

Date: 20071030

Docket: IMM-5173-06

Citation: 2007 FC 1122

Toronto, Ontario, October 30, 2007

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

**LAI FAN CHAO
QIAO ZHEN WANG
JUN KIT WANG
JUN LIM WANG**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The Principal Applicant, Ms. Lai Fan Chao, and her three children (collectively referred to as the Applicants) are citizens of the People's Republic of China (China). They claim a fear of returning to China due to the involvement of the Principal Applicant's husband and children's father with Falun Gong. As outlined in detail in her Personal Information Form (PIF), the Principal Applicant claims that, because her husband is a Falun Gong practitioner who has gone into hiding, the Public Security Bureau (PSB) will persecute her if she returns to China.

[2] In a decision dated August 23, 2006, a panel of the Immigration and Refugee Board, Refugee Protection Division (the Board) rejected her claim. The Board based its decision on a number of inconsistencies between the Principal Applicant's oral testimony and her PIF and a number of parts of her story that, in the Board's view, were implausible. The Board concluded that "the principal claimant is not a credible and trustworthy witness and that the PSB is not seeking her arrest or her husband's arrest in China".

[3] The Applicants seek judicial review of the Board's decision.

[4] The determinative issue is whether the Board's credibility finding was patently unreasonable in that it was made in a perverse or capricious manner or without regard to the evidence. For the reasons that follow, I am persuaded that the decision should not stand.

[5] It is well-settled that the standard of review as to the assessment of credibility of a claimant by the Board is patent unreasonableness (see, for example, *Ogiriki v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 342 at para 5). The Board is certainly entitled to rely on inconsistencies and implausibilities in the record in making its determination. The same highest standard of review applies to findings based on implausibilities. As stated by Justice Décary in *Aguebor v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 732 (C.A.) (QL), "As long as the inferences drawn by the tribunal are not so unreasonable as to warrant our intervention, its findings are not open to judicial review". I would also opine that, as long as any

inconsistencies are supported by the record, they too will not be questioned, even though the Court may have viewed the inconsistencies differently.

[6] With this statement of general principle in mind, I turn to the decision. The Board noted a number of inconsistencies and implausibilities. A number of these are not, in my view, supported by the record or, at the very least, are not explained. The following summarizes the areas where I have difficulty in accepting the findings of the Board:

1. The Board's conclusion that the Principal Applicant was inconsistent in why the PSB might arrest her is not borne out by a careful review of the PIF and the transcript. While the Principal Applicant restated the reasons set out in her PIF, I can find no inconsistency in substance – only a minor difference in the words used.
2. The Board stated that it did not “find it plausible that the principal claimant's husband would not try to get her to do Falun Gong also, if indeed he was a serious practitioner who had been practicing Falun Gong for over five years”. The Board does not explain this statement. For example, the Board could have referred to documentary evidence (if it exists) that reflects that a Falun Gong practitioner will pressure other family members to join. The Board does not explain why it would be logical for a father to put his wife and children in danger by persuading them to practise Falun Gong. While, the Board's inference may be supportable, without further explanation I am simply unable to determine how that inference can be drawn.

3. The Board questioned the plausibility that only two members of the husband's Falun Gong group would be caught and that he would be able to flee when the PSB discovered their underground Falun Gong practice. The Board's only stated reason for its concerns was that the "panel would expect that if the PSB had discovered the group and wanted to arrest them, that there would be more than two people caught and the principal claimant's husband would [not] be able to escape". The Board does not explain what makes the PSB able to eliminate the option of escape. From application of my own common sense, I could equally conclude that it is entirely plausible that someone can escape a police raid. Perhaps the Board has specialized knowledge about the operational practices of the PSB that would make its conclusion supportable; I do not know. The Board's explanation is inadequate.
4. The Board relied on the omission from the PIF of any reference to the fact that the Principal Applicant "had received fines for the second and third child and had been sterilized with a needle". The Board found this to be a "major omission as it is very clear in the PIF that all incidents should be included". It has never occurred to me that a claimant is required to record every one of her life's difficulties in the PIF. Rather, as the instructions state, the claimant is to "set out . . . all the significant events and reasons that have led you to claim refugee protection in Canada". If the Applicants were claiming protection and fled China because of its policies towards extra children, the omission would be relevant. However, that is not why they claim to have left China. A straight-forward response by the Principal Applicant that she has fears for her children does not change the basis of her claim. Therefore, it was patently unreasonable for the Board to rely on this omission. It was open to

the Board to consider whether the evidence of the Principal Applicant's concerns for the children could support a finding of fact that the Applicants left China for reasons other than those stated in the PIF. However, if this was the direction that was being taken by the Board, its stated reasons fall far short of being an adequate explanation of such a conclusion.

[7] None of the other findings by the Board would, in my view, warrant the Court's intervention. However, there are four significant short-comings in the Board's reasons. These four problems create a situation where I am unable to conclude that the decision, as a whole, is not patently unreasonable. Accordingly, I will allow the application and send the decision to a different panel of the Board for re-consideration.

[8] Although counsel for the Applicants initially suggested that the decision could justify the certification of a question, upon reflection and further discussion, he acknowledged that this case is one that is very fact driven. No question will be certified.

ORDER

THIS COURT ORDERS that:

1. The application for judicial review is allowed, the decision quashed and the matter referred back to the Board for re-consideration by a different panel of the Board; and
2. No question of general importance is certified.

“Judith A. Snider”

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-5173-06

STYLE OF CAUSE: LAI FAN CHAO ET AL V. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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**REASONS FOR ORDER
AND ORDER:** Snider J.

DATED: October 30, 2007

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