

Federal Court



Cour fédérale

Date: 20141208

Docket: IMM-5531-13

Citation: 2014 FC 1184

Toronto, Ontario, December 8, 2014

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

SHUN QIU YE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*, the Act], of the decision of the Refugee Protection Division of the Immigration and Refugee Board [RPD, Board] dated July 8, 2013 refusing the Applicant's claim for refugee protection.

II. Facts

[2] Shun Qiu Ye [the Applicant] is a citizen of China from the Guangdong province, who claims a fear of (i) the Public Service Bureau [PSB] as she was in a house church that was raided in November 2010 and (ii) the Family Planning authorities in China [Family Planning] as she hopes to have more children and fears sterilization.

[3] She claims that she began attending a house church in December of 2009, and that it was raided in November of 2010. She went into hiding and fled China in February of 2011. When the PSB went to the Applicant's home looking for her in November 2010, they showed an arrest warrant to her husband. However, when her husband later went to the local PSB office to obtain a copy of the arrest warrant, he was unable to get one. The Applicant claims that she practices her Christian faith in Canada.

[4] The Applicant also claims that since the birth of her son in 1999, she has twice been forced by Family Planning to wear an IUD birth control device, and was forced to abort her second child in 2009. The Applicant's husband passed away in January 2013. She wishes to have more children.

III. Decision

[5] The RPD rejected the Applicant's claim under sections 96 and 97, on the grounds that:

- A. She lacked credibility and as such was not considered by the Board to be a genuine practicing Christian in China or Canada, and/or pursued by the PSB;
- B. her fears of forced sterilization were not genuine, and were premature and speculative given that her husband is now deceased and she was not forced to undergo sterilization when she became pregnant the second time. She also failed to provide objective evidence that she would be sterilized as a widow, since China's one-child policy provides for married women with one child to have an IUD inserted, not to be sterilized.

The hearing focused on the first issue, which will be the main subject of this decision.

IV. Issue

[6] This matter raises the following issue:

- A. Was the Decision reasonable?

V. Relevant Provisions

[7] Sections 96 and 97 of *IRPA* are annexed to this decision.

VI. Standard of Review

[8] The RPD's findings of fact and mixed fact and law are reviewable on a standard of reasonableness: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 51.

[9] When reviewing a decision on the standard of reasonableness, the Court is concerned with “the existence of justification, transparency and intelligibility within the decision-making process” and with “whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir* at para 47).

VII. Parties’ Submissions

[10] The Applicant submits that the RPD’s credibility finding was unreasonable for the following reasons:

- A. There was no inconsistency between the Personal Information Form [PIF] Narrative, which said the Applicant really came to know who God and Jesus were for the first time in December 2009, and the Applicant’s testimony, in which she said that her friend started talking to her about Christianity in November 2009.
- B. The Board failed to consider the highly relevant evidence from the psychological report in its assessment of the Applicant’s credibility.
- C. The Board unreasonably drew conclusions about the expected behaviour of the PSB in issuing summonses.
- D. The Board concluded that the Applicant did not know the first name of the individual who smuggled her to Canada, without asking her for his first name.

- E. The Board unreasonably dismissed country condition evidence reporting events of persecution of Christians in Guangdong province.

[11] The Respondent, in response, submits that the RPD's finding that the Applicant's claim of fear of the PSB was not credible was reasonable for the following reasons:

- A. The Applicant's PIF Narrative and testimony were inconsistent with respect to when she became a Christian. The Board gave her an opportunity to explain the inconsistency but she could not. She cannot now provide an explanation not provided to the Board.
- B. There were also weaknesses in the Applicant's oral testimony with respect to her knowledge of basic Christianity.
- C. The Applicant did not know the psychologist's diagnosis and recommendations. As such, the Board concluded that she was not truly interested in getting treated by the psychologist. Further, despite alternative explanations provided by the psychologist's report for any inconsistencies or omissions, the Board can still base a negative credibility finding on those inconsistencies or omissions (*Kaur v MCI*, 2012 FC 1379 at paras 33, 36).
- D. The Applicant's claim that the PSB obtained an arrest warrant even though it never issued a summons is inconsistent with the documentary evidence.

- E. The Board did not believe that the Applicant left China on a fraudulent passport as she did not know the full name of the smuggler or any other instructions he allegedly gave her. It was implausible, given the fact that she held out to be the smuggler's wife during transit, that she was able to provide so few details, including his first name.

- F. The issue above leads to the question of how she was able to leave China on her own passport if she was wanted by the PSB.

- G. The Applicant's allegation that the PSB raided her house church and arrested two parishioners is inconsistent with the documentary evidence on Guangdong province.

[12] The Respondent further noted that the Applicant, at almost every occasion found a reason to obfuscate when questioned on sensitive details regarding many of the above items. As difficult as it was to testify shortly after the death of her husband, that alone cannot be a reason for failing to credibly respond to fundamental details of the basis of her claim.

VIII. Analysis

[13] I have concluded that on the totality of the evidence, the Board's overall conclusions were reasonable. Despite errors made by the Board in some of its findings, as I will review below, I find the overall Decision to be reasonable.

A. *Credibility Findings*

- (1) Inconsistency in dates

[14] In my view, the Board's finding that the Applicant provided inconsistent dates for when her friend began talking to her about Christianity is unwarranted. There is no contradiction between the Applicant's statement that her friend began to talk to her about Christianity in November 2009, and her PIF Narrative which says that one day in the beginning of December, she "really came to know who God and Jesus Christ were for the first time" (Certified Tribunal Record [CTR], p 33).

[15] The Applicant wrote in her original PIF Narrative, after describing her sadness following the forced abortion of her second child, that:

In order to make me walk out of the sorrow and face my life, my friend Hong Fang Cao prayed for me, asking Jesus Christ to save me. Starting one day in the beginning of December 2009, I really came to know who God and Jesus Christ were for the first time, why we needed to pray. Hong Fang Cao talked about the miracle of Jesus Christ happened to her, which was also the course for her to believe in God, to encourage me and to give me confidence. When she prayed for me for the second time, I felt as if there was a pair of warm hands over my head and my body became much lighter. Hong Fang Cao prayed for me for several other times, taught me how to pray on my own, and continued to spread the Gospel to me. She gave me a Bible, so sometimes, we would read together. My situation was gradually improving, and meanwhile, I had more and more interest in Christianity. When I almost got recovered, I then made the decision to believe in God and to become a follower of Jesus Christ. I believe that a real God exists in this world, and believe in his enormous power. I hope my life be [sic] meaningful and my soul will be saved after death.

On December 25, 2009, I started my church life, because Hong Fang Cao brought me there. [...]

(PIF Narrative, CTR, p 33, paras 4-5)

[16] She then testified before the Board that her friend began talking to her about Christianity in November 2009. When the Board challenged her on this, she explained the inconsistency:

MEMBER: Okay, so you say she started talking to you about Christianity in November?

CLAIMANT: Yes.

MEMBER: In your PIF, it seems it was in December.

CLAIMANT: December was the first time she took me to church.

MEMBER: Do you know when in December she took you to church?

CLAIMANT: it [sic] was December 25th.

[17] While the RPD receives significant deference on its credibility findings, it is unreasonable to find an inconsistency where there is none.

(2) Board's assessment of the psychological report

[18] The Board gave the psychological report limited evidentiary value on the basis that: it was based on the Applicant's self-reporting; the report was based solely on a 2 hour examination three days after her husband's death; and the Applicant did not know the diagnosis, which suggested that she was not interested in treatment but rather used the report for the purposes of supporting her memory lapses and her story of traumatising in China.

[19] I am not convinced that whether or not an applicant knows the diagnosis in the psychologist's report is relevant to the weight that should be given to that report.

[20] However, in this case, I find the Board did not err in giving limited weight to the report.

In this respect, I adopt the words of Justice Reed in *Gosal v MCI*, [1998] FCJ No 346 at para 14:

[...] When such reports are nothing more than a recitation of the applicant's story, which the Board does not believe, and a conclusion based on symptoms, which the applicant has told the psychiatrist are being experienced, then, Boards cannot be faulted for treating such reports with some degree of scepticism. When they are based on independent and objective testing by a psychiatrist, then, they deserve more consideration.

(3) Negative inference drawn from absence of a summons

[21] The Board found that the Applicant failed to provide any persuasive documentary evidence that she is being pursued by the PSB. It found her allegation that the PSB had attended at her home on eight occasions and her mother's home on one occasion, and that the PSB showed her husband an arrest warrant for her arrest five days after the raid to be contrary to the documentary evidence. It relied on the documentary evidence (CHN103401.E) in finding that the issuance of arrest warrants is rare in China, and that since the PSB would have to provide credible evidence that the claimant was not going to attend voluntarily in order to obtain a warrant, it is reasonable to expect that the PSB would have left a summons at the Applicant's home in order to obtain this proof.

[22] I have reviewed the IRB Response to Information Request CHN103401.E and CHN104188.E (Applicant's Record, 123-131). These documents state that the PSB rarely uses warrants, but that the Procuratorate will issue an arrest warrant after the PSB has investigated the case and has evidence that the suspect committed the crime. CHN103401.E says that if the addressee of the summons is absent, the summons may be received on her behalf by an adult

member of her family. It also states that it is possible to obtain a copy of an arrest warrant or summons later by requesting one from the PSB, but does not specify whether somebody other than the individual can request and obtain a copy on the individual's behalf.

[23] CHN103401.E states that Chinese authorities do not always comply with the legislation, that arrest procedures differ from locale to locale, and that individuals do not always receive a copy of the summons. Thus, in my view, it would generally not be reasonable to base a credibility finding solely on the absence of a summons being issued in China, even where the police have attended to look for an individual on 9 occasions, as they did here. If the police in a given locale do not make use of summonses, it may not matter how many times they attend to look for the same individual.

[24] In this case the Applicant claims that the PSB showed an arrest warrant to her husband, but would not give him a copy when he asked for one later on. On the one hand, the documentary evidence indicates that arrest warrants are rarely used, which makes it less likely that an arrest warrant really was issued and shown to her husband in this case.

[25] On the other hand, the documentary evidence indicates that arrest warrants are only issued after the PSB has investigated the case and has evidence that the suspect committed the crime, which could have occurred in this case. Further, the country condition documents do not confirm whether an individual other than the subject of the arrest warrant can request and obtain a copy of the warrant.

[26] I find that it was not an error for the Board in this case to consider the Applicant's failure to produce a summons or warrant as one factor in its credibility assessment. It is not, however, a determinative factor.

(4) Applicant knew little about how she got to Canada

[27] The Board found it implausible that the Applicant did not know details about the smuggler and the trip to Canada, since she testified that they were to be traveling as husband and wife.

[28] Overall, I find it was reasonable for the Board to have made these findings with respect to the Applicant's knowledge about the smuggler, and her voyage to Canada.

(5) Testimony that church members were arrested contrary to documentary evidence

[29] I am also of the opinion that the Board's country condition findings are reasonable in that lay members of small underground Christian churches are not customarily arrested in Guangdong province, which may not be the same for church leaders. The evidence notes that residents of Guangdong province enjoy one of the most liberal policies on religious freedom in China, while some other areas of China are not as fortunate.

[30] The Board found that if there had been recent arrests or incidents of persecution of house church Christians with a profile similar to that of the claimant's church in Guangdong province,

there would be some documentation of it. I find these conclusions to be reasonable in light of evidence such as that detailed above.

(6) General demeanour

[31] Finally, I have reviewed the transcript, and agree with the Respondent that there was an overabundance of hesitation when it came to substantive details. Many times when the Applicant was asked about these issues, she hesitated and claimed that she was having memory problems, or issues dealing with her husband's death, rather than answering the questions.

[32] Counsel had every right to request an adjournment if it was all too much for the Applicant. The psychological report, if nothing else, provided evidence that the Applicant displayed serious anxiety issues after the death of her husband, as well as other issues arising from her past experiences

[33] However, I find that the Board member was sensitive to the issue, and provided various breaks to the Applicant during the hearing so that she could compose herself. The Board member also clearly told the Applicant that she was aware that her husband's death was difficult for her

[34] In conclusion, while some of the Board's findings were in error, I find that the Board's overall credibility determination in this case was not outside of the range of defensible outcomes

B. *No genuine fear of sterilization*

[35] Overall, I find the Board's conclusion that the Applicant would not be persecuted by Family Planning officials if she returned to China to be reasonable. Overall the Board's conclusion did not fall outside the range of reasonable outcomes. As the Board noted, the objective evidence did not establish that the Applicant would be sterilized if she returns to Guangdong province. Furthermore, the Board noted that her fear was premature and speculative at this point, as her husband had just died and it is not known at this point whether she will become pregnant again

IX. Conclusions

[36] This application for judicial review is dismissed. I find that the Board's findings regarding the Applicant's fear of persecution are reasonable. No questions for certification were raised, and this case does not raise a serious question of general importance warranting certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is hereby dismissed. No questions will be certified.

"Alan Diner"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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