

## November 4, 2005: China/Asylum Issues: Fifth Circuit vacates troubling asylum decision on religious freedom in China

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Anne Johnson, Director of Communications, (202) 523-3240, ext. 27 WASHINGTON - The U.S. Commission on International Religious Freedom (USCIRF) welcomes the November 1 order issued by the United States Court of Appeals for the Fifth Circuit to vacate its August 2005 ruling in *Li v. Gonzales*. The original decision - deferring to arguments advanced by the United States Department of Justice - upheld the order to remove a Chinese man who had been arrested, beaten, fired, and charged with the "crime" of organizing an unregistered house church in China. In so holding, the Fifth Circuit ruled that Mr. Li had been subject to prosecution for failing to register his church - not persecuted on the basis of his religious beliefs. The Fifth Circuit held - adopting the argument advanced by the Department of Justice - that China has the "sovereign right" to regulate unregistered religions, and that China's treatment of unregistered churches is an issue for "moral judgment - not a legal one." Subsequently, the Commission wrote the Department of Justice to make it clear that China's control over registered churches - and its prosecution of individuals for engaging in "unauthorized" religious activity - are clearly in violation of international law with regard to freedom of religion or belief. On November 1, the Fifth Circuit vacated the decision after the Department of Justice - citing the letter written by the Commission - changed its position on removing Mr. Li to China. The Commission had never before intervened in an individual asylum case. However, the Commission wrote the Department of Justice in this matter because the position taken was at odds with efforts by the President, the Department of State, and the U.S. Embassy in Beijing. U.S. foreign policy toward China and other authoritarian regimes has been clear: it is not permissible under international law to criminalize religious activity on the sole basis that such activity is "unregistered" or "unauthorized." 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 Commission reminded the Department of Justice that the President clearly shares this concern over China and has personally raised the issue on numerous occasions with the Chinese leadership. The Commission wrote that Mr. Li is a case in point, and the decision to deny him protection is at odds with the positions advanced by the Administration 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* would have undermined the international leadership of the United States in protecting asylum seekers and advancing the right to freedom of religion or belief. The Fifth Circuit's order to vacate ensures that the original decision in *Li v. Gonzales* cannot be cited as legal precedent to remove other asylum seekers accused of participating in the "crime" of unregistered religious activity. "Mr. Li, his attorneys, and the Departments of Justice and Homeland Security deserve great credit for working together to change the government's original position on this case, and to have the Fifth Circuit decision vacated. Had the decision been allowed to stand as precedent, it would have seriously limited the ability of the United States to protect people of faith fleeing the increasing tendency among certain authoritarian regimes to criminalize unregistered religious activity - regimes including - among others - China, Belarus, Burma, Eritrea, and Vietnam," said USCIRF Chair Michael Cromartie. Shortly after reviewing the letter from the Commission, the Department of Homeland Security filed a motion with the Board of Immigration Appeals (BIA) at DOJ to reconsider Mr. Li's case. On October 6, citing the Commission's letter as new evidence, the BIA reversed its earlier ruling and re-instated the Immigration Judge's decision to protect Mr. Li from removal to China. Even after the Department of Justice reversed itself and decided not to remove Mr. Li, the Commission was concerned that the Fifth Circuit decision - which misrepresented China's criminalization of unregistered religious activity as a legitimate "sovereign right" - remained legal precedent. The Fifth Circuit's decision to vacate the decision allays that concern.

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