

Date: 20070807

Docket: IMM-4171-06

Citation: 2007 FC 819

Ottawa, Ontario, August 7, 2007

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

XIU YING CAO

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Ms. Xiu Ying Cao says that she fears persecution by authorities in China on two grounds – because she had a child when she was not married and because she worshipped at an underground Christian church. She sought refugee protection in Canada but a panel of the Immigration and Refugee Board dismissed her claim. Ms. Cao argues that the Board erred when it disbelieved her testimony and failed to consider documentary evidence that supported her claim. She asks for a new hearing. I agree with Ms. Cao, in part, and will grant this application for judicial review.

I. Issue

[2] Did the Board wrongly discredit Ms. Cao's testimony or fail to consider relevant evidence?

II. Analysis

(a) Factual Background

[3] Ms. Cao stated in her personal information form (PIF) that she joined a Christian church in Fujian province in 2003. She attended services on Sunday evenings. That same year, she met and fell in love with a man who worked as a cook at the hotel where she was a waitress. In 2005, she learned that she was pregnant. She asked her boyfriend to marry her but he refused. She found out that he had previously been married and already had a child. He quit his job and deserted her. Ms. Cao knew that having a child outside of marriage was illegal and feared that authorities would force her to have an abortion. So, she went into hiding at her aunt's home. Soon after, she learned that the authorities had found out about her situation and were looking for her. With her family's support, she fled to Canada.

(b) The Board's decision

[4] The Board did not believe that Ms. Cao was a Christian. It gave four reasons:

- Ms. Cao failed to describe the significance of baptism. She said that baptism was a test of faith, not a washing away of sins.

- Ms. Cao gave an incomplete description of a typical Christian church service in China. She said that everyone introduced each other, prayed, read the Bible and then discussed the scriptures. She failed to mention singing hymns and reciting the Lord's Prayer, although she acknowledged that these were also part of her church's services.
- Ms. Cao did not know what a "benediction" was.
- When she first arrived in Canada, Ms. Cao failed to mention that she was the member of an underground Christian church.

[5] Further, the Board did not believe Ms. Cao had shown a well-founded fear of family planning authorities in China. It gave three reasons:

- It was unlikely that authorities would have learned about Ms. Cao's pregnancy in March 2005, as she had claimed, because she was only one month into her term at that point.
- Ms. Cao stated in her PIF that authorities visited her home once while, in her oral testimony, she said that they visited once a month.

- Documentary evidence suggested that Ms. Cao may be fined when she returns to China, not that she is liable to be sterilized. The amount of the fine would likely be less than what she had paid to come to Canada.

(c) Disposition

[6] In my view, on the issue of Ms. Cao's fear of persecution on religious grounds, the Board's conclusion was supported by some evidence. The Board had before it evidence both supporting, and casting some doubt on, Ms. Cao's claim to have been a member of an underground Christian church. Given the significant deference owed the Board in the area of fact-finding, I cannot find grounds for the Court's intervention.

[7] However, on the issue of Ms. Cao's fear of family planning authorities, I have come to the opposite conclusion. First, unlike the Board, I do not find it implausible that authorities might have learned of Ms. Cao's pregnancy soon after she disclosed it to her family, boyfriend and fellow parishioners. With respect to a finding of implausibility, the Court is often just as capable as the Board at deciding whether a particular scenario or series of events described by the claimant might reasonably have occurred: *Divsalar v. Canada (Minister of Citizenship and Immigration)* 2002 FCT 653, [2002] F.C.J. No. 875 (QL)(T.D.) (at para. 6).

[8] Second, I believe the Board erred in its treatment of the documentary evidence. The Board observed correctly that a child born to a Chinese couple overseas would probably not be counted for purposes of the one-child policy. However, there was no evidence before the Board justifying its

conclusion that authorities would take the same tolerant view of an unmarried woman who returned with a foreign-born child. The Board realized that it is unlawful in China for an unmarried woman to bear a child and that she may, at the very least, be ordered to pay a steep fine. Still, the Board failed to refer to evidence that provided some support for Ms. Cao's fear of forced abortion (before her departure) and forced sterilization (if she returned). Finally, the documentary evidence clearly showed that it is extraordinarily difficult to obtain information on the enforcement of family planning regulations in some regions of China, including Fujian province. Therefore, in these circumstances, one could not safely infer from the absence of direct evidence about the treatment of those in Ms. Cao's circumstances that her fear of persecution was not well-founded.

[9] Accordingly, I will allow this application for judicial review and order a new hearing before a different panel of the Board, solely on the issue of Ms. Cao's fear of persecution as an unmarried mother. 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 granted and a new hearing before a different panel, solely on the issue of Ms. Cao's fear of persecution as an unmarried mother, is ordered
2. No question of general importance is stated.

"James W. O'Reilly"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4171-06

STYLE OF CAUSE: XIU YING CAO v. THE MINSITER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: May 24, 2007

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: August 7, 2007

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