival in Canada.

Having found that he was not a Falun Gong practitioner in China, and having no evidence of an independent impetus to practice Falun Gong which occurred in Canada, I find, 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 this context, as noted above, and on the basis of the totality of evidence disclosed, I find that the claimant is not a genuine adherent of

Falun Gong, nor would he be perceived to be such a practitioner in China. [Emphasis added] (Decision, paras. 36 and 37)

[7] I find fundamental reviewable error in the RPD's decision-making leading to the dismissal of the Applicant's *sur place* claim for two reasons.

[8] First, the RPD applied a capricious finding respecting the Applicant's practice of Falun Gong in China to the separate issue of his practice of Falun Gong in Canada. By implementing this capricious finding in the evaluation of the Applicant's *sur place* claim, the evaluation was unfairly corrupted. And second, whether or not the RPD believed that the Applicant is a "genuine adherent of Falun Gong in Canada", he was, nevertheless, recognized as practicing Falun Gong in Canada. Thus, the *sur place* issues before the RPD were: would the Applicant be identified as a Falun Gong practitioner upon return to China; and if so identified, would the Applicant suffer more than a mere possibility of persecution? The RPD utterly failed to address these primary issues (see: *Shao Rong Hu v Minister of Citizenship and Immigration*, 2012 FC 544 at paragraph 8).

**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 question to certify.

“Douglas R. Campbell”

---

Judge

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

**DOCKET:** IMM-4606-13

**STYLE OF CAUSE:** BAOPING LIU v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 8, 2014

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

**DATED:** OCTOBER 14, 2014

**APPEARANCES:**

MICHAEL KORMAN FOR THE APPLICANT

ALEKSANDRA LIPSKA FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

OTIS & KORMAN FOR THE APPLICANT  
Barristers & Solicitors  
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of  
Canada