

Federal Court



Cour fédérale

**Date: 20121001**

**Docket: IMM-271-12**

**Citation: 2012 FC 1154**

**Ottawa, Ontario, October 1, 2012**

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

**BETWEEN:**

**HONG BIN SUN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The applicant seeks judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada (the Board), dated December 16, 2011, which found that the applicant was neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act, SC 2001, c 27 (IRPA)*. For the reasons that follow the application is granted.

### ***Background***

[2] The applicant is a citizen of China. He claims that he began practicing Falun Gong to manage a chronic and disabling back injury in late October of 2008. The applicant explained that he knew Falun Gong was illegal but his friend assured him that it could be practiced in secret without problems. After practicing Falun Gong on his own, the applicant states that he joined his friend's group, attending sessions at different homes. On July 25, 2009, he states that the Public Security Bureau (PSB) raided their gathering. He escaped and hid in another city until he could leave the country. On November 16, 2009, he applied for refugee protection in Canada.

[3] The applicant claims that the PSB came to look for him at his home on July 27, 2009 and have continued to look for him since. Before the Board, he said that three members of his group have been arrested.

### ***Decision Under Review***

[4] The Board found that the applicant lacked credibility, based on the following considerations:

- The applicant was asked why he became involved with Falun Gong, in light of the government crackdown against practitioners. The applicant stated that he was unaware of the extent of the risk. The Board did not find this credible because the campaign against Falun Gong is widespread and public.
- The applicant stated that he and his fellow practitioners did not discuss the risk they faced. The Board considered this unbelievable.

- The applicant stated that after the raid he went into hiding at the home of his wife's aunt, in another city. The Board questioned this because the applicant had previously lived in that city and the PSB also could have tracked him down through the family connection. The applicant then said that the woman was actually his wife's older friend, not a relative.
- The applicant's Hukou, a household registration document, did not indicate that he was being sought by the authorities, even though it was issued after the alleged raid. The documentary evidence stated that this information would be registered on a Hukou. The applicant explained that he is not officially wanted because the authorities do not want to publicize that they are pursuing Falun Gong practitioners.
- The applicant stated that his family mailed the Hukou to him in Canada, after two unsuccessful attempts. The post office returned the Hukou the previous times to the false addresses his family had used. The Board did not find this story believable.
- The claimant provided a letter that he said was from his employer terminating his employment because he practiced Falun Gong. The Board gave little weight to the letter because there was writing on top of the seal, indicating that it was not authentic.

[5] The Board then considered whether the applicant had become a refugee *sur place*. The applicant provided letters from Falun Gong practitioners to corroborate his current practice. He also provided photos of himself practicing Falun Gong. The Board determined that he had become involved in Falun Gong in Canada to support his fraudulent refugee claim. The Board concluded that he is not a genuine practitioner and would not be perceived as such by Chinese authorities.

*Standard of Review and Issue*

[6] The issue for this judicial review is whether the Board reasonably decided that the applicant is not a Convention refugee nor a person in need of protection: *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190.

*Analysis*

[7] The Board based its negative credibility finding on perceived inconsistencies and implausibilities in the applicant's evidence. I find that the Board's consideration of his evidence was unreasonable on a number of issues.

[8] The Board is entitled to rely on common sense in determining whether an applicant's testimony is plausible. The Board cannot, however, engage in speculation or make findings that lack an evidentiary foundation: *Bains v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1144.

[9] The applicant explained that when he began practicing Falun Gong he was unaware of the extent of the risk he faced. He further stated that he and his fellow practitioners did not discuss the risk. The Board found it "reasonable to assume that most Chinese citizens would be aware of the dangers of being associated with Falun Gong."

[10] The Board misconstrued the applicant's testimony. He did not claim that he was unaware there were dangers. Rather he testified that he did not know the *extent* of the danger until the PSB raid. The applicant testified that he and his group practiced in secret with a watchperson on guard. Such precautions demonstrate an understanding that there was risk. He stated: "I only knew it is like illegal gathering; I also knew that the numbers of the Falun Gong practitioner was getting bigger and bigger and the government was afraid of that...". He explained that the Chinese media did not cover the persecution of Falun Gong members. His testimony on this issue is plausible.

[11] The Board found that the applicant gave inconsistent testimony regarding who he stayed with while in hiding. The applicant stated that he hid from the PSB with his wife's aunt. He later explained that she is really his wife's friend and that the family was in the habit of calling her aunt. He testified that "... in China if you are a female senior who is your mother's generation but not your aunt, no blood relationship, can be called aunt as well."

[12] The Board expected that he would have clarified his relationship to the woman prior to being questioned. However, the applicant cannot be expected to have anticipated that this peripheral detail would become relevant. The Board also erred in neglecting to consider the applicant's explanation that in Chinese "aunt" can refer to someone who is not a relative. The Board must take care to ensure that negative credibility findings are not the result of cultural assumptions or misunderstandings.

[13] During the hearing, the applicant spontaneously volunteered that it took three attempts for his family to send his Hukou. He said that the post office rejected it the first two times. He also

volunteered that the family did not use their home address when mailing the Hukou but rather used other people's addresses. The applicant testified that, when rejecting the mail, the post office returned it to those addresses.

[14] The Board found this testimony undermined the applicant's credibility. In particular, the Board thought that the post office would have returned the Hukou to the listed residence or directly to the PSB. This is speculative. It is equally plausible that the post office would have returned the mail to the address provided. The Board also stated that there was no evidence as to why the post office refused to mail the Hukou. This concern has no bearing on applicant's claim. It is unreasonable to base a negative credibility finding on such a tangential issue.

[15] The Board also considered whether the applicant had become a refugee *sur place*. The Board determined that the applicant was not a genuine practitioner of Falun Gong in Canada based on the earlier negative credibility finding. For the reasons I have described, those findings were based on speculation and an unreasonable examination of tangential issues. Accordingly, given the findings on the principle claim, the Board's conclusion on the *sur place* claim must be set aside.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is granted. The matter is referred back to the Immigration Refugee Board for reconsideration before a different member of the Board's Refugee Protection Division. No question for certification has been proposed and the Court finds that none arises.

"Donald J. Rennie"

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-271-12

**STYLE OF CAUSE:** **HONG BIN SUN v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION**

**PLACE OF HEARING:** Toronto

**DATE OF HEARING:** September 6, 2012

**REASONS FOR JUDGMENT  
JUDGMENT:** RENNIE J.

**DATED:** October 1, 2012

**APPEARANCES:**

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