

Federal Court



Cour fédérale

**Date: 20150520**

**Docket: IMM-998-14**

**Citation: 2015 FC 650**

**Ottawa, Ontario, May 20, 2015**

**PRESENT: The Honourable Madam Justice Simpson**

**BETWEEN:**

**YANG, XUE KE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant, Xue Ke Yang, has applied for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board [the Board] dated January 27, 2014, wherein the Board determined that the applicant is neither a Convention refugee nor a person in need of protection [the Decision]. This application is made pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA].

I. Background

[2] The Applicant is a Chinese citizen who lived in Guangzhou City in Guangdong Province.

[3] After the Applicant's wife gave birth to their first child, she was fitted with an IUD. However, she became pregnant and was required to submit to an abortion in the spring of 2010.

[4] In early September of that year, the Applicant joined a Roman Catholic house church because he approved of its anti-abortion stance. The Applicant testified that he was told that the church took precautions and had not had problems with the Public Security Bureau [the PSB] for many years.

[5] The Applicant testified that on December 25, 2010, the PSB raided his church. Everyone escaped and the Applicant went into hiding.

[6] Two days later, his home was searched by the PSB and his wife was questioned and was required to sign a search warrant. The next day the PSB returned with a summons for the Applicant's arrest. The PSB also looked for him at his in-laws' home.

[7] On March 3, 2011, the Applicant travelled to the U.S. with the help of a smuggler. He arrived in Canada on March 25, 2011.

## II. The Decision

[8] The Board concluded, *inter alia*, that the Applicant was not credible when he said that his wife had been asked to sign a search warrant because that fact was omitted from his Personal Information Form [PIF]. The Board also found that the PSB summons was a fraudulent document and, for these reasons, it concluded that the Applicant's house church had not been raided and that he was not a fugitive from the PSB.

[9] However, the Board did accept that the Applicant worshipped at a Catholic house church in China, and that he continued to practice his faith in Canada.

[10] The Board therefore considered whether there was a serious possibility that the Applicant would be persecuted if he returned to China and continued to worship in an unregistered Catholic house church.

[11] Since there was no documentary evidence before the Board showing any raids on house churches in Guangdong Province, and since there was no evidence of any worshippers having been arrested or fined, the Board concluded that, on his return to China, the Applicant would be free to worship in any church of his choosing because the risk of persecution of worshippers in house churches in Guangdong Province was low.

## III. The Issues

[12] Against this background there are two issues:

- i. Is the Decision unreasonable because the Board failed to address the Applicant's risk of persecution under the one child policy?
- ii. Is the Decision unreasonable because the Board failed to address the submissions made by counsel for the Applicant about the nature of religious persecution?

IV. Issue I

[13] In my view, there is no error arising from the Board's failure to address whether the Applicant faced persecution by reason of China's one child policy because the Applicant did not raise that policy as a reason for his fear of returning to China. He presented his refugee claim based only on religious grounds, and this was confirmed in his Counsel's closing submissions. The only relevance of China's one child policy was that the abortion his wife experienced served as the catalyst for the Applicant's decision to join a Roman Catholic house church.

V. Issue II

[14] The Applicant says that the Decision is unreasonable because the Board failed to consider the following submissions made by his Counsel at the hearing:

- Notwithstanding the absence of evidence of raids or arrests, was the fact that the Applicant would have to worship at an underground Catholic house church persecutory because his human right to practice his religion openly and freely would be denied? [The First Submission]

- Was the fact that the Applicant would have to worship at an underground Catholic house church, which was illegal and seen as a political threat, persecutory because it meant that he was vulnerable to detention and arrest at any time? [The Second Submission]

VI. The Decisions on which the Applicant Relies

[15] The Applicant relies on two decisions issued by Mr. Justice de Montigny in 2009. The first is *Zhang v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1198 [*Zhang*]. In that case, the Applicant practiced Christianity in an underground house church in Anhui Province in China. However, because documents showed that only six people had been arrested in that province, the Board concluded that the church would not be raided, and that the Applicant would not be subject to arrest and imprisonment.

[16] Mr. Justice de Montigny dealt with this conclusion in paragraph 19 and in part of paragraph 20 of his Decision. There, he said:

[19] The RPD Member's focus on the number of arrests of Christians as an indicator of the likelihood of persecution is misplaced and erroneous. The number of arrests of underground Christians in China may speak to the ability of church members to stay underground and conceal their activities from the authorities. But the extent to which underground Christians are able to hide their activities and avoid detection is irrelevant for the purpose of determining whether or not they are subject to persecution for their religion, and unable to freely practice their religion openly and in accordance with their fundamental belief system. The Court has made it clear that religious persecution can take any number of forms:

The fact is that the right to freedom of religion also includes the freedom to demonstrate one's religion or belief in public or in private by teaching, practice, worship and the performance of rites. As a

corollary to this statement, it seems that persecution of the practice of religion can take various forms, such as a prohibition on worshipping in public or private, giving or receiving religious instruction or, the implementation of serious discriminatory policies against persons on account of the practice of their religion.

*Fosu v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 1813; 90 F.T.R. 182, (F.C.T.D.) at para. 5.

[20] The case law makes it quite clear that any meaningful restriction on the applicant's ability to practice her religion as she wished in her house church, including a brief period of detention or a fine, would most certainly constitute religious persecution. The fact that it is illegal to belong to an unregistered or non state sponsored church in China would therefore tend to support a finding of religious persecution.

[17] However, the quotation in *Zhang* from paragraph 5 of the decision in *Fosu v Canada (Minister of Employment and Immigration)*, [1994] F.C.J. 1813; 90 F.T.R. 182, (F.C.T.D.), [*Fosu*], did not include the last sentence of the paragraph. It showed that the Court in *Fosu* was speaking of an applicant who was a Jehovah's Witness.

[18] In *Fosu*, the Applicant was from Ghana. Its government passed legislation suspending the public activities of Jehovah's Witnesses and prohibiting all their services and meetings. After he met with a friend for bible study, the Applicant's home was searched and religious pamphlets were found. He was arrested and charged with disobeying a government order, and committing acts of sabotage prejudicial to the national security of Ghana. In my view, it is noteworthy that the enforcement of the law and the arrest and subsequent charges played a significant role in Mr. Justice Denault's finding that the applicant was a victim of religious persecution and faced future risk.

[19] Shortly after his Decision in *Zhang*, Mr. Justice de Montigny issued his decision in *Zhou v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1210, [*Zhou*]. It concerned an applicant who had worshipped at an unregistered Christian house church in China. Yet the Board found that he would not risk persecution at a registered church. Mr. Justice de Montigny held that this conclusion was flawed either because the Board misunderstood the differences between house and registered churches or because the Board believed the differences were inconsequential.

[20] However, another aspect of the Board's decision was also criticized. In that regard, Mr. Justice de Montigny referred again to *Fosu* and this time, included the reference to Jehovah's Witnesses at the end of paragraph 5. He said at paragraph 29 of *Zhou*:

[29] It seems to me the RPD also erred in equating the possibility of religious persecution with the risk of being raided, arrested or jailed. This understanding of religious freedom is quite limited and does not take into account the public dimension of this fundamental right. If one has to hide and take precautions not to be seen when practising his or her religion, at the risk of being harassed, arrested and convicted, I do not see how he or she can be said to be free from persecution. As this Court said in *Fosu v. Canada (Minister of Employment and Immigration)* (1994), 90 F.T.R. 182, [1994] F.C.J. No. 1813:

5. The fact is that the right to freedom of religion also includes the freedom to demonstrate one's religion or belief in public or in private by teaching, practice, worship and the performance of rites. As a corollary to this statement, it seems that persecution of the practice of religion can take various forms, such as a prohibition on worshipping in public or private, giving or receiving religious instruction or, the implementation of serious discriminatory policies against persons on account of the practice of their religion. In the case at bar I feel that the prohibition made against Jehovah's Witnesses meeting to practise their religion could amount to

persecution. That is precisely what the Refugee Division had to analyze.

[21] I am not persuaded that the decisions relied on by the Applicant are helpful. I have so concluded because in both decisions Mr. Justice de Montigny appears to have been primarily concerned with restrictions on the public dimension of worship. He illustrated his concern in both decisions with reference to *Fosu* which was a case about Jehovah's Witnesses for whom proselytizing is an essential aspect of their religious practice.

[22] However, the Applicant in the present case did not testify that his religious practice was constrained by the fact that he worshipped with others in private. In other words, there was no evidence of an essential public dimension to his religion. For example, he did not testify that pilgrimages were integral to his practice of his religion even though he participated in one in Canada.

[23] Mr. Justice de Montigny also appeared concerned that a small number of arrests might be misinterpreted by the Board to suggest tolerance on the part of the authorities when, in fact, it simply meant that the worshippers had successfully hidden their services. This is a reasonable concern which the Board might consider depending on the facts of a particular case. However, in the present case, there was no evidence that any raids or arrests had occurred in Guangdong Province.

[24] Finally, I am unable to agree with Justice de Montigny's suggestion that the simple fact that house churches are illegal is persecutory. In my view, the facts, including those dealing with



enforcement and government policy, must be ascertained to determine whether the illegality of house churches actually creates a serious possibility of persecution.

## VII. The Evidence

[25] The Applicant testified that a house church service included a silent prayer, a reading from the Bible, an explanation of the reading, a discussion of members' testimony and a recitation of the rosary. The worshippers could not sing and communion had to await a visit from a priest. However, the Applicant did not testify that these matters impeded his worship.

[26] In his PIF, the Applicant described being impressed by "a holy atmosphere around the house church" and reported that on his second visit, he was given a Bible as a welcome gift.

[27] There was no suggestion in the evidence that attending a house church meant that the Applicant was prevented from worshipping according to the dictates and tenets of his religion. As well, the evidence was clear that, at least in the Applicant's case, the illegal nature of the house church and the precautions taken against PSB raids did not detract from the church's holy atmosphere.

## VIII. Discussion

### A. *The First Submission*

[28] Public worship in an unregistered church in China is not an option. This means that if the Applicant had wanted to worship in public, he would have been denied that freedom. However, there was no evidence that the Applicant sought or required a public venue. In these circumstances, the Board was not required to address the First Submission.

B. *The Second Submission*

[29] The law is clear that the assessment of whether there is a serious possibility of future persecution can be informed by evidence of past conduct on the part of potential agents of persecution. In my view, the fact that house churches are tolerated and raids have not occurred in Guangdong Province is evidence which suggests that, while house church worshippers are theoretically vulnerable to arrest and detention, the risk is low.

[30] In my view, the Board dealt with and rejected the Second Submission when it concluded that the Applicant was not at risk.

IX. Conclusion

[31] For all these reasons, the application will be dismissed.

X. Certified Question

[32] The Applicant posed the following question for appeal pursuant to section 74(d) of the IRPA:

Can a person be said to be free from persecution if they cannot practice their faith openly, freely and according to their religious convictions?

[33] In my view, this question cannot be dispositive because there is no evidence that the Applicant is unable to practice his faith according to his religious convictions. Accordingly, this question will not be certified.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The application is dismissed; and
2. The question is not certified.

“Sandra J. Simpson”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-998-14

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