



RPD File No. / N° de dossier de la SPR : TB2-12605  
TB2-12643  
TB2-12644

*Private Proceeding / Huis clos*

## Reasons and Decision – Motifs et Décision

<b>Claimant(s)</b>	XXXX XXXX XXXXXXXXXX XXXX XXXXXXXX XXXX XXXX	<b>Demandeur(e)(s) d'asile</b>
<b>Date(s) of Hearing</b>	October 1, 2018	<b>Date(s) de l'audience</b>
<b>Place of Hearing</b>	Toronto, Ontario	<b>Lieu de l'audience</b>
<b>Date of Decision and reasons</b>	October 15, 2018	<b>Date de la décision et des motifs</b>
<b>Panel</b>	Milton Israel	<b>Tribunal</b>
<b>Counsel for the Claimant(s)</b>	Jordana Rotman Barrister and Solicitor	<b>Conseil(s) du (de la/des) demandeur(e)(s) d'asile</b>
<b>Designated Representative(s)</b>		<b>Représentant(e)(s) désigné(e)(s)</b>
<b>Counsel for the Minister</b>	Mary Kramer	<b>Conseil du (de la) ministre</b>

## REASONS FOR DECISION

[1] XXXX XXXX, the principal claimant, XXXX XXXX, the associate claimant, and XXXX XXXX XXXX, the minor claimant, seek refugee protection pursuant to section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act* (IRPA).<sup>1</sup>

[2] The minor claimant is a citizen of Honduras. The principal claimant and the associate claimant are citizens of China. In addition, the principal and associate claimants may also be permanent residents of Honduras.

[3] The Minister has intervened in the hearing of these claims and indicates that Section E of Article 1 of the *United Nations Convention Relating to the Status of Refugees* may apply to the claims of XXXX XXXX and XXXX XXXX.

[4] The principal claimant is the designated representation of the minor claimant.

## ALLEGATIONS

[5] The principal claimant's narrative represented all three claimants.

[6] The principal claimant (hereafter the claimant) alleged in her narrative that she and her husband operated a store in Honduras. Her husband passed away in XXXX 2012. She felt weak and her cousin in China advised her to try Falun Gong. The claimant saw people practising Falun Gong in a park in Honduras and began to practice.

[7] Mr. XXXX, a friend who worked in the store, pressed her to marry him and to transfer the business to him. She refused.

[8] Subsequently, Mr. XXXX raped her daughter, the associate claimant.

[9] The claimant tried to report the incident to the police but Mr. XXXX said that if she did so, he would kill her and her children.

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<sup>1</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, as amended, sections 96 and 97(1).

[10] In XXXX 2012, Mr. XXXX went to Panama to visit a sick relative. During that time, the claimant sold her business and returned to China with her children.

[11] In China, the claimant was told that she would not be allowed to register her child in her *hukou* unless she was sterilized.

[12] The claimant joined her cousin's Falun Gong practice group and the associate claimant also attended when the practice sessions were held at the claimant's cousin's house.

[13] On XXXX XXXX, 2012, the PSB raided the group. The claimant escaped and went to her aunt's house. On XXXX XXXX, 2012, she learned that three co-practitioners had been arrested. She further alleged that the PSB came to her mother's house to arrest the claimant and the associate claimant.

[14] The PSB returned to her mother's home and also went to her siblings' homes. As a result, the claimants left China with the help of an agent on XXXX XXXX, 2012.

[15] The claimant was informed that the PSB continues to look for her and the associate claimant.

[16] The claimant alleges that if they returned to China, they would be arrested and jailed because they are Falun Gong practitioners. The claimant further alleges that if they returned to Honduras, they would be killed by Mr. XXXX.

## ISSUES

[17] The issues in regard to these claims are credibility and exclusion.

### Exclusion

[18] The Minister intervened in the hearing and indicated that Article 1E may apply to the claims of XXXX XXXX and XXXX XXXX.

[19] The Minister noted that the claimant has lived in Honduras since XXXX 2000, and her passport shows a stamp indicating she has resident status on the basis of family ties because she has a child, the minor claimant, who has Honduran nationality.

[20] The Minister further noted that XXXX XXXX, the associate claimant, entered Honduras in 2008, and her passport indicates she has resident status.

[21] The Minister noted as well that the United States documentation indicates that the principal and associate claimants provided Honduran identity documents to US authorities.

[22] The Minister submits that the principal and associate claimants have residency status in Honduras. The Minister notes that their Personal Information Forms (PIFs)<sup>2</sup> indicate that they were working and studying in Honduras. The principal claimant travelled to China from XXXX to XXXX 2008, and returned to Honduras where she continued to work in her store. The associate claimant entered Honduras in 2008, attended school, had her visa renewed and acquired residency.

[23] The Minister submits that the claimants are country shopping because they failed to apply for asylum in the United States.

[24] The Minister further submits that the claimants concealed their status in Honduras by withholding from Canadian authorities their Honduran identity documents. The Minister notes that at question 22 of their PIFs,<sup>3</sup> they failed to indicate they have or could obtain these documents.

[25] The Minister submits as well that the principal and associate claimants had residency status in Honduras when they applied for protection in Canada and that they continue to have it. They have not provided information that they previously had residency status and have lost it or had access to it and failed to acquire it. The Minister submits they have not provided evidence that they could not return to Honduras.

[26] The Minister notes that the minor claimant is a citizen of Honduras, she has made no claim against that country, she enjoys its protection, and she is able to return to that country. The Minister submits that the principal and the associate claimants are also able to return to Honduras because they have family ties to a Honduran citizen, namely the minor claimant.

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<sup>2</sup> Exhibit 2, Personal Information Form (PIF); Exhibit 3, Personal Information Form (PIF); Exhibit 4, Personal Information Form (PIF).

<sup>3</sup> Ibid.

[27] The panel questioned the claimant as to her status in Honduras when she made her claim. The claimant agreed that she had status in Honduras when she made her claim. The claimant was asked whether she continued to have status in Honduras today. She responded she had status, but it had expired.

[28] The panel asked the claimant if she wished to return to Honduras, could she do so at this time. The claimant responded that she would have to start over again since her status expired in 2017. She further explained that she was required to renew her status every five years.

[29] The claimant was asked whether she had any corroborating evidence indicating her status expired in 2017 and that it had to be renewed every five years. She said, “No.”

[30] The panel asked the claimant whether she could have maintained her status in Honduras if she wished to. The claimant responded that she could not because they could not live in those conditions. The panel notes that the claimant offered no legal constraint as to the maintenance of her and the associate claimant’s status in Honduras.

[31] The panel noted that counsel submitted an affidavit<sup>4</sup> from an articling student in counsel’s firm indicating that she had called the Honduran embassy and she had provided a description of the stamps on the claimants’ passports to the consul in the embassy. The consul stated she was unfamiliar with the stamps regarding the claimants’ residency status. She further stated that regardless of the residency class, if a person is outside Honduras, residency status would be lost.<sup>5</sup>

[32] The panel noted that the claimant left Honduras in XXXX 2008 and she returned to Honduras in XXXX 2008. The panel further noted there was no evidence that she had lost her residency status because she was outside the country.

[33] Counsel submitted an additional affidavit<sup>6</sup> from the articling student in her firm which indicated that she had spoken to the Honduran consul again. The consul informed the articling student that once residency status is lost, the process would have to start again from the beginning to obtain residency and that there is no process to renew expired residency status. The consul

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<sup>4</sup> Exhibit 15, Affidavit of XXXX XXXX.

<sup>5</sup> Ibid., at para 4.

<sup>6</sup> Exhibit 16, Affidavit of XXXXX XXXXX.

further stated that having a child with Honduran citizenship does not affect the process; the claimants without citizenship would have to submit applications.<sup>7</sup>

[34] The panel noted that both documents did not come directly from a Honduran official but were the result of the articling student's description of the situation of the principal and associate claimants. There was no mention of the requirement that residency status be renewed every five years or the reason why the claimants residency status had been lost.

[35] The panel notes that the Minister disclosed a document concerning the significance of the code 12 that appears on the reverse side of the claimant's resident alien card.<sup>8</sup> A lawyer from the Emigration Department of the General Migration Directorate in Tegucigalpa, Honduras stated that the number 12 indicates that residency status has been obtained on the basis of family ties. It is further stated that the holder has a child or children, brothers or sisters, or grandchildren who have Honduran nationality.

[36] The panel asked the claimant whether she had voluntarily given up her residency status and she said, "Yes." The panel further asked the claimant whether she could have maintained her status in Honduras if she wanted to do this. The claimant responded that she could not live under those kinds of conditions and that she feared returning to Honduras.

[37] The claimant was asked if she provided Canadian officials with information as to her status in Honduras when she made her claim. The claimant responded she told them the minor claimant was born in Honduras and she showed them identification documents from Honduras.

[38] The panel noted the Minister has indicated that she did not do this. The Minister stated the claimants had residency status in Honduras when they made their claims, but they did not give this information to the Canadian authorities at that time. The panel further noted that the Minister obtained this information from the US authorities to whom the claimants had disclosed their Honduran documentation.

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<sup>7</sup> Ibid., at paras 4, 6.

<sup>8</sup> Exhibit 9, Minister's Notice of Intent to Intervene, supporting documentation, at pp. 3-4.

[39] The panel notes that the principal and associate claimants' original Honduran residence cards<sup>9</sup> were in the RPD file. If they had been disclosed in their application for protection interview, these cards would have been seized and copies would have been made for the RPD file. The panel further notes that the original cards were returned to the claimants at the hearing and that counsel made copies of them and provided the panel with copies for the RPD file.

[40] The panel draws a negative inference from the claimant's testimony that she showed her Honduran documentation to Canadian authorities and that the principal and associate claimants concealed their true status in Honduras when they made their claims for protection in Canada.

[41] The panel cites the reformulated test to be applied to Article 1E determination as stated by the Federal Court of Appeal in 2010.<sup>10</sup>

Considering all relevant factors to the date of the hearing, does the claimant have status, substantially similar to that of its nationals, in the third country? If the answer is yes, the claimant is excluded. If the answer is no, the next question is whether the claimant previously had such status and lost it, or had access to such status and failed to acquire it. If the answer is no, the claimant is not excluded under Article 1E. If the answer is yes, the RPD must consider and balance various factors. These include, but are not limited to, the reason for the loss of status (voluntary or involuntary), whether the claimant could return to the third country, the risk the claimant would face in the home country, Canada's international obligations, and any other relevant facts.<sup>11</sup>

[42] The panel has considered the evidence provided by the claimant, including country documentary evidence, and the evidence provided by the Minister. The panel acknowledges that the information concerning residency status in Honduran country documents is confusing and that there is a lack of specific information as to how one acquires or loses residency status.<sup>12</sup>

[43] The panel notes the claimant testified that she retained her residency status in Honduras when she made her claim for protection in Canada. The panel finds it is reasonable to assume that the associate claimant also retained her residency status at that time.

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<sup>9</sup> Exhibit 7, Principal Claimant's and Associate Claimant's Honduran Resident ID Cards.

<sup>10</sup> *Zeng, Guangqiu v. M.C.I.* (F.C.A., no. A-275-09), Noël, Layden-Stevenson, Stratas, May 10, 2010, 2010 FCA 118. Reported: *Zeng v. Canada* (Minister of Citizenship and Immigration), [2011] 4 F.C.R. 3 (F.C.A.).

<sup>11</sup> *Ibid.*, at para 28.

<sup>12</sup> Exhibit 7, Claimants' country documentation, at pp. 1-25.

[44] The panel further notes the claimant testified that she lost her status in 2017 and that her residency status had to be renewed every five years.

[45] As noted above, the evidence concerning the loss of residency status in Honduras is unclear. The Honduran consul cited by counsel initially indicated that if a person is outside Honduras, residency status would be lost.<sup>13</sup> However, the panel noted that the claimant left Honduras in 2008 to visit China in XXXX 2008 and returned to Honduras in XXXX 2008 without any apparent impact on her residency status.

[46] As to the second exchange with the Honduran consul, it is stated that once residency has been lost, the process would have to start again to gain such status. However, there is no information in regard to that exchange as to how or why the claimants' residency status was lost. Neither is there any mention of a requirement that residency status must be renewed every five years.<sup>14</sup>

[47] The panel also notes that the claimant testified that she retained her residency status in Honduras until 2017, approximately five years after the claimants left Honduras and travelled to China and Canada, and that she maintained her Honduran status until 2017.

[48] The panel notes the difficulty in answering the first question in the Federal Court of Appeal's reformulated test to be applied to Article 1E determination, in the context of the lack of clear Honduran sources. While the claimants may have lost residency status because of the length of time that they have been absent from Honduras, there is no firm evidence that this is in fact the case.

[49] If it is assumed that the answer to the first question, whether the claimants had status in the third country to the date of the hearing, is no, the claimants cannot be excluded on this basis. As to the second question, whether the claimants previously had such status and lost it, or had access to such status and failed to acquire it, the answer is yes. On this basis, the panel must consider and balance various factors.

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<sup>13</sup> Exhibit 15, Affidavit of XXXXXXXX XXX.

<sup>14</sup> Exhibit 16, Affidavit of XXXX XXXXX.



[50] The panel finds, on a balance of probabilities, that the claimants voluntarily gave up their residency status. The panel further finds, on a balance of probabilities, that the claimants could have maintained their status and that they can return to Honduras and reacquire their status in that country, in particular on the basis of their relationship to the minor claimant, who is a citizen of Honduras.

[51] In balancing the various factors as required in the test, the panel must consider the alleged reasons for the claimants' decision to leave Honduras and to voluntarily give up their residency status in Honduras. In this regard, the substantive nature of the claim against Honduras will be considered.

[52] The panel notes the claimant indicated in her PIF<sup>15</sup> that the claim she and the other claimants were making was against China. There was no mention of Honduras in this regard. The panel further notes that the claimant indicated their claim was against Honduras, in addition to China, in response to a query by the panel.

[53] The claimant testified and noted in her PIF narrative<sup>16</sup> that her husband had died and her daughter was raped by a man who worked in her shop. The claimant was asked whether she called the police and she responded that she did not dare to because she feared something would happen.

[54] The claimant was asked whether she had any corroborating evidence concerning this incident from friends in Honduras. She said, "No." Rather, she was concerned about the shame the rape would cause for her family and the ability of her daughter to marry in the future. The claimant was asked whether anyone was aware that this man had threatened her, as noted in her PIF narrative,<sup>17</sup> and she said, "No." She further stated this man had helped her in the shop and that no one would believe her. The claimant was asked whether she had made any effort to contact anyone who could verify her allegations concerning the actions of this man. She responded that she did not want anyone to know about the rape.

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<sup>15</sup> Exhibit 2, Personal Information Form (PIF).

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

[55] The panel noted that the claimant indicated in her PIF narrative<sup>18</sup> that she tried to call the police but the man threatened her. When asked to confirm this, the claimant responded, “Yes.” The panel further noted she indicated that she was willing to contact the police even though this would clearly result in others finding out about the incident. The claimant responded that people would know.

[56] The panel notes that until the panel raised the issue, the claimant made no reference in her testimony to this man’s alleged threat as the reason why she did not call the police. Rather, she emphasized the shame that this would bring to her family if others learned about the incident. The panel notes that there was no mention of this concern in the claimant’s narrative.

[57] The panel questioned the associate claimant as to her mother’s testimony about the alleged incident and she confirmed that the incident had happened.

[58] The panel finds it reasonable to expect that after living and operating a XXXX business in Honduras for more than a decade that the claimant would have shared her concerns about the alleged efforts of this man to marry her and take over her business, if not the alleged rape itself, with someone else in the Chinese community. The panel draws a negative inference from the total lack of any corroborating evidence as to the claimant’s alleged situation.

[59] As to contacting the police, the panel acknowledges that the country documentary evidence indicates that there is widespread violence against women in Honduras and corruption in Honduran institutions, including the police and the courts.<sup>19</sup> It is further noted, however, in other country documentary evidence<sup>20</sup> that rape is criminalized in Honduras and the state prosecutes even when the victim does not press charges. It is noted as well that perpetrators are subject to prison terms between three and nine years and that the courts enforce penalties.

[60] While the panel acknowledges the violence against women and constraint on police response, the claimant did not mention this as the reason for her failure to contact the police. In addition, when questioned about this, the claimant was inconsistent as to the reason.

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<sup>18</sup> Ibid.

<sup>19</sup> Exhibit 7, Claimants’ country documentation; Exhibit 13, National Documentation Package (NDP) for Honduras (April 30, 2018), item 1.5; *ibid.*, item 2.2.

<sup>20</sup> Exhibit 13, National Documentation Package (NDP) for Honduras (April 30, 2018), item 2.1, at p. 23.

[61] The panel notes that the only corroborative evidence concerning the alleged rape is a psychological assessment concerning the associate claimant.<sup>21</sup> The panel further notes this assessment is totally based on only the associate claimant's self-reporting and the diagnosis of Post-Traumatic Stress Disorder is based on one interview without any further testing. The panel has concerns that such an assessment is possible without more extensive interviews with the associate claimant and the use of testing instruments.

[62] The panel notes that the assessment is dated August 1, 2018 and that the associate claimant's initial hearing was scheduled for August 15, 2018. The panel finds, on a balance of probabilities, that if the claimant suffered from psychological problems as a result of the alleged 2012 incident in Honduras, it is reasonable to expect that she would have sought professional help when she arrived in Canada and certainly long before six years had passed.

[63] The associate claimant was asked whether she was concerned about her psychological health and why she waited approximately six years before she sought any professional help. She responded that she was told that she required a report for the hearing. She then said it was her own decision. The panel noted that the two responses were inconsistent and that the claimant indicated her language was unclear. The panel stated that her responses were quite clear.

[64] On the basis of the analysis above, the panel gives this psychological assessment little weight as corroborative evidence concerning the alleged 2012 incident.

[65] In making an assessment of the claimant's evidence regarding the alleged actions of this man and the claimants' fear to return to Honduras, the panel is mindful of the decision of the Federal Court of Appeal in *Maldonado* in which the Court stated that "when an applicant swears to the truth of certain allegations, this creates a presumption that those allegations are true unless there be reason to doubt their truthfulness."<sup>22</sup>

[66] The panel further cites the decision of the Federal Court in *Owoussou* in which the Court stated:

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<sup>21</sup> Exhibit 10, Psychological Assessment of XXX XXXX.

<sup>22</sup> *Maldonado, Pedro Enrique Juarez v. M.C.I.* (F.C.A., no. A-450-79), Heald, Ryan, MacKay, November 19, 1979. Reported: *Maldonado v. Canada (Minister of Employment and Immigration)*, [1980] 2 F.C. 302 (C.A.); 31 N.R. 34 (F.C.A.), at para 5.

It would be grossly unfair to allow safe haven as a refugee simply on a person's say-so. Often, the core of the claim cannot be verified, but other elements can, which is why the rules call upon the claimant to provide acceptable documentation.<sup>23</sup>

[67] The panel finds, on a balance of probabilities and in the context of the analysis and findings above, that there is insufficient credible evidence, which it is reasonable to expect would have been available to the claimants, to support a finding that the alleged incident that resulted in the claimants leaving Honduras, and their fear to return there, actually took place.

[68] Having found that there is insufficient evidence that the alleged 2012 incident took place and having found that the claimants are able to return to Honduras and regain their residency status on the basis of the relationship between the minor claimant, who is a citizen of Honduras, and the principal and associate claimants, the panel further finds that the claimants are excluded from consideration of their refugee claims in Canada pursuant to Article 1E of the *United Nations Convention Relating to the Status of Refugees*.<sup>24</sup>

[69] In the event that the panel's findings above are challenged, the panel further finds that the claimants are able to return to China without fear of persecution or the harms pursuant to subsection 97(1) of IRPA.<sup>25</sup> The reasons for this decision are noted below.

### **Family Planning Policy in China and in Guangzhou, Guangdong Province**

[70] The claimant testified that she and her children travelled to China on XXXX XXXX XXXX 2012. She indicated in her narrative that she tried to get the minor claimant registered in the family *hukou* but she was told that she must be sterilized if she wanted to get a *hukou* for the entire family. She further stated that she did not want to do this. The panel asked the claimant whether she had any corroborating evidence regarding this issue. She responded that she did not and it was voluntary. The panel did not consider this issue further during the hearing and neither

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<sup>23</sup> *Owoussou, Paul Kojo v. M.C.I.* (F.C., no. IMM-1251-03), Harrington, May 5, 2004, 2004 FC 661, at para 12.

<sup>24</sup> UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137.

<sup>25</sup> *Immigration and Refugee Protection Act*, *supra*, footnote 1, ss. 97(1).

was this issue mentioned in the claimant's testimony other than in response to the panel's questions. Neither did counsel mention the issue in her submissions.

[71] The panel notes the change in circumstances from 2012 to 2018 as a result of the 2016 reform of family planning policy in China. The panel also notes that there is no evidence of forced sterilizations in Guangzhou since 2012 and that Guangdong province has a liberal reputation as regards family planning.

[72] The panel further notes that counsel had an opportunity to examine the claimant as to the issues of forced sterilization and the ability to register the children in the family *hukou*, but she failed to do so.

[73] The panel acknowledges that there have been forced abortions and sterilizations in Guangdong Province but notes that there is no evidence available to the panel that such practices have occurred since 2012. The panel further notes in this regard a 2012 directive issued by the *National Population and Planning Commission of China* which bans the "... enforcement of [the] family planning policy carried out in a brutal way."<sup>26</sup>

[74] The panel acknowledges that the family planning policies are unevenly enforced in China and, in some instances, local officials have forced women to have abortions and sterilizations. The panel notes, however, the wide variation in provincial practices and it further notes that there is no evidence that such actions occurred in Guangdong Province and, in particular, in Guangzhou City since 2012.

[75] The panel cites country documentary evidence which indicates that historically Guangdong authorities have taken a more relaxed approach to family planning. In 2011, the Director of Guangdong's *Population and Family Planning Commission* stated that he had applied for "... approval to be the leader in the country in the relaxation of the family planning policy."<sup>27</sup>

[76] The panel notes that Guangzhou City, the claimants' home city, is the capital of Guangdong Province and the province's largest city. In the context of Guangdong's historical

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<sup>26</sup> Exhibit 5, NDP for China (April 30, 2018), item 5.15, at p. 1.

<sup>27</sup> Ibid., item 5.7, at p. 25.

flexibility in regard to the implementation of family planning regulations and the indication in these regulations that a fine is charged for having an out-of-plan child, the panel finds that it is likely that officials in Guangzhou City would follow the 2012 directive as to the use of force in the implementation of the family planning policy. As noted above, there is no evidence of any forced abortions or sterilizations since 2012.

[77] The panel cites the 2015 decision of the Federal Court in *Yu*<sup>28</sup> in which the Court noted the panel recognized that although forced sterilization and forced abortion are illegal in China, such practices still occur. The Court further noted that the panel relied on evidence of conditions in the applicant's province of Guangdong and it found sufficient safeguards against these forced measures. The Court noted that evidence shows that Chinese citizens may be required to pay a monetary fine. The Court also noted the jurisprudence of the Court which has held that such fines do not amount to persecution.

[78] The panel further cites the decision of the Federal Court in *Liang*,<sup>29</sup> in which the Court reviewed Guangdong family planning documentation and noted the regulations indicate that a fine is charged for an out-of-plan birth and the fine is multiplied by the total number of out-of-plan children. The Court further noted the variation in the enforcement of the family planning policy in China and it found that there was insufficient evidence to establish that the applicants would face forced sterilization in Guangdong. Thus, the appeal was dismissed.

[79] The panel cites country documentary evidence concerning the implementation of the two-child policy.<sup>30</sup> This document cites a professor from the *Institute of Population and Labour Economics* at the *Chinese Academy of Social Sciences*. "According to the professor, all children born should be registered, no matter if they are second or third or higher births, prior to or after the new regulations."<sup>31</sup> This document further states that Guangdong Province has officially de-linked fines and *hukou* registration for those born outside the rules, although a fine must be paid eventually. The panel notes that the claimant has only two children.

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<sup>28</sup> *Yu, Jiahong v. M.C.I.* (F.C., no. IMM-3220-14), Shore, January 15, 2015, 2015 FC 61.

<sup>29</sup> *Liang, Ai Yan v. M.C.I.* (F.C., no. IMM-8066-12), Russell, July 9, 2013, 2013 FC 765, at paras 91-95.

<sup>30</sup> Exhibit 5, NDP for China (April 30, 2018), item 5.13.

<sup>31</sup> *Ibid.*, item 5.13, at p. 3.

[80] The panel further cites the decision of the Federal Court in *Huang*<sup>32</sup> which concerns a couple who had a fourth child and who feared being forced to wear an IUD and being subjected to forced sterilization if they returned to China. The Court noted that the applicants bear the burden of proof and they submitted no evidence to suggest that a family with a fourth child was at any greater risk than families who had a second or a third child. The Court further noted that the Board cited evidence that couples with a second or third child in Guangdong province had paid fines but they had not been required to wear an IUD or be subjected to sterilization. The Court found that it was reasonable to conclude that past practice was likely to continue now that the applicants had four children. The Court dismissed the application.<sup>33</sup>

[81] In the context of its analysis of Guangdong Province's family planning regulations, its practices in this regard since 2012, and its apparent practices since the implementation of the two-child policy, the panel finds that the claimant will not be required to be sterilized to have her children registered in the family *hukou*. The panel further finds that if the claimant were to have an additional child in China should she be returned there, she would be subject to a fine which the Federal Court jurisprudence has found not to be persecutory.

### **Falun Gong practice and Public Security Bureau (PSB) pursuit in China**

[82] The claimant testified that she began practising Falun Gong in Honduras in mid-XXXX 2012 where people were allowed to practice freely. She further testified that she began practising in China a week after she returned and that the associate claimant joined her. As well, the claimant testified that she and the associate claimant practised only a few times because the PSB raided their practise group on XXXX XXXX, 2018 and the claimants went into hiding.

[83] The claimant also testified that the PSB came to her mother's home looking for her and the associate claimant. They told her mother that three co-practitioners had been arrested and they returned the next day, and again a few days later.

[84] The claimant was asked whether the PSB had left a summons and she indicated that they had not. The claimant was further asked whether the PSB returned to her family home after she

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<sup>32</sup> *Huang, Xiaoshan v M.C.I.*, December 1, 2017, 2017 FC 1090.

<sup>33</sup> *Ibid.*

and her daughters fled China and came to Canada. The claimant responded that they did go to her family home during Chinese New Year and during other festivals. She further testified that the PSB came to her family home looking for her and the associate claimant approximately ten times since they arrived in Canada. The claimant was asked whether the PSB left an arrest warrant. She indicated that they had not.

[85] The panel acknowledges that the country documentary evidence indicates that the PSB practice regarding the issuance of a summons varies from one locality to another.

[86] The panel finds, however, on a balance of probabilities, that given the multiple PSB visits to which the claimant testified and the alleged arrest of three practitioners, the PSB has demonstrated a significant interest in the claimants and it is reasonable to expect that a summons would have been issued and left with her family if the claimants were not present.

[87] The panel further finds, on a balance of probabilities, that the authorities in a large metropolitan centre, such as Guangzhou, would document their interest in the claimants.

[88] The panel is guided in this regard by the decision of the Federal Court in *Zhang* in which the Court stated that the RPD recognized that the police did not always leave a summons, but given the number of times the claimant alleged the police visited his family in search of him, documentary evidence indicates that the police would likely have left something at some time.<sup>34</sup>

[89] In addition, the Court in *Lin* noted that no evidence was adduced by the applicants that the PSB does not leave a warrant with family members in their province, and it concluded that the RPD did not err in its finding concerning the lack of a summons.<sup>35</sup>

[90] The Court in *Lan Cao*<sup>36</sup> also noted that the PSB practice, with respect to leaving a summons, was not uniform. However, the Court held that given the number of times the PSB

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<sup>34</sup> *Zhang, Xi Shun v. M.C.I.* (F.C., no. IMM-6200-10), Kelen, June 8, 2011, 2011 FC 654.

<sup>35</sup> *Lin, Bizhu v. M.C.I.* (F.C., no. IMM-9100-11), Scott, October 15, 2012, 2012 FC 1200.

<sup>36</sup> *Lan Cao, Feng v. M.C.I.* (F.C., no. IMM-2326-12), Near, November 29, 2012, 2012 FC 1398.



went to the applicant's home, it was reasonably open to the Board to conclude that a summons would have been left.<sup>37</sup>

[91] The panel draws a negative credibility inference concerning the lack of a summons even though the PSB allegedly visited the claimant's home a number of times.

[92] The panel acknowledges that PSB practice, as to the issuance of an arrest warrant, varies from one locality to another. However, on a balance of probabilities, and in the context of the multiple PSB visits to the claimants' home, including after they had fled from China, the panel finds that it is reasonable to expect that an arrest warrant would have been issued. The panel draws a negative inference from the lack of a warrant.

[93] The panel is guided in this regard by the decision of the Federal Court in *Cao*<sup>38</sup> in which the Court stated that with respect to the Board's finding that an arrest warrant would have been expected if the PSB had visited the family home many times in pursuit of him, the Board did acknowledge the mixed evidence and that the issuance of a warrant is not always implemented. The Court further stated that the Board reasonably noted that in this case, a warrant would have been expected given the applicant's evidence that the PSB continued to look for him many times, including after he left China.<sup>39</sup>

[94] In addition, the Court in *Lin* noted that no evidence was adduced that the PSB in the claimant's province did not leave an arrest warrant with the claimant's family.<sup>40</sup>

[95] The panel draws a further negative credibility inference from the lack of an arrest warrant given the number of alleged PSB visits to the claimants' family home, including visits after the claimants had left China.

[96] The panel finds, on a balance of probabilities and on the basis of the analysis and negative inferences noted above, that there is insufficient credible evidence to support a finding that the claimants are being pursued by the PSB.

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<sup>37</sup> Ibid., at para 35.

<sup>38</sup> *Cao, Zhuohao v. M.C.I.* (F.C., no. IMM-4258-14), Kane, June 29, 2015, 2015 FC 790.

<sup>39</sup> Ibid., at para 47.

<sup>40</sup> *Lin*, *supra*, footnote 33, at para 30.

[97] The claimant was asked whether she and her children had used their own genuine passports to exit China. She said, “Yes.” The claimant was further asked whether they were required to show their passports when they obtained boarding passes. She said, “Yes.” She was also asked whether they were required to show their passports at a security checkpoint. She said, “Yes.” The claimant was also asked whether they were required to show their passports before boarding the plane. Once again, she said, “Yes.”

[98] The panel cites country documentary evidence concerning China's *Golden Shield Project*. This evidence indicates that it is a national computer policing network and one of its databases is concerned with criminal fugitive information. It is further indicated that all police departments at county level and above can connect to the Policenet system. It is also noted that the Chinese police are in charge of exit and entry administration.<sup>41</sup>

[99] The panel finds on a balance of probabilities that the PSB in a large metropolitan centre like Guangzhou would be connected to the system, and it is reasonable to expect that they would share information about absconding criminals with airport security officials.

[100] The panel acknowledges that there is corruption in the Chinese bureaucracy and likely among airport officials. However, the panel finds on a balance of probabilities that while a smuggler might be able to bribe one airport official, it is not likely that he or she could bribe all of them, including the three officials to which the claimants had to show their documentation.

[101] As to the *Jurisprudential Guide*<sup>42</sup> concerning exiting China while using one's own passport even though one was allegedly being pursued by the PSB, the panel notes that the *Guide* is dated November 30, 2016, and this is a 2012 claim.

[102] The panel further notes that while it has considered this *Guide* when dealing with the issue of the claimant's exit from China, it is cognizant of the possible differences between 2016 and 2012. However, the documentation to which the panel referred to above is from the Board's documentation package dated June 4, 2012, that is, it concerns the time of the claimants' exit

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<sup>41</sup> Exhibit 6, NDP for China (June 8, 2012), item 10.3.

<sup>42</sup> Jurisprudential Guides, Decision TB6-11632 (November 30, 2016), identified by the Chairperson under the statutory authority found in section 159(1)(h) of the *Immigration and Refugee Protection Act*.

from China. The panel's finding in this regard is based on the documentation in the RPD file which is contemporary with the claimants' exit.

[103] The panel finds, on a balance of probabilities, that the claimants' ability to pass through airport security checkpoints without constraint while using their own genuine passports indicates that they were not being pursued by the PSB. The panel further finds that the claimants' unconstrained exit further supports its findings above as to the lack of a summons or a warrant.

[104] The panel acknowledges that Federal Court jurisprudence in this regard is mixed. The panel is guided, however, by the decision of the Federal Court in *Lui* in which the Court found the claimant's ability to exit China without a problem not to be credible if the allegation of PSB pursuit were true.<sup>43</sup> In addition, the Court in *Cao* supports this finding.<sup>44</sup>

[105] The panel's finding in this regard is further supported by the decision of the Refugee Appeal Division in *X(Re)*<sup>45</sup> in which it is stated:

API [advance passenger information] requirements which have been in effect for years, in conjunction with the highly effective Golden Shield program makes it ... unlikely a wanted person could depart China from an international airport using a passport with his own name, date of birth, and photograph in it. The likelihood of bribing so many people as would be involved in a person's departure is miniscule. From the person selling the ticket, to the check in counter, to the security checkpoint, the customs and immigration people onto the person who checks the Boarding pass, all of these people may be randomly in place and make it nearly impossible ... that a wanted man will escape China on his own legitimate documents.<sup>46</sup>

[106] The panel cites further Federal Court jurisprudence that support this decision and the panel's finding in this regard.<sup>47</sup>

[107] The panel finds that there is insufficient credible evidence to support the claimants' allegations of Falun Gong practice and pursuit by the PSB in China. The panel further finds that

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<sup>43</sup> *Liu v. Canada (Citizenship and Immigration)*, 2017 FC 736.

<sup>44</sup> *Cao, supra*, footnote 36.

<sup>45</sup> *X(Re)*, 2015 CanLII 72857 (CA IRB).

<sup>46</sup> *Ibid.*, at para 23.

<sup>47</sup> *Zeng v. Can. (M.C.I.)*, [2014] F.T.R. Uned. 437 (FC), [2014] F.T.R. Uned. 437, 2014 FC 1060; *Su, Jialu v. M.C.I.* (F.C., no. IMM-4968-14), Fothergill, May 25, 2015, 2015 FC 666; *Cao, Jie v. M.C.I.* (F.C., no. IMM-6248-13), Noël, March 12, 2015, 2015 FC 315.

the claimants were not Falun Gong practitioners in China and that they are not being pursued by the PSB. Therefore, the panel finds on a balance of probabilities that the claimants made fraudulent claims for protection when they arrived in Canada and that their general credibility is in doubt.

[108] The panel questioned the claimants as to their Falun Gong knowledge and they demonstrated some knowledge and understanding of basic Falun Gong theory and practice.

[109] As to the *sur place* aspect of these claims, the panel acknowledges the difficulty in making a judgment about the genuineness of someone's Falun Gong identity. The panel finds that merely having some basic knowledge of Falun Gong theory and practice is in itself an insufficient basis for making this judgment. Rather, the totality of the evidence adduced in testimony and the documentation disclosed must be considered, including events in China.

[110] The panel is guided in this regard by the decision of the Federal Court in *Jiang* in which the Court held that the Board must be entitled to import its credibility findings into its assessment of an applicant's *sur place* claim.<sup>48</sup>

[111] In addition, the Court in *Zhou* stated that it is permissible for the RPD to assess an applicant's genuineness and therefore a *sur place* claim in light of the credibility concerns relating to the original authenticity of the claim.<sup>49</sup>

[112] Counsel raised the issue of the monitoring of Falun Gong practitioners in Canada by Chinese officials. The panel finds, however, that having found that the claimants were not Falun Gong practitioners in China, there would be no identity evidence available to Chinese officials in this country that came from China. In addition, the panel notes that the claimants did not provide any evidence that their Falun Gong activities were monitored by Chinese officials and that they were personally identified by these officials. The panel finds, on a balance of probabilities, that the claimants were not identified as Falun Gong practitioners by Chinese officials in Toronto.

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<sup>48</sup> *Jiang, Sumei v. M.C.I.* (F.C., no. IMM-13-12), Zinn, September 11, 2012, 2012 FC 1067.

<sup>49</sup> *Zhou, Zhian v. M.C.I.* (F.C., no. IMM-5833-13), Boswell, January 5, 2015, 2015 FC 5.

[113] The panel notes that the claimants disclosed some photographs of their Falun Gong activities. The panel finds that these photographs may confirm that they participated in some Falun Gong activities. They do not however confirm the genuineness of their practice. The panel gives these photographs little weight.

[114] The panel further notes that the claimants disclosed two confirmation letters<sup>50</sup> from people who allege that they practised Falun Gong with the claimants in Toronto. The panel also notes the letter-writers are unknown to the panel and that they did not appear in the hearing to give the panel an opportunity to question them as to the basis of their assertion that the claimants are genuine practitioners. The panel gives the letters little weight.

[115] Having found that the claimants were not Falun Gong practitioners in China and that they were not being pursued by the PSB, and having further found that they made fraudulent claims for protection when they arrived in Canada, and on that basis that their general credibility is in doubt, the panel notes that there is a heavy burden on the claimants to demonstrate that they are now genuine practitioners. The panel finds, on a balance of probabilities, that there is insufficient evidence to support this assertion. The panel further finds that whatever knowledge of Falun Gong the claimants have and whatever practice sessions they attended reflect an effort to support fraudulent claims.

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<sup>50</sup> Exhibit 8, Claimants' personal documents, at pp. 13-17.

## CONCLUSION

[116] Therefore, the panel finds that the principal and associate claimants are neither Convention refugees nor persons in need of protection, and their claims are dismissed. As the claim of the minor claimant is totally based on that of the principal claimant, her claim is also dismissed.

*(signed)*

**“Milton Israel”**

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**Milton Israel**

**October 15, 2018**

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**Date**