

**Date: 20080523**

**Docket: IMM-4094-07**

**Citation: 2008 FC 640**

**Ottawa, Ontario, May 23, 2008**

**PRESENT: The Honourable Mr. Justice Beaudry**

**BETWEEN:**

**NAN LI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, 2001, c. 27, (the Act) of the decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated August 13, 2007, finding that the applicant is neither a Convention refugee, nor a person in need of protection.

**ISSUES**

[2] The applicant raises three issues to be determined. However, because the issues relate to the Board's factual conclusions on three points, I would restate the issue as follows: Did the Board

make an unreasonable error by failing to provide justifiable, transparent and intelligible reasons or arrive at a conclusion outside the range of possible, acceptable outcomes with regard to facts and law?

[3] For the following reasons, the application for judicial review shall be dismissed.

### **FACTS**

[4] The applicant is a citizen of the People's Republic of China (China), born on July 9, 1986. He seeks protection in Canada on the ground that he has a well-founded fear of persecution at the hands of the Public Security Bureau (PSB), by reason of his religious beliefs as a member of an underground Roman Catholic Church.

[5] The specific incident that led the applicant to leave China occurred at Christmas Eve mass in 2004. In the applicant's original Personal Information Form (PIF) narrative, received by the Board on January 4, 2006, the applicant claimed that the incident occurred at Easter mass in 2005. The date was later changed to Christmas Eve 2004 in an amended PIF dated March 9, 2007.

[6] The applicant attended a mass on Christmas Eve 2004 at a fellow church member's home. While the applicant was assisting the priest in performing the ceremony, the gathering was interrupted by police without uniform, who entered and directed themselves toward the priest. The applicant was standing in front of the altar.

[7] Within seconds of the police officers' entry, members of the congregation cut the power in the building and the lights went out. According to the applicant's account, this allowed the applicant and the priest to escape through the backdoor. The applicant went into hiding. While in hiding, the applicant learned that the PSB went to his grandmother's home, in order to arrest him. The applicant also learned that four people were arrested following the incident.

[8] The applicant left China in February 2005, with the assistance of a fellow church member. Over the following months, he passed through Russia, Germany, Italy and Denmark before arriving in Canada on October 4, 2005. He arrived in St. John's, Newfoundland, on a cruise ship with a false Korean passport and made a refugee claim. The applicant was detained upon his arrival, pending security clearance. He was interviewed by Canada Border Services Agency (CBSA) officers on five occasions, namely October 5, 11, 13, 24 and 26, 2005. He was finally released on conditions on December 8, 2005.

[9] The applicant was detained a second time on January 8, 2006, after missing his reporting date with CBSA, and then being discovered trying to cross the border into the United States by hiding in the back of a semi-truck trailer with eight other people.

#### **DECISION UNDER REVIEW**

[10] In its analysis, the Board noted the applicant's poor demeanour, as well as the indirect and vague answers he offered to the questions asked at the hearing.

[11] The Board based its refusal of his claim on two reasons. First, the Board concluded that the applicant was not wanted by the PSB, based on a number of omissions and inconsistencies in his account. Second, the Board concluded that the applicant is not nor has he ever been a Roman Catholic.

[12] The Board mentioned the following omissions and inconsistencies in the applicant's account:

- a) The Board noted that the most serious omission was that the claimant failed to mention the specific incident that led him to leave China to CBSA officials at any of the interviews conducted while he was in detention. When asked why he failed to mention the raid of the mass, he stated that he had asked for an interpreter. He was reminded that an interpreter was present at the time, and he said he was confused. The Board rejected the explanation and inferred from the omission that the event did not occur.
- b) The Board considered that the applicant failed to mention that the PSB went to his grandmother's house to find him, in his interviews with CBSA officials, as well as in his PIF. When asked about this omission, the applicant stated that he learned of the fact later. When it was pointed out to him that he learned of this while he was in hiding, he accounted for the inconsistency saying he had a memory lapse. The Board rejected the explanation, since the PSB's visit to his grandmother's home was central to his decision to leave.

- c) The Board noted that the applicant initially stated in his PIF that the raid by the PSB occurred on Easter 2005. It drew a negative inference from the fact that the PIF was later amended to indicate Christmas Eve 2004. The applicant's explanation that he was told to complete his PIF as quickly as possible was rejected.
- d) Finally, the Board noted that at the October 11, 2005 interview, the applicant stated that his reason for not wanting to return to China was not based on fear, but rather on the fact that he had spent a lot of money in coming to Canada.

[13] For the above-mentioned reasons, the Board found that the PSB was not interested in arresting the applicant, and therefore there was no serious possibility of persecution, or risk to his life, or risk of cruel and unusual treatment or punishment, or danger of torture in China.

[14] The Board went on to buttress its negative credibility finding, and stated that the applicant was never a Roman Catholic. This determination was based on the following reasons:

- a) It noted that during the CIC interview dated October 5, 2005, when asked how many gospels there are, the applicant replied "a lot". The applicant explained this error stating that there was an interpretation problem; however, the Board rejected this explanation on the ground that no other interpretation errors were raised.
- b) When the Board asked the applicant to name the Pope in power prior to Benedict XVI, the applicant initially stated that he did not know. When asked a second time he said Paul II, and the third time he correctly answered John Paul II. When asked

why he had difficulty naming the previous Pope, the applicant asserted that he had answered correctly and that the interpreter had a problem in English.

- c) The Board noted that the applicant struggled when asked to recite the Nicene Creed, which should not have been the case were he really a Roman Catholic.
- d) Finally, the Board drew a negative inference from the fact that the applicant was unable to answer to the Board's satisfaction why the Vatican is located in Rome and not Paris or New York City. The Applicant stated that it would be necessary to look to the cultural background of Jesus at that time, and that the most powerful preachers were in Rome. The Board noted that the answer was incorrect and that the Vatican is in Rome because that is where it is believed that St. Peter was buried, something the applicant should have known.
- e) The Board concluded that the letter provided by the applicant from his priest was not genuine, since he was not Roman Catholic.

## **ANALYSIS**

### *Standard of Review*

[15] The standard of review applicable to a decision of the Board on questions of fact is reasonableness. The jurisprudence of this Court has consistently found that findings of fact, and more particularly credibility, made in the context of a refugee claim, are subject to the highest level of deference (*Aguebor v. (Canada) Minister of Employment and Immigration* (1994), 160 N.R. 315 (F.C.A)). Following the Supreme Court of Canada's decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] S.C.J. No. 9, determinations regarding the credibility of a refugee claimant made by

the Board, should continue to be subject to deference by the Court, and are reviewable on the standard of reasonableness (*Dunsmuir*, above at paragraphs 55, 57, 62, and 64).

[16] For a decision to be reasonable, there must be justification, transparency and intelligibility within the decision making process. The decision must fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law (*Dunsmuir*, above at paragraph 47).

*Determination with Regard to Persecution*

[17] The applicant challenges the Board's finding that the PSB was not interested in arresting him, arguing that the finding is capricious and made without regard to the evidence. The applicant alleges that the Board erred in concluding that the applicant had no well-founded fear, because he in fact wanted to stay for financial reasons. The applicant asserts that the Board cherry-picked the evidence that supported its conclusion while ignoring other evidence.

[18] The applicant misapprehends the Board's conclusion. It is in fact the applicant who is focussing too closely on one aspect of the Board's reasons in advancing his argument. The Board's conclusion that the applicant was not wanted by the PSB is in fact a negative finding of credibility. The Board referred to a number of omissions, errors and inconsistencies in the applicant's account. From all of these, the Board concluded that the event central to the refugee claim did not occur. There can be no question that it is open to the Board to impugn the applicant's account on the basis of omissions and contradictions, and thereby infer that the facts underlying the claim are false (*Chen*

*v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 767, [2005] F.C.J. No. 959).

Drawing such a negative inference with regard to the credibility of the claim lies at the heart of the functions of the Board.

[19] A careful review of the Certified Tribunal Record, as well as the applicant's record, reveals that the inferences made by the Board were based on the evidence before it. The Board made no error in its assessment on this determinative issue.

*Determination with Regard to Religion*

[20] The applicant submits that the Board made a reviewable error in the determination of his identity as a Roman Catholic. He further submits that it is insufficient that he did not know the name of the Pope or why the Vatican is in Rome.

[21] The applicant rightly takes issue with certain reasons relied upon by the Board in determining that the applicant is not and never was a Roman Catholic. In particular, a careful review of the transcripts of the hearings before the Board does not support the Board's statement that the applicant struggled in reciting the Nicene Creed:

MEMBER: Okay. Would you recite the Nicene Creed for me?

INTERPRETER: Let me find this, Mr. Speaker. I'm not a Catholic. I believe you want him to say the whole ---

MEMBER: It's probably easier for you to just say it and Mrs. Tsao if you could say it afterwards.

CLAIMANT: You want him to say all the Nicene Creed?



MEMBER: The Nicene Creed, yes.

CLAIMANT: (Recites in Mandarin)

INTERPRETER: He didn't say Amen.

MEMBER: Was it recited correctly?

INTERPRETER: Yeah, yeah; correctly.

MEMBER: Okay; thank you.

[22] To the contrary, the transcript indicates that the applicant recited the Nicene Creed correctly.

[23] Further, I agree with the applicant's submission that the Board's question regarding the reason for locating the Vatican in Rome is not determinative of the applicant's identity as a Roman Catholic. It is my opinion that many well educated and practicing Catholics would fair no better were this question put before them (*Fedarov v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 101, [2007] F.C.J. No. 135; *Chen v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 270, [2007] F.C.J. No. 395).

[24] I also note that the explanation given by the applicant for failing to state the previous Pope's name is different from the explanation cited by the Board in its reasons. The Board's reasons indicate that "the claimant stated that maybe he said John Paul II and in English the interpreter had a problem." The transcript of the hearing provides the following:

MEMBER: What was the name of the Pope before Benedict the XVI.

CLAIMANT: I don't know.

MEMBER: The person before Benedict I believe was the Pope for close to 25 years. You don't know his name?

CLAIMANT: Paul the II.

MEMBER: Paul the II was the Pope previously to Benedict?

CLAIMANT: John Paul II.

MEMBER: Why couldn't you say that to begin with when I asked you?

CLAIMANT: Maybe I said it, John Paul II because the English Catholic John is different pronunciation with the Protestant, maybe you mistake saying to the interpreter.

MEMBER: But I asked you the question, you said you didn't know who the Pope was.

INTERPRETER: Sorry, I speak in English now.

CLAIMANT: I thought you were asking about Benedict XVI?

MEMBER: My question was "Name of the Pope before Benedict XVI."

CLAIMANT: Yeah. I heard it – misunderstood. I thought you were asking about Benedict XVI, his former name. What is his name?

[25] While I am troubled by the conclusions drawn by the Board from the applicant's answers to the questions asked at the hearing concerning his identity as a Roman Catholic, it is my opinion that the Board's finding with respect to the existence of a well-founded fear of persecution is determinative, and the application should be dismissed regardless of any error in the determination of the applicant's identity as a Roman Catholic.

*Other Immaterial Errors*

[26] Finally, the applicant submits that the application for judicial review should be allowed on the ground that the number of errors made by the Board is sufficiently important.

[27] Notably, the applicant alleges two errors in the Board's summary of the allegations. First, the applicant submits that the Board erred in stating that the raid occurred on Easter 2005, when the evidence indicated that it occurred on Christmas Eve 2004. Second, the applicant argues that the Board erred in stating that the applicant left China on October 4, 2005, when the evidence indicated that that he arrived in Canada on that date. In support of its submission, the applicant cites *Luzi v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1179, at paragraph 34, [2003] F.C.J. No. 1492.

[28] I do not agree. The two errors raised by the applicants do not reflect any misapprehension of the evidence on the part of the Board. The first error, regarding the date of the raid, is not in fact an error; Easter 2005 was the date submitted by the applicant in his original PIF. It is clear that the Board was cognizant of the amended date, since it relied on this amendment to draw a negative inference.

[29] The second error appears to be attributable to nothing more than a failure to proofread the reasons; the impugned sentence reads as follows:

The claimant left the People's Republic of China on October 4, 2005 and filed for refugee protection the same day in Canada.

The evidence shows that in fact the applicant left China in February 2005. None of the Board's conclusions turns on the date of October 4, 2005; the error is therefore immaterial.

[30] No questions were submitted for certification and none arise.

**JUDGMENT**

**THIS COURT ORDERS that** the application for judicial review be dismissed. No question is certified.

“Michel Beaudry”

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Judge

**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** IMM-4094-07

**STYLE OF CAUSE:** **NAN LI**  
**and THE MINISTER OF CITIZENSHIP**  
**AND IMMIGRATION**

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** May 20, 2008

**REASONS FOR JUDGMENT**  
**AND JUDGMENT:** Beaudry J.

**DATED:** May 23, 2008

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