

Federal Court



Cour fédérale

Date: 20150203

Docket: IMM-6996-13

Citation: 2015 FC 137

Ottawa, Ontario, February 3, 2015

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**JINFENG ZHUANG
(A.K.A. JINFENG ZHUANG)**

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr Jinfeng Zhuang sought refugee protection in Canada based on his fear of religious persecution in China. He claimed that the Public Security Bureau (PSB) raided the Christian house church he was attending in June 2008. The PSB allegedly arrested, interrogated, detained and beat him, releasing him only after he paid a fine. Mr Zhuang maintains that he attended

another house church shortly thereafter and it, too, was raided by the PSB. While he managed to escape and find his way to Canada, he fears that he will be persecuted if he returns to China.

[2] A panel of the Immigration and Refugee Board dismissed Mr Zhuang's refugee claim based on a lack of credible evidence. Mr Zhuang submits that the Board's adverse credibility findings were unsupported by the evidence and, therefore, its conclusion was unreasonable. He asks me to quash the Board's decision and order another panel of the Board to reconsider his claim.

[3] I agree that the Board's decision was unreasonable. Several of its negative credibility findings were not supported by the evidence before it. Accordingly, I must allow this application for judicial review.

[4] The sole issue is whether the Board's decision was unreasonable.

II. The Board's Decision

[5] The Board summarized Mr Zhuang's account of events. He claimed to have sought out a Christian church because he was depressed after his family's land had been expropriated. He attended the church in June 2008, and fled China for the United States in August of that year. However, the Board found no proof that Mr Zhuang was actually in China during that time frame.

[6] After the PSB raided the church he attended on June 29, 2008, Mr Zhuang went into hiding. Mr Zhuang claimed that the PSB was looking for him at his home, but the Board was concerned that he was unable to explain how the PSB knew that he was at the church on that date. Further, Mr Zhuang's employment record showed that he was employed at his uncle's internet company from August 2007 to August 2008, which the Board found to be contrary to his claim to have been in hiding from the PSB.

[7] The Board also drew an adverse inference from Mr Zhuang's failure to produce an arrest warrant which he said the PSB had shown his parents. Without any kind of corroborating evidence, the Board doubted that Mr Zhuang was actually wanted by the PSB.

[8] The Board also noted that, when Mr Zhuang arrived in the United States, he was asked why he had left China. He answered that he wanted to work in New York; he did not mention being sought by the PSB.

[9] Mr Zhuang sought asylum in the United States but did not stay long enough for a decision to be made on his application. Instead, he travelled to Canada to make a claim here. Given that Mr Zhuang was baptized and attended church in the United States, his decision not to pursue his claim there caused the Board to question the genuineness of his asylum claim.

[10] Finally, the Board doubted whether Mr Zhuang was actually a Christian.

[11] Based on these concerns, the Board found that Mr Zhuang had failed to present a credible refugee claim.

III. Was the Board's decision unreasonable?

[12] The Minister concedes that some of the Board's rulings are questionable, but argues that the Board's final conclusion can be sustained on the basis of a number of sound findings.

[13] I disagree. I find that most of the Board's credibility findings are unsupported by the evidence.

[14] As mentioned, the Board found no proof that Mr Zhuang was actually in China between June and August 2008. However, there were two documents in evidence showing his presence in China in June 2008. The Board did not cite them or explain why this evidence was unsatisfactory.

[15] The Board faulted Mr Zhuang for failing to explain how the PSB knew that he was at the house church on June 29, 2008. But in his testimony before the Board, Mr Zhuang stated that the PSB members who had visited his parents stated that they had followed Mr Zhuang to the church. The Board did not respond to that explanation in its decision.

[16] Mr Zhuang's documentation showed that he worked for his uncle from August 2007 to August 2008. The Board found this evidence to contradict Mr Zhuang's claim to have been in hiding from the PSB beginning in June 2008. However, Mr Zhuang was actually living with his

uncle at the time – it is not implausible that he could have continued working while resident in his uncle’s house.

[17] The Board faulted Mr Zhuang for failing to file a corroborating arrest warrant. He stated that the PSB had shown his parents a warrant in 2009, but did not provide them with a copy. It is unclear how Mr Zhuang or his parents could have obtained a copy of that document.

[18] It is true that when Mr Zhuang arrived in the United States, he was asked why he had left China and said that he wanted to work in New York. However, he also stated that he was afraid of returning to China and would be harmed if he did so. The Board did not refer to the latter statements.

[19] Mr Zhuang explained that he did not stay in the United States to pursue his asylum claim because he was told that if his claim failed he would be arrested. In addition, he was told that his chances of success were greater in Canada. The Board did not refer to his explanations.

[20] Looking at these findings as a whole, I conclude that the Board’s adverse credibility rulings were rendered without regard for the evidence before it. Accordingly, its ultimate conclusion was unreasonable.

IV. Conclusion and Disposition

[21] The Board’s conclusion that Mr Zhuang’s refugee claim was unsupported by credible evidence did not represent a defensible outcome based on the facts and the law. It was

unreasonable. Therefore, I must allow this application for judicial review and order another panel of the Board to reconsider his claim. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed, and the matter is returned to another panel of the Board for reconsideration.
2. No question of general importance is stated.

"James W. O'Reilly"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6996-13

STYLE OF CAUSE: JINFENG ZHUANG (A.K.A. JINFENG ZHUANG) v
THE MINISTER OF CITIZENSHIP AND
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JUDGMENT AND REASONS: O'REILLY J.

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APPEARANCES:

Elyse Korman FOR THE APPLICANT

Alexis Singer FOR THE RESPONDENT

SOLICITORS OF RECORD:

Otis & Korman FOR THE APPLICANT
Barristers and Solicitors
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of
Canada
Toronto, Ontario