

Federal Court



Cour fédérale

Date: 20150130

Docket: IMM-7866-13

Citation: 2015 FC 119

Ottawa, Ontario, January 30, 2015

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

YONGCHAO HAO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant seeks judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada (the Board), dated November 19, 2013, which found that he was neither a Convention refugee nor a person in need of protection pursuant to section 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). For the reasons that follow the application is dismissed.

[2] The applicant, Yongchao Hao, is a 33 year old citizen of China. On October 18, 2009, the applicant began attending an underground church with his friend. The applicant decided to attend church as he believed that by praying he could remedy the dizziness and fatigue he had been experiencing.

[3] The applicant began to spread the Gospel to people around him; however, in September 2010, a church member was caught by the Public Security Bureau (PSB) while distributing church flyers. In response, the church suspended activities and the applicant went into hiding until March 2011, when other members determined it was safe enough to return home. The member who had been apprehended was sentenced to two years in labour camp.

[4] The church resumed activities but on September 25, 2011 was raided by the PSB while the applicant was out of town. The church organizer and another member were caught and the applicant resumed hiding.

[5] Two days later, on September 27, 2011, the applicant learned from his wife that the PSB came to his home seeking to arrest him. They returned on September 30 to ask why the applicant had not surrendered, and threatened his wife not to conceal any information concerning his whereabouts. According to the applicant, the PSB have been to his home four times while he was in hiding and have produced a warrant for his arrest.

[6] On November 26, 2011 the applicant left China with the assistance of a smuggler. Using his own passport, the applicant arrived in Canada, via the USA, on a fraudulent visa. The applicant states that the PSB have been to his house on five occasions since he left China.

[7] On October 29, 2013, the Board dismissed the applicant's refugee claim primarily on the ground that the applicant was not credible.

[8] The Board concluded that the applicant was not credible based on a variety of factors, including his level of knowledge with respect to his church activities in China. Further, the Board made a negative inference based on the applicant's testimony that he had tried to leave China for the USA or Canada using fraudulent visa applications during his first time in hiding, even though there was no specific evidence that he was at risk of arrest from the PSB at that point in time.

[9] The Board also took issue with the applicant's lack of evidence in the form of a summons or arrest warrant from the PSB. The applicant testified that his wife was told by the PSB that they could not give the summons to anyone but the applicant; however, the Board relied on the National Documentation Package for China to show that Chinese law provides for alternative service to "an adult member of his family..." The Board therefore found that the applicant's testimony was not consistent with the documentary evidence and an adverse credibility inference was drawn.

[10] The Board explained that in leaving China the applicant travelled through the United States, but did not make a refugee claim. Further, he did not keep any airline boarding passes or tickets which would show how long he spent in the USA, his flight route, or his flight between Vancouver and Toronto. The applicant explained that he did not know they would be useful, and he had surrendered his passport to the smuggler. The Board reasoned that he has had representation by counsel since arriving in Canada, and should have known the importance of corroborating documents and could have made an effort to obtain confirmation of his flights from the airlines. As he failed to do this, the Board drew an adverse inference.

[11] Further, the Board did not find it plausible that the applicant was able to leave China without incident using his genuine passport, as the Chinese government has a national computer network that contains information on criminal fugitives. If the PSB was actually in pursuit of the applicant, the Board explained that it was reasonable to expect that the claimant's name would have been entered into the database as a person wanted by the PSB.

[12] The Board also found that the applicant was not a member of any church in China, and that as he was not sought by the PSB or police in China because of church activities. The Board therefore found that on a balance of probabilities, the claimant was not a genuine Christian.

[13] The applicant argues that the Board's decision was unreasonable. Specifically, he states that the negative credibility findings were unreasonable and not in accordance with the evidence; that the Board made an unreasonable assessment of the applicant's identity as a Christian and the associated *sur place* claim related to his Christian faith in Canada; that the Board erred in

basing its decision on erroneous findings of fact that the applicant's fear of persecution was not supported by the evidence and that he would be able to practice his faith freely in Hebei Province, China.

I. Analysis

[14] The decision under review is based on credibility, evidentiary and factual findings and is therefore subject to the standard of review of reasonableness.

[15] The Board's credibility findings were based on numerous credibility concerns including vagueness, omissions and the overall implausibility of the applicant's evidence. These include the fact that the applicant sought a visa to Canada and the United States at a point in time when he was not at risk, the absence of any summons or arrest warrant in circumstances where it was reasonable to expect one would exist, the fact that the applicant was able to leave China given its exit controls and imprecision around the operations of the house church of which he testified he was a member.

[16] In my view, the Board reasonably found that the applicant was not credible. This finding was based on his testimony, lack of corroborating documents, and his ability to leave China. Importantly, the Board found that the applicant was not a practicing Christian in China. The questions raised by the Board were all reasonable for the Board to consider and upon which to make determinations with respect to credibility could be founded. While the applicant makes a compelling argument that there is a distinction between credibility findings based on

inconsistencies and credibility findings based on the implausibility of the applicant's narrative, no error has been identified which renders any particular material finding unreasonable.

[17] I turn to the alleged errors with respect to the applicant's Christian identity. The Board did not determine that the applicant was not a Christian in Canada solely on the basis that he did not practice Christianity in China; rather, the Board determined that the applicant only joined a Christian church in Canada to support a fraudulent refugee claim. Again, its findings in this regard are supported in the evidence and were open to it. The Board noted, but considered unpersuasive, a letter from the pastor of a church in Canada and a baptism certificate. The circumstances here are analogous to those addressed by Justice Near (now of the Court of Appeal) in *Jing v Canada (Citizenship and Immigration)*, 2012 FC 609, para 20:

The Board's negative credibility assessment as to the Applicant's participation in an underground church and being wanted by the PSB was based on several concerns associated with the evidence as presented. The findings were made in "clear and unmistakable terms" (*Hilo v Canada (Minister of Employment and Immigration)*, [1991] FCJ no 228, 15 Imm LR (2d) 199) and fall within the range of acceptable outcomes. The Applicant's dissatisfaction with the Board's conclusions and weight assigned to various pieces of evidence is not a basis for the Court's intervention.

[18] In my view, the reasoning of the Board in this case falls squarely with that type identified by Justice Mary Gleason in *Li v Canada (Citizenship and Immigration)*, 2012 FC 998 where the Board noted the applicants questionable motive for conversion but then went on to assess the genuineness of the applicants conversion and found it to be lacking.

[19] Finally, although the Board determined that it did not believe that the applicant would have any interest in practicing as a Christian if he was returned to China, it nevertheless

reviewed the documentary evidence and concluded that if he did want to practice Christianity in Hebei province he would be able to without fear of persecution. As the Federal Court of Appeal noted in *Canada (Citizenship and Immigration) v Sellan*, 2008 FCA 381, para 3:

[W]here the Board makes a general finding that the claimant lacks credibility, that determination is sufficient to dispose of the claim unless there is independent and credible documentary evidence in the record capable of supporting a positive disposition of the claim. The claimant bears the onus of demonstrating there was such evidence.

[20] The Board reviewed the evidence in regard of the ability to practice Christianity in Hebei province, and while there was conflicting evidence, the conclusion on this point was reasonably open to the Board.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question for certification.

"Donald J. Rennie"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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