

Yang v. Canada (Minister of Citizenship and Immigration)

Between
Hui Qing Yang, applicant, and
The Minister of Citizenship and Immigration, respondent

[2001] F.C.J. No. 1463
2001 FCT 1052
Court File No. IMM-6057-00

**Federal Court of Canada - Trial Division
Vancouver, British Columbia
Dubé J.**

Heard: September 11, 2001.
Judgment: September 26, 2001.
(28 paras.)

Aliens and immigration — Admission, refugees — Grounds, well-founded fear of persecution — Grounds, religion — Particular social group defined — Credible basis for claim.

Application by Yang for judicial review of a ruling by the Convention Refugee Determination Board that she was not a Convention refugee. Yang, who was from China, contended that as a member of Falun Gong she was subjected to persecution because of religion, political opinion, or membership in a particular political group. Falun Gong derived from Taoism and Buddhism, but its practitioners denied that it was a religion. China regarded it as a cult and Yang was subjected to a fine and re-education for practising it. However, the board found that neither Yang nor her family faced persecution as she claimed, and that Falun Gong did not constitute a religion or social group.

HELD: Application allowed. The board's decision was set aside and the matter was referred back for redetermination. The board erred in law. Falun Gong was partly a religion and partly a particular social group. The Chinese government considered it so, and its members voluntarily associated for reasons so fundamental to their human dignity that they were not to be forced to forsake that association. The court certified the question as the definition and scope of the term religion used in the Convention refugee context.

Statutes, Regulations and Rules Cited:

Immigration Act.

Counsel:

Guy Riecken, for the applicant.
Sandra E. Weafer, for the respondent.

1 **DUBÉ J.** (Reasons for Order):— This application is for the judicial review of a decision of the Convention Refugee Determination Division of the Immigration and Refugee Board ("the Board") dated November 6, 2000, to the effect that the applicant is not a Convention refugee.

Facts

2 The applicant is a thirty-seven year old citizen of China. Her Convention refugee claim is based on her fear of persecution by the authorities in China due to her participation in the Falun Gong movement and her adherence to Falun Gong beliefs and practices. She claims that Falun Gong is either a religion, a political opinion or a particular social group.

3 According to the documentary evidence, Falun Gong is an advanced system of cultivation and practice introduced in 1992 which has attracted more than one million people over the world. In addition to being a powerful mechanism for healing, stress relief and health improvements, it is different from other techniques as it has a higher objective of cultivation and practice towards enlightenment. It is complete with its own system of principles and empirical techniques.

4 The applicant alleges that she was first introduced to Falun Gong in February 1996. She claims that Falun Gong is essential for her to cope with problems in her life, including separation from her husband and her son. She entertained suicidal thoughts until she discovered Falun Gong. She further claims that she raises more benefit from Falun Gong when practising in a group.

5 The Chinese government cracked down on this organization, and outlawed the organization on July 22, 1999. Tens of thousands of people were detained. There is documentary evidence that practitioners were sentenced, without trial, to re-education through labour for up to three years.

6 In October 1999, the applicant was fined 5,000 RMB and required to attend a compulsory re-education class for 15 days. She also alleges that State authorities threatened to punish her and her family if she was discovered practising again, even secretly at home.

Decision of the Board

7 Overall, the Board found that the applicant was credible but held that the treatment she suffered did not amount to persecution. The punishment she suffered was meted out

in accordance with an announcement made by the government of China for "ordinary practitioners". Although the applicant characterized Falun Gong as a religion, such a description was denied by the organization itself. Consequently, the Board was unable to conclude that Falun Gong is a religion or an organization that cultivates religious beliefs.

8 The Board held that there was no more than a mere possibility that she would be persecuted if she practised on her own and in private. It relied on the fact that she was not a "core member" and added that "No one is asking her to give it up". It also determined that the applicant does not fall within the meaning of a particular social group as described in *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689. In support of that view, the Board stated that the applicant could and should disassociate herself from that organization: "does not amount to an abdication of her human dignity".

Analysis

9 In my view, the Board should have found Falun Gong to be partly a religion and partly a particular social group. It is clearly not a political opinion.

10 The jurisprudence has not as yet clearly defined the meaning of "religion" under the Immigration Act ("the Act"). James C. Hathaway in *The Law of Refugee Status*, at page 145, under the sub-title 5.3 Religion writes that "Religion" is defined in international law as follows:

5.3 Religion

Religion as defined in international law consists of two elements. First, individuals have the right to hold or not to hold any form of theistic, non-theistic, or atheistic belief. This decision is entirely personal: neither the state nor its official or unofficial agents may interfere with an individual's right to adhere to or to refuse a belief system, nor with a decision to change one's beliefs. Second, an individual's right to religion implies the ability to live in accordance with a chosen belief, including participation in or abstention from formal worship and other religious acts, expression of views, and the ordering of personal behaviour.

11 He concludes at page 148:

Alternatively, however, a claim is also established where an individual is allowed to adopt or exercise a belief system, but other serious human rights consequences flow from such a decision or action. For example, in *Abdul Rashid* the Immigration Appeal Board looked to evidence of the socio-economic victimization of the Ahmadi claimant to substantiate his claim to refugee status, and in *Jorge Marcal Baltazar* the Board was willing to consider evidence of religiously inspired interference with the claimant's livelihood. Any form of anticipated harm within the scope of persecution

suffices, so long as it is linked to a decision to hold or exercise a particular form of belief.

(my emphasis)

12 The Handbook on Procedures and Criteria for Determining Refugee Status provides as follows under the title "Religion", at page 18:

(c) Religion

71. The Universal Declaration of Human Rights and the Human Rights Covenant proclaim the right to freedom of thought, conscience and religion, which right includes the freedom of a person to change his religion and his freedom to manifest it in public or private, in teaching, practice, worship and observance.
72. Persecution for "reason of religion" may assume various forms, e.g. prohibition of membership of a religious community, of worship in private or in public, of religious instruction, or serious measures of discrimination imposed on persons because they practise their religion or belong to a particular religious community.
73. Mere membership of a particular religious community will normally not be enough to substantiate a claim to refugee status. There may, however, be special circumstances where mere membership can be a sufficient ground.

13 In his book *Immigration Law and Practice*, Lorne Waldman interprets his concept of religion at par. 8.268:

8.268 In addition, the concept of religion should be broadly interpreted to allow for claims based on a person's religious beliefs, even if those are not part of an organized religion. This can even be extended to cover cases where a person's religious beliefs are such that he or she rejects religion altogether. If a person is persecuted by reason of such a belief, then there will be a sufficient nexus to the claim. This position was adopted by the Australian High Court in the case of *Okere v. Minister for Immigration and Multicultural Affairs*, where the court accepted a claim based on religion where the person was not persecuted because of his participating in a specific religion, but rather because of his refusal to do so.

(my emphasis)

14 In his volume 1 entitled *Discrimination and the Law*, Justice Walter Surma Tarnopolsky offers in chapter 6 his answer to the following question:

6.1 What Is Religion, Religious Beliefs, Religious Creed or Creed?

None of the human rights statutes in Canada defines these terms. On the whole, courts both in Canada and the United Kingdom have avoided definitions even when discussing such important constitutional issues as "freedom of religion". The matter has been given considerably more attention by American courts both because of the First Amendment protection of religion and prohibition of the establishment of religion, and because of anti-discrimination legislation purporting to prohibit discrimination on grounds of religion. Before turning to judicial definitions in these three jurisdictions, it would be useful to start, as most courts do, with dictionary definitions.

Turning first to American ones, Webster's Third New International Dictionary (Springfield, Mass.: G. & C. Merriman Co., 1968) provides the following:

1. The personal commitment to and serving of God or a god with worship or devotion conducted in accordance with divine commands esp. as found in accepted sacred teachers, a way of life recognized as incumbent on the believers, and typically the relating of oneself to an organized body of believers

...

- 3.(a) One of the systems of faith and worship: a religious faith ...

(b) The body of institutionalized expressions of sacred beliefs, observances and social practices found within a given cultural context ...

- 15 The Canadian Encyclopedia, Year 2000 Edition, defines "Religion" as follows:

Religion/Latin, *religio*, "respect for what is sacred"/may be defined as the relationship between human beings and their transcendent source of value. In practice it may involve various forms of communication with a higher power, such as prayers, rituals at critical stages in life, meditation or "possession" by spiritual agencies. Religious, though differing greatly in detail, usually share most of the following characteristics: a sense of the holy or the sacred (often manifested in the form of gods, or a personal God); a system of beliefs; a community of believers or participants; ritual (which may include standard forms of invocation, sacraments or rites of initiation); and a moral code.

16 The document referred to by the Board (Response to Information Request) is that Falun Gong (or Falun Dafa) "is different from other qigong techniques in having a higher objective of cultivation and practice towards enlightenment. It is complete with its own system of principles and empirical techniques".

17 The Board also refers to a statement of the applicant in her Personal Information Form:

I recognised the true meaning of my life and got my spiritual encouragement by practising Falun Gong. It enriched my cultural life and improved my health as well. Since I started practising Falun Gong, I have changed a lot. The principles of practicing is (sic) Truth -- Compassion -- Forbearance or Tolerance. Truth means to tell the truth. Compassion means to do good deeds for people and to be a kind person. Forbearance or tolerance means to endure the humiliation that normal people can not endure. As a Falun Gong practitioner and as a Chinese Citizen, I believe the principle of treating people nicely. I obey the laws and regulations. I try to do good deeds for people and I try to be useful to the country and society and to be helpful to other people.

18 In Ward [supra], the Supreme Court of Canada referred to political opinion as a ground for a claim of persecution and refugee status. La Forest, J. wrote as follows, at page 747:

Second, the political opinion ascribed to the claimant and for which he or she fears persecution need not necessarily conform to the claimant's true beliefs. The examination of the circumstances should be approached from the perspective of the persecutor, since that is the perspective that is determinative in inciting the persecution. The political opinion that lies at the root of the persecution, therefore, need not necessarily be correctly attributed to the claimant. Similar considerations would seem to apply to other bases of persecution.

(my emphasis)

19 It is clear from that analysis that the determination of a political opinion must be approached from the point of view of the persecutor since that is the motive that incites the persecution. In my view, the same reasoning applies with respect to religion. If Falun Gong is considered by the Government of China to be a religion, then it must be so for the purposes of the instant claim.

20 In the Amnesty International -- Report -- ASA 17/11/00, entitled "People's Republic of China, the Crackdown on Falun Gong and Other So-Called "Heretical Organizations", under the sub-title The Crackdown on "Heretical Organizations" it

appears that the Government of China dealt with Falun Gong under the Bureau of Religious Affairs:

The government banned Falun Gong on 22 July 1999 and launched a massive propaganda campaign to denounce its practice and the motivation of its leaders, in particular Li Hongzhi. Since then, the government's accusations against the group have been repeatedly publicized by the state media and government officials. At a news conference on 4 November 1999, for example, Ye Xiaowen, Director of the Bureau of Religious Affairs of the State Council (government), said that "Falun Gong had brainwashed and bilked [double-crossed] followers, caused more than 1,400 deaths, and threatened both social and political stability". Further emphasizing that Falun Gong was a political threat, he added: "any threat to the people and to society is a threat to the Communist Party and the government".

(my emphasis)

21 The answer by the applicant to a question posed by her solicitor at the Board hearing is telling:

Q Now, when you were there, did they tell you anything else about the practice, or what you should do, or what might happen to you or to others?

A And they want us to learn that Falun Gong is a cult, is an illegal organization. They want us to know about all these things. You cannot continue to practice Falun Gong. If you continue, then you'll be get arrested. If you secretly do it at home, if we found out, so then we're going to punish your family members, saying they didn't report to the government. Then they'll be punished too.

(my emphasis)

22 Moreover, documentary evidence is to the effect that Falun Gong is derived from the two traditional Chinese religions, Buddhism and Taoism. More importantly, both the persecutor and the victim in this instance consider Falun Gong to be a cult or at least a form of religion.

23 My opinion is that Falun Gong could also be considered as a particular social group. In Ward [supra], at page 739, La Forest J. identified three possible categories of a "particular social group":

- (1) groups defined by an innate or unchangeable characteristic;
- (2) groups whose members voluntarily associate for reasons so

fundamental to their human dignity that they should not be forced to forsake the association; and

- (3) groups associated by a former voluntary status, unalterable due to its historical permanence.

24 Falun Gong would fall under the second category. The members voluntarily associate themselves for reasons so fundamental to their human dignity that they should not be forced to forsake the association. The Board excluded the applicant from the definition as it concluded that forcing the applicant to disavow her attachment to Falun Gong would not involve giving up something fundamental to her human dignity.

25 The Board stated that in his view "this is one organization from which the claimant can and should be expected to disassociate herself". That remark flies in the face of the applicant's opinions and beliefs. The evidence shows that the applicant took up the practice of Falun Gong because she was depressed to the point of being suicidal. Through Falun Gong she recognized the true meaning of life, enriched her culture and improved her health. She said that following Falun Gong gave her spiritual trust and made her life happier. Finally, group practice is a key part of Falun Gong. Together, the participants can share information, encourage each other, and support each other "just like Christianity ... if a person go to attend a church"[sic]. All these assertions of the applicant can be found in the transcript.

Disposition

26 It follows that the Board erred in law in its application of the Convention refugee definition by concluding that, for the purposes of the Convention, adherence to Falun Gong beliefs and practice is neither a religion nor a particular social group.

27 The decision of the Board is set aside and the matter is referred back to be determined in accordance with my reasons for order.

28 The following question has been suggested and I concur that it is of general importance and should be certified as the term "religion" has yet to be defined by the jurisprudence on Convention refugee definition:

What is the definition and the scope of the term "religion" used in the Convention refugee definition?

DUBÉ J.