

Federal Court



Cour fédérale

**Date: 20230405**

**Docket: IMM-4580-22**

**Citation: 2023 FC 487**

**Ottawa, Ontario, April 5, 2023**

**PRESENT: Madam Justice Sadrehashemi**

**BETWEEN:**

**ENBIN YU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, Enbin Yu (“Mr. Yu”), is a citizen of China. He fears persecution in China based on his practice of Falun Gong. His claim was rejected by the Refugee Protection Division [RPD] on October 19, 2021. Mr. Yu appealed this decision to the Refugee Appeal Division [RAD]. The RAD confirmed the RPD’s decision and found that Mr. Yu lacked sufficient Falun Gong knowledge to establish that he is a genuine practitioner.

[2] Mr. Yu challenges the RAD's determination in this judicial review. He argues that the RAD misapprehended the objective evidence on Falun Gong practice as well as his testimony at the RPD hearing about his Falun Gong practice. The parties agree, as do I, that I am to review the RAD's determination about Mr. Yu's Falun Gong knowledge on a reasonableness standard. I allow the application for judicial review because the RAD made findings about Falun Gong practice and Mr. Yu's testimony that are not supported by the record before it. These findings were not minor missteps but went to the key issue on which the RAD dismissed Mr. Yu's claim, namely that his knowledge of Falun Gong was insufficient for him to be a genuine practitioner.

[3] Based on the reasons below, I allow the application.

## II. Background

[4] Mr. Yu made a claim for refugee protection in 2018 based on China's family planning policies. While he was in Canada, he was introduced to Falun Gong practice and, close to his RPD hearing date, he amended his narrative to add his Falun Gong practice as an additional basis for his fear of persecution.

[5] The RPD heard Mr. Yu's refugee claim on September 28, 2021, and refused it on October 19, 2021. Mr. Yu did not challenge the RPD's findings with respect to his claim based on China's family planning policies. Mr. Yu's appeal to the RAD focused solely on the RPD's determination on his Falun Gong claim. The RPD drew a negative inference due to the timing of Mr. Yu's amendment to his refugee narrative to add his Falun Gong practice as an additional

basis for his fear of persecution. The RPD also rejected the claim because of Mr. Yu's lack of Falun Gong knowledge.

[6] On appeal, the RAD did not adopt the RPD's negative inference in relation to the timing of the Falun Gong basis for his claim. The RAD's decision focuses solely on Mr. Yu's knowledge of Falun Gong. The RAD found that Mr. Yu's "level of knowledge [of Falun Gong] was lacking" and dismissed the appeal on May 10, 2022.

### III. Analysis

[7] The only issue on this judicial review is whether the RAD's reasoning and determination on Mr. Yu's knowledge of Falun Gong are reasonable. The RAD provided three examples in support of its view that Mr. Yu's knowledge was lacking. At least two of the examples given by the RAD are not supported by the record.

[8] First, the RAD made the following findings with respect to the five exercises practiced in Falun Gong:

The Appellant mentioned several times that he practised four of them in a group and one of the exercises he practiced at home because it involved sitting for long periods. The objective evidence is clear that two of the five exercises involved sitting for long periods and the Appellant repeatedly only mentioned one of the sitting exercises.

[9] The objective evidence does not support the RAD's finding that two of the exercises were sitting exercises. The reference the RAD makes to a Response to Information Request notes that

“two exercises require remaining still for extended periods of time,” not that both exercises require sitting. Other objective evidence in the record confirms that it is only the fifth exercise that involves sitting. The RAD misapprehended the evidence in the record and used its own misapprehension to make a negative finding about Mr. Yu’s knowledge.

[10] Further, upon careful review of the RPD transcript, as noted by Applicant’s counsel and accepted by Respondent’s counsel at the hearing, there is no basis in the transcript for the RAD’s claim that Mr. Yu had stated “several times” and “repeatedly” at the RPD hearing that only the fifth exercise was a sitting exercise. There was a reference to the fifth exercise being a sitting exercise in Mr. Yu’s refugee narrative. As noted already, this assertion about the fifth exercise being a sitting one is consistent with the objective evidence. Regardless, it is concerning that the RAD misapprehended Mr. Yu’s testimony, stating that he testified to something repeatedly when he had not said it at all.

[11] The second example of the RAD misapprehending Mr. Yu’s evidence is with respect to the Falun Gong talks. The RAD found:

When asked to talk about his favourite talks, the Appellant was able to name only two [which were the second and fourth talks]... The RPD asked the Appellant what the sixth talk was about, and the Appellant responded that ‘I don’t quite remember’ and he wanted to talk about the ones he was ‘more interested in.’ The RPD then asked the Appellant about the eighth talk and again he responded that ‘I don’t quite remember’ and did not testify at all about either of these talks. The Appellant went on to testify that he read the talks daily yet could not elaborate on the ones the RPD asked him about.

[12] The RAD misconstrued Mr. Yu's testimony. Mr. Yu did not testify that he read these talks daily. He testified that he reads Falun Gong books daily and had explained earlier in his testimony that he had two books: "Zhuan Falun" and "The Great Consummation Way of Falun Dafa." When asked whether he had read "Zhuan Falun" where the talks are found, Mr. Yu explained, "I have read the book, but I – some topics that I'm more interested in I will read over and over, and some topics that I'm less interested in I might not read as much." Mr. Yu was later asked to name his favourite talk. He proceeded to speak about the second talk. Then he was asked to name another favourite talk and he talked about the fourth talk. The RPD Member then asked about the sixth talk and the eighth talk, and Mr. Yu explained that he did quite remember those talks. This is consistent with his earlier testimony about reading the topics he was more interested in. Mr. Yu also testified about the seventh talk, which the RAD does not mention in this assessment. Overall, I find that there was no basis to draw an adverse inference about Mr. Yu's knowledge based on his testimony on the Falun Gong talks. The RAD was incorrect when it found that Mr. Yu had testified that "he read the talks daily" and it was based on this misapprehension that the RAD drew an adverse inference from Mr. Yu's inability to recall some of the talks.

[13] I do not see the RAD's errors outlined above with respect to the objective evidence and Mr. Yu's testimony as minor missteps, particularly given the context of a claim for refugee protection, where the impact of the decision on the individual is severe (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 133-135). Given these central problems in evaluating the evidence in the record, the matter must be redetermined.

[14] Accordingly, it is not necessary for me to address in detail the last basis on which the RAD found Mr. Yu's knowledge of Falun Gong lacking, which was that his answers were brief with respect to his practice of Falun Gong besides the exercises and the meaning of the concepts of Truth, Compassion and Forbearance. I am satisfied that this ground alone, even if the RAD's was reasonable in its evaluation, would not have been a sufficient justification for dismissing the claim. Further, I note that not addressing this basis of the RAD's dismissal should not be taken to mean that I find the RAD's evaluation of Mr. Yu's testimony on these issues to have been reasonable.

[15] The application for judicial review is allowed. Neither party raised a question for certification and I agree none arises.

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is allowed;
2. The matter is sent back to be redetermined by a different decision maker at the RAD; and
3. No serious question of general importance is certified.

"Lobat Sadrehashemi"

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Judge

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

**DOCKET:** IMM-4580-22

**STYLE OF CAUSE:** ENBINYU v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MARCH 15, 2023

**JUDGMENT AND REASONS:** SADREHASHEMI J.

**DATED:** APRIL 5, 2023

**APPEARANCES:**

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