

October 3, 2005: China/Asylum Issues: USCIRF deeply troubled by 5th Circuit decision in Li v. Gonzales

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Contact:

Anne Johnson, Director of Communications, (202) 523-3240, ext. 27 WASHINGTON - The U.S. Commission on International Religious Freedom (USCIRF) has written to Attorney General Alberto Gonzales expressing its concern over the decision by the U.S. Court of Appeals for the Fifth Circuit in the case *Li v. Gonzales*, which involves an asylum claim by a Chinese Christian who organized an unregistered house church in China. The Fifth Circuit upheld a decision by the Board of Immigration Appeals overturning an Immigration Judge's decision to grant Mr. Li withholding of removal from the United States. The Fifth Circuit adopted the Justice Department's position that Mr. Li had been prosecuted for failing to register his church with the government, not persecuted on account of his religion. The Commission is deeply troubled by the potential impact of this decision and the positions advanced by the Department of Justice in the case, which we believe undermine the international leadership of the United States in protecting asylum seekers and advancing the right to freedom of religion or belief. "The decision to deny Mr. Li protection is at odds with the positions advanced by the Administration and the State Department on conditions for freedom of religion in China and whether or not those conditions amount to violations of international human rights standards," said USCIRF Chair Michael Cromartie. "As a precedent, *Li v. Gonzales* will effectively provide a refuge from international law for those countries that criminalize 'unregistered' religious activity. It will refuse refuge, however, to those who flee persecution from such countries." The text of the letter follows: Dear Mr. Attorney General: I am writing on behalf of the United States Commission on International Religious Freedom. We would like to thank the Department of Justice for the recent meeting which was convened at our request by Assistant Attorney General Peter Keisler. At the meeting, Assistant Attorney General Keisler and his colleagues from the Departments of Justice and Homeland Security listened to our concerns regarding the recent Fifth Circuit decision in *Li v. Gonzales*. The Commission is deeply troubled by the potential impact of this decision and the positions advanced by the Department of Justice in that case, which we believe undermine the international leadership of the United States in protecting asylum seekers and advancing the right to freedom of religion or belief. The Commission is an independent government agency which advises the President, the Secretary of State, and the Congress on matters relating to international religious freedom. The Commission has focused considerable attention on the situation in China, where the government has engaged in severe and systematic violations of freedom of religion or belief against members of virtually all religious communities, including Uighur Muslims, Tibetan Buddhists, underground Catholics, house church Protestants, and spiritual movements such as the Falun Gong. As you are aware, the Commission recently completed a Congressionally authorized study on the treatment of asylum seekers in Expedited Removal proceedings. The Department of Justice has maintained a cooperative relationship with the Commission, and the Executive Office for Immigration Review has invited the Commission to participate in numerous trainings of immigration judges and attorneys at the Board of Immigration Appeals (BIA). The Commission has not previously taken a position on an individual asylum case, but is compelled as a matter of principle and precedent to do so now. *Li v. Gonzales* involves an asylum claim by a Chinese Christian who organized an unregistered house church in China. For his role in this activity, Mr. Li was arrested, beaten and detained for five days, lost his job, was forced to clean public toilets without pay, and faced prosecution and - potentially - years of imprisonment. The Immigration Judge granted Mr. Li withholding of removal, having found that Mr. Li would "more likely than not" face persecution for his religion were he to return to China. The INS trial attorney appealed, and the BIA (in a 2 to 1 decision) reversed the Immigration Judge, and ordered Mr. Li removed. The Fifth Circuit upheld the decision by the Board. While the BIA and the Fifth Circuit found Mr. Li to be credible, they ordered him removed. They found that Mr. Li had been subject to prosecution for failing to register his church - which they distinguished from persecution on the basis of religion. The Commission - which recently returned from China - is concerned with the increasing trend by China and other authoritarian governments to criminalize religious activity on the sole basis that the activity is not approved or the relevant religious organization registered by the government. Section 3 of the International Religious Freedom Act of 1998 explicitly defines arbitrary religious registration requirements as a "violation of the internationally recognized right to religious freedom." The President clearly shares this concern in China and has raised the issue on numerous occasions with the Chinese leadership. Mr. Li is a case in point, and the decision to deny him protection is at odds with the positions advanced by the Administration and the State Department on conditions for freedom of religion in China and whether or not those conditions amount to violations of international human rights standards. As a precedent, *Li v. Gonzales* will effectively provide a refuge from international law for those countries that criminalize "unregistered" religious activity. It will refuse refuge, however, to those who flee persecution from such countries. We have provided Assistant Attorney General Keisler with documentation of the human rights violations endured by those who belong to unregistered - as well as registered - churches in China. We look forward to continue working with the Department in addressing this important issue. Sincerely, Michael Cromartie
Chair

Michael Cromartie, Chair

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