

Date: 20080603

Docket: IMM-4841-07

Citation: 2008 FC 698

Toronto, Ontario, June 3, 2008

PRESENT: The Honourable Maurice E. Lagacé

BETWEEN:

JIAN QIN LIN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] A citizen of the People's Republic of China, the applicant claims that he was denied refugee protection by the Refugee Protection Division (RPD) of the Immigration and Refugee Protection Board, due to a finding of a lack of credibility in his account of persecution for having been mistaken as a supporter of the Falun Gong. The applicant seeks a judicial review of that decision pursuant to s. 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 (the Act) and requests that the matter be referred back to a differently constituted panel for redetermination.

I. Facts

[2] In March 2005, Mr. Lin claims he opened a store in his home town of Changle City in Fujian Province. His store sold books as well as audio and video material to customers whom he alleges were all from his home town. From time to time, some of the customers who were familiar with the applicant would ask him to help sell their products in his store. In May of 2006, his friend Mr. Chen did just that.

[3] The applicant alleges that on May 10, Mr. Chen gave him approximately fifty (50) books and DVDs on consignment and told him that the contents of the DVDs were about Buddhist teachings and Qi Gong. The applicant claims he agreed to sell these items and in fact, did, after having watched 2 of the DVDs. However, he claims he did know about Falun Gong and thought the material was about what Mr. Chen had said. Three days later, after he had sold ten (10) of the DVDs, members of the Public Security Bureau (PSB) acting on complaints from customers that these materials were about the Falun Gong, descended on his store, confiscated all the merchandise and detained his cousin who was minding the store that day in the absence of the applicant who was in San Ming City.

[4] As owner of the store, the applicant claims he was wanted by the PSB. They allegedly visited his home, interrogated his parents regarding his activities and whereabouts and accused him of being involved in the illegal promotion of the Falun Gong. His mother informed him of this visit and told him not to return home. Mr. Lin hid in his relatives' home in Sang Ming City where he

says the police also came often. As a result, he decided he could not safely stay in China, fled and arrived in Canada on August 6, 2006 to claim refugee protection. The applicant claims that after his arrival, he learned that the police continued their search for his whereabouts.

[5] After hearing the applicant's refugee claim the RPD, in its decision dated October 26, 2007, determines that he is neither a Convention refugee nor a person in need of protection and denied his claim.

II. The Impugned Decision

[6] In light of a number of inconsistencies, implausible statements and embellishments found in the information provided by the applicant to an immigration officer upon landing, in his Personal Information Form (PIF), and his testimony, the RPB determines that there is no basis to the claim due to the applicant's lack of credibility, and concludes that there is no serious possibility that Mr. Lin would be persecuted or be subjected personally to a risk to his life or to cruel and unusual treatment or punishment or be in danger of torture by any authority if he were to return to China.

[7] Following the Board's determination that the applicant is not a Convention refugee according to section 96, or a "person in need of protection" according to section 97 of the Act, the claim for refugee status is therefore dismissed. The determinative issue rests mainly on the applicant's lack of credibility.

III. Legislation

Immigration and Refugee Protection Act

(S.C. 2001, c.27)

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 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

Loi sur l'immigration et la protection des réfugiés,

(L.C. 2001, ch. 27)

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 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

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 in or from that country,

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

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

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 ne le sont généralement pas,

(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) 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.

IV. Issues

[8] The issues submitted by the parties can be rephrased as follows:

- Did the Board err in finding that the applicant lacked credibility on the basis of a misunderstanding of the evidence and a finding of fact that was perverse, capricious or without regard to the evidence?

[9] The applicant argues that considering he had submitted an amended PIF to correct certain discrepancies, in concluding as it did and in ignoring this amended PIF the RPD committed an error

of such magnitude and reflective of such significant and critical misunderstanding of the evidence that was before it, that it constituted a fundamental error that cannot withstand judicial scrutiny.

[10] The respondent argues for his part that the applicant's PIF omitted several significant facts that were only introduced at the hearing. Among the omissions found by the RPD, the applicant's PIF did not state that the PSB had put him on a wanted list, or that he needed a smuggler to bribe the airport officials in order to leave the country; these allegations were only introduced at the applicant's oral hearing. Therefore and in view of these omissions, the RPD was entitled to conclude as a result that the applicant lacked of credibility. In support of this argument the respondent cites *Sanchez v. Canada (Minister of Citizenship and Immigration.)*, [2000] F.C.J. No. 536, 98 A.C.W.S. (3d) 1265. The respondent adds that the RPD does not err in finding it implausible that the applicant would not know that the material sold in his store was about the Falun Gong after having watched the DVDs, and that he would have be able to exit China using his own passport if his name was on a wanted list by national authorities. The respondent argues that the Board is entitled to make such reasonable findings based on implausibility, common sense and rationality.

V. Standard of Review

[11] The respondent submits that the Board's findings with respect credibility and implausibility are findings of fact reviewable on the standard of unreasonableness (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] S.C.J. No. 9). The decision maker's credibility analysis is central to its role as

trier of fact, and consequently its Credibility findings are entitled to the highest degree of curial deference and therefore set a heavy onus on the applicant seeking to set aside such a finding.

[12] The grant of deference supports a reasonableness standard of review and implies, as the Court held at paragraph 49 of *Dunsmuir*, above, that courts will give “due consideration to the determinations of decision makers” when reaching a conclusion. Accordingly, the Court’s analysis of the Board’s decision will be concerned with “the existence of justification, transparency and intelligibility within the decision-making process [and also with] [...] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir*, above, at paragraph 47).

VI. Analysis

[13] The applicant submitted no valid argument to justify the Court’s intervention. The applicant has failed with his burden to demonstrate that the impugned decision is based on erroneous findings of fact made in a perverse or capricious manner, or that the decision was made without regard for the material before it.

[14] Having reviewed the evidence in record, this Court notes that in its reasons the Board does not make mention of the amended PIF. This amendment was introduced less than one month before the RPD hearing. However, the RPD benefits from the presumption that it has considered all of the evidence before it, though this presumption is not so strong as to overcome an omission to

comment on important evidence which on its face strongly supports a conclusion different than the one actually reached (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*), [1998] F.C.J. No. 1425, 157 F.T.R. 35).

[15] Nonetheless, the Court finds that this is not the case here since the RPD's negative inferences were drawn and well supported by evidence other than the amended PIF, and did not rest solely on this one aspect of the narrative. Further, the Court does not see that this information affects as such the overall negative credibility finding of the applicant. Therefore any errors linked thereto are not material to the result.

[16] The implausibility withstand review based on the evidence, and it was well open to the Board to conclude that the applicant lacked credibility given the improbabilities of his narrative and the discrepancies between information provided in his initial landing interview, his PIF, at the hearing and with due regard to the amendments to the PIF which are not relevant to the decision reached.

[17] In brief the impugned "decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law", and therefore deserves defence from this Court. For these reasons this Court concludes that the RPD did not commit a reviewable error and therefore the judicial review will be dismissed.

[18] The Court agrees with the parties that there is no question of general interest to certify.

JUDGMENT

FOR THE FOREGOING REASONS THIS COURT dismisses the application.

“Maurice E. Lagacé”

Deputy Judge

FEDERAL COURT
SOLICITORS OF RECORD

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