

Date: 20080312

Docket: IMM-1220-07

Citation: 2008 FC 337

Ottawa, Ontario, March 12, 2008

PRESENT: The Honourable Madam Justice Dawson

BETWEEN:

DU BIN CEN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Du Bin Cen is a citizen of the People's Republic of China (China) who arrived in Canada in October of 1990.

[2] Mr. Cen claimed protection as a Convention refugee because he said that he had organized, and participated in, student protests held in China in the spring of 1989. He fled China because he feared arrest and imprisonment. In March of 1991, his claim for refugee protection was dismissed by the Convention Refugee Determination Division of the Immigration Refugee Board (CRDD).

[3] In February of 2007, Mr. Cen's application for a pre-removal risk assessment (PRRA) was refused. He brings this application for judicial review of that decision.

[4] A single issue is raised on this application: did the PRRA officer conduct a sufficiently extensive risk assessment of whether Mr. Cen was a person in need of protection within the meaning of section 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act)? I find that the officer adequately considered this risk and so the application for judicial review is dismissed.

[5] Mr. Cen's argument is premised upon the fact that his refugee claim was considered in 1991, before the protection contained in section 97 of the Act was enacted. As of 1991, the CRDD only assessed whether a claimant fell within the definition of a Convention refugee (now encompassed by section 96 of the Act). For ease of reference, sections 96 and 97 of the Act are set out in the appendix to these reasons.

[6] To properly assess this argument, consideration must be given to the nature of Mr. Cen's claim before the CRDD and the risks he described in his PRRA application.

[7] Before the CRDD, Mr. Cen described his involvement in organizing students in support of the General Student Movement and his participation in demonstrations. He said that he was suspended from work. Fearing arrest and imprisonment, he then left China.

[8] In rejecting his claim, the CRDD observed that letters from Mr. Cen's wife, who remained in China, did not mention that the police were looking for him. The CRDD doubted that he was suspended from his job. The CRDD's ultimate conclusion was that there was no evidence that the penalties for those who played a role as minor as Mr. Cen did amounted to persecution. There was no serious possibility he "would actually suffer persecution, a severe restriction of his rights or serious physical abuse."

[9] Mr. Cen identified the same risk in his PRRA application. The only documentary evidence he provided was an article from Wikipedia entitled "Tiananmen Square protests of 1989". With respect to the current conditions in China, the article noted that the "topic is still a political taboo in mainland China, where any public discussion of it is regarded as inappropriate," and that Tiananmen Square is tightly patrolled on the anniversary of June 4th, in order to prevent any commemoration of the events of 1989.

[10] The PRRA officer expressly noted that he was required to assess Mr. Cen's risk under section 97 of the Act. The officer wrote:

I have considered the evidence provided by the applicant in order to determine under Section 96 of the Immigration and Refugee Protection Act (IRPA) whether he has a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion. I have also considered Section 97(1)(a) and (b) of IRPA regarding whether the applicant is a person in need of protection due to a danger of torture, or to a risk to his life or a risk of cruel and unusual treatment or punishment.
[emphasis added]

[11] While the PRRA officer acknowledged that China's human rights record remained poor, the officer noted that Mr. Cen had not provided sufficient evidence, since the rejection of his refugee claim, to convince the officer that he faced any of the risks outlined in sections 96 and 97 of the Act:

I have reviewed the documentation regarding the human rights situation in the People's Republic of China. Although the PRC's human rights record is poor, the applicant has not provided sufficient objective evidence since the rejection of his claim for protection by the Convention Refugee Determination Division (CRDD), to lead me to come to the conclusion that he personally faces any of the risks outlined in sections 96 and 97 of the IRPA.

[12] Specifically, on the question of whether Mr. Cen fell within the meaning of section 96 of the Act, the PRRA officer was not persuaded that Chinese authorities had a continuing interest in Mr. Cen or that Mr. Cen had a well-founded fear of persecution:

After a careful analysis of all the evidence before me, I do not find any reason as to why the Chinese authorities would continue to be interested in the applicant as the incident which caused him to come to the attention of the authorities occurred almost eighteen years ago. There is insufficient evidence before me to indicate that the applicant has continued to be perceived by the Chinese authorities as a political dissident. In the absence of any new persuasive evidence from the applicant, the country documents lead me to conclude that the applicant in this particular case does not face more than a mere possibility of persecution for any of the Convention grounds in the People's Republic of China. This application does not meet the requirements of Section 96 of the Immigration and Refugee Protection Act.

[13] As to whether Mr. Cen fell within section 97 of the Act, the PRRA officer again found that there was insufficient evidence to make such a finding:

The evidence was also carefully assessed in considering the application of Section 97 of the Immigration and Refugee Protection Act. I find that there is insufficient evidence to conclude that the applicant, if returned to the People's Republic of China, would be subjected to a danger, believed on substantial grounds to exist, of

torture within the meaning of Article 1 of the Convention Against Torture.

Furthermore, I find that it is unlikely that the applicant would be subjected personally to a risk to his life or to a risk of cruel and unusual treatment or punishment upon return to the People's Republic of China. As a result, this application for protection does not meet the requirements of subparagraph 97(1)(b)(i) of the Immigration and Refugee Protection Act.

[14] Mr. Cen's claim to risk was based solely upon a Convention ground: his political opinion. This risk was fully assessed by the CRDD and no new evidence of risk developments, relevant to either section 96 or 97 of the Act, was put forward by Mr. Cen.

[15] On that factual basis, I find the officer's section 97 analysis to be both adequate and reasonable. I note that similar conclusions have been reached, albeit in the refugee protection context, in cases such as *Kulendrarajah v. Canada (Minister of Citizenship and Immigration)* (2004), 245 F.T.R. 145 at paragraph 13 and *Brovina v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 771 (QL) at paragraphs 17 and 18.

[16] For these reasons, the application for judicial review is dismissed.

[17] Counsel posed no question for certification if the application was decided on this basis; therefore, no question is certified.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is dismissed.

“Eleanor R. Dawson”

Judge

APPENDIX

Sections 96 and 97 of the Act read as follows:

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d’être persécutée du fait de sa race, de sa religion, de sa nationalité, de son

social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

97(1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals

appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

97(1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent

in or from that country,

ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1220-07

STYLE OF CAUSE: DU BIN CEN, Applicant

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION, Respondent

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 5, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** DAWSON, J.

DATED: MARCH 12, 2008

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