Date: 20070905

Docket: IMM-80-07

Citation: 2007 FC 885

Ottawa, Ontario, September 5, 2007

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

YONG JIN LONG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] Mr. Long came to Canada from China as a student in 2001. While here, he became an adherent of Falum Gong, a practice which he says came to the attention of the Chinese authorities when he returned home for a visit in the spring of 2004.

[2] This led him to seek refugee status upon his return to Canada. However, the Refugee Protection Division of the Immigration and Refugee Board found that his story was not credible, that he was not a *bona fide* Falum Gong follower, and that he was probably not being sought in China for his Falum Gong activities.

[3] He then requested an updated pre-removal risk assessment (PRRA). Again he was found not to be at risk. This is a judicial review of that decision.

[4] Counsel for Mr. Long raises three interrelated points: a) the PRRA officer ignored some evidence; b) she failed to properly characterize some of the evidence as being new; and c) she misconstrued the risk of persecution which gave Mr. Long fear.

STANDARD OF REVIEW

[5] The determination of risk on return to a particular country is fact-driven, and so commands considerable deference. On questions of fact, the standard against which the decision should be reviewed is that of patent unreasonableness (*Kim v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 437, [2005] F.C.J. No. 540).

DISCUSSION

[6] A PRRA arises from section 113 of the *Immigration and Refugee Protection Act*. An applicant may only present new evidence that arose after the refugee claim was rejected, or was not reasonably available, or that he could not reasonably be expected in the circumstances to have presented.

[7] The applicant presented letters from two members of Falum Gong in Canada who confirmed that Mr. Long is a follower, and since January and February 2005, respectively, had been practicing Falum Gong with them, and others, at a park in Toronto. Undated photos were also presented which were said to show the applicant at a meeting.

[8] Although the letters were dated after the rejection of the refugee claim, the content related to evidence that pre-dated the Board's hearing and decision. No explanation had been given to the PRRA officer as to why this evidence was not available earlier. Consequently, the PRRA officer held that these letters did not constitute new evidence.

[9] Before me, it was submitted that although the letters straddled a timeframe which both pre- and post-dated the decision rejecting Mr. Long's refugee claim, it was thought that they would not have been of much use at that hearing because they did not relate to what had gone on in China.

[10] The decision to reject that evidence was not unreasonable and should not be disturbed.

[11] The second piece of new evidence is a photocopy of a summons to appear, which apparently had been addressed to Mr. Long at his parents' home in China and delivered in January 2006, some four months after his refugee claim had been rejected.

[12] Given that the evidence had indicated that the last time the authorities had visited Mr. Long's parents' home in China prior to the summons was in September 2004, it was not unreasonable for the officer to treat this summons as a "magic bullet". No evidence was offered as to how Mr. Long came to receive this photocopy in Canada. Mr. Long argues that the officer was wrong in saying "…I have assigned little weight to this piece of evidence". Either weight should have been assigned, or not assigned. There should have been no middle ground. I agree. The language is simply a polite way of challenging the authenticity of the document.

[13] However, the officer went on to say that in any event there was evidence on file that there would be no penalty for failing to comply with a court subpoena of this type.

[14] This leads to Mr. Long's argument that the officer misconstrued the risk. He does not fear being prosecuted for failing to respond to a subpoena, while he was out of the country, but rather he fears being persecuted for being a Falum Gong practitioner.

[15] However, I find no reason to disturb the officer's finding that there was no evidence of new risk developments which were personalized to Mr. Long and which had arisen since the negative refugee decision. The documentary evidence did not reflect a change in country conditions, and the PRRA application is not a second refugee hearing (*Kaybaki v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 32, [2004] F.C.J. No. 27).

ORDER

THIS COURT ORDERS that the application for judicial review of the pre-removal risk assessment rendered 9 November 2006 is dismissed.

"Sean Harrington"

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-80-07
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