**Date: 20081015**

**Docket: IMM-1027-08**

**Citation: 2008 FC 1168**

**Ottawa, Ontario, October 15, 2008**

**PRESENT: The Honourable Orville Frenette**

**BETWEEN:**

**FANG CHEN**

**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 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), of a decision of the Refugee Protection Division (RPD), dated February 11, 2008, where the Board determined that the Applicant was not a Convention Refugee or a person in need of protection.

## BACKGROUND

[2] The Applicant is a 27 year old citizen of the Republic of China, who claims persecution by the Public Security Bureau (PSB) due to his membership in an underground Christian church.

[3] The Applicant claims to have joined the church on September 28, 2003 and attended weekly meetings in the homes of other members until he came to Canada on a student visa on January 4, 2004. He enrolled at George Brown College in Toronto, to study English as a second language (ESL). He followed courses from January 4 to August 13, 2004, passing the third level course but not the fourth level despite registering three times.

[4] He returned to China in August, 2004 because of the failing health of his grandfather. He left China after the death of the latter in October, 2004. Upon his return to Canada, he attempted to register at the same college in October, but he was told the classes were full. He applied for refugee status on November 8, 2004.

[5] In summary, he successfully passed only one course (with a C-) in English during his stay in Canada. The Applicant claims that on October 24, 2004, his mother told him that three members of the underground church had been arrested in China and that members of the PBS were searching for him.

[6] By decision of May 8, 2006, the Applicant's claim was rejected but a judicial review of that decision was allowed on March 8, 2007. Justice Robert Barnes of this Court found that the claim should be re-determined because the credibility findings were deficient.

**THE DECISION OF FEBRUARY 11, 2008**

[7] Both RPD panel members came to the conclusion that the Applicant had not established satisfactory evidence that he was a member of an underground church because he could not describe a typical religious service with sufficient accuracy. Specific points of concern included: that he stated that the organizer read the Lord's Prayer rather than reciting it; that he failed to mention, until directly asked, that the Bible was read in church; that he declared that the Bible stated that only pastors are allowed to give the Benediction; and that he stated that marriage was not a sacrament (line 46, T.R. p. 242).

[8] The RPD Member Diane Tinker, in her decision of February 11, 2008 also found that the Applicant had not been a *bona fide* student in that while in Canada; he successfully completed only one English course. She drew a negative inference from the fact that the refugee claim was only made in November, 2004, i.e. after his student status had expired.

**THE ISSUE**

1. **Did the RPD Member err in the assessment of the Applicant's credibility and *bona fide* status?**

**The applicable Standard of Review**

[9] The Supreme Court of Canada in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, has established two standards of judicial review, correctness and reasonableness.

[10] The standard of correctness applies to questions of law, of procedural fairness and natural justice, while the standard of reasonableness applies to assessments of facts or mixed facts and law.

[11] When the issue involves matters of facts or law applied to facts, a judicial review is not to be granted if the decision falls within the range of acceptable assessments of the facts.

[12] The instant case involves solely a determination of facts; therefore the standard of reasonableness applies. The panel's findings on the facts are essentially a credibility finding and, as such, should be given significant deference, especially since the Applicant had the opportunity to explain his claim at an oral hearing.

[13] The alleged error in failing to consider the Applicant's identity as a Christian in Canada is subject to the standard of reasonableness and should only be disturbed if the facts were misapprehended or interpreted outside the range of acceptable outcomes (*Vilmond v. Canada (Minister of Citizenship and Immigration)* 2008 FC 926 at para. 13).

## ALLEGED ERRORS

### Description of church services

[14] The Applicant alleges that the Panel member misrepresented or ignored evidence as to the description of church services by him, especially the words "read" and "recite" and the translator's explanation about these words. He relies upon *Huang v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 346, to state that the Member's expectations of the Applicant's doctrinal

knowledge and description were unreasonably high. He also alleges that a microscopic examination of the evidence was undertaken.

[15] The Respondent counters that the Member's credibility findings resulted from the implausible testimony which casts doubt on the Applicant's entire story. The translator's explanation did not improve or rehabilitate the Applicant's credibility.

[16] The Respondent distinguishes the *Huang* case because the Applicant in that case was from a rural area in China and had only a grade seven education. In this case, the Applicant has secondary schooling and twelve years of formal education.

**<u>ANALYSIS</u>**

[17] In my view, the alleged errors in the Panel member's credibility findings do not exist. Furthermore, seeing that deference should be granted to the Member, I believe that the findings fall within the acceptable outcomes available from the established facts. Besides the religious question, the Applicant's testimony is vague, and he did not answer pertinent questions adequately, such as why he obtained a passport in 1999 for no specific purpose and renewed this passport in 2003, when it remained valid for one more year.

[18] The *Huang* decision is easily distinguishable because Mr. Huang had little education and the RPD in that case was overly focused on a few points of error or misunderstandings so as to be a

microscopic examination which analysis was criticized in *Attakora v. Canada (Minister of Citizenship and Immigration)* (F.C.A.), [1989] F.C.J. No. 444.

**APPLICANT'S CHRISTIAN IDENTITY IN CANADA**

[19] The Applicant submits that the RPD member had an obligation to assess Mr. Chen's identity as a Christian in Canada regardless of his findings relating to the underground church in China, based upon *Huang,* above, and *Li v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 266.

[20] The Respondent answers that the Member did not commit an error in her decision that any Christian religious knowledge could have been acquired by the Applicant in Canada when he attended church while here. The Member stated that it is not illegal in China to practice Christianity if the church is registered.

**DISCUSSION**

[21] Most of the issues and sub-issues in this case were fully discussed in *Huang* which purported to follow *Chen v. Canada (Minister of Citizenship and Immigration)*, 2002 F.C.T. 480. The latter case involved a member of the Falun Gong, a sect which is not considered a religion in China but is illegal and a well-known target of persecution in China.

[22] Case law clearly distinguishes the situations involving registered and unregistered Christian churches in China and Falun Gong followers. Justice Teitlebaum in two recent decisions had to

deal with both situations. In *Liao v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1043, entailed a situation similar to the present one, of a Chinese native claming membership in an underground Christian church, Justice Teitlebaum dismissed the application for judicial review he found that the Board's decision that the Applicant was neither a Convention refugee or a person in need of protection, was well founded upon in the evidence.

[23] Another case, involving a Chinese citizen, practicing Falun Gong, Justice Teitlebaum also dismissed the application for similar reasons (*Lin v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1052 and see also *Jiang v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 775).

[24] In *Yang v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1056, Justice Campbell, on facts similar to those in the present case, granted the application considering that the Member had reached unacceptable factual findings relating to the knowledge of the Applicant of the tenets of the Christian Pentecostal faith.

[25] Every case must turn on its particular facts. However, with all due respect to the contrary opinion, I agree with the reasoning of Justice Teitlebaum in the above cited cases, especially because of the rationale discussed but also all three Applicants were of Chinese nationality and related to underground churches and their treatment in China.

[26] In my view, the same arguments and reasoning apply to the RPD's decision in the instant case. The Member's decision was centered on the issue of the Applicant's religion whether in China or in Canada and concluded that he never was a member of an underground Christian church in China.

[27] The Panel member based his credibility and implausibility findings on the totality of the evidence including the fact that the Applicant was not a *bona fide* student in Canada and made an application for refugee status only after his student status had expired.

[28] The Refugee division is the primary finder of fact and the Member gave many reasons why it did not find the Applicant credible.

[29] In such a case, this Court should not interfere with such findings, even if I do not agree with all inferences reached by the Member of the Refugee Board (*Aguebor v. Canada (Minister of Citizenship and Immigration)* (1993), 160 N .R. 315 (F.C.A.) and *Sheikh v. Canada (Minister of Citizenship and Immigration)* (1990), 3 F.C. 238 (F.C.A.) at 244).

## **CONCLUSION**

[30] According to the dicta set out in *Dunsmuir*, above, if the decision falls within the acceptable range of outcomes which can be based in the evidence, a court should not interfere. This is the situation in this case; therefore the application must be dismissed.

## JUDGMENT

**WHEREFORE THIS COURT ORDERS AND ADJUDGES that:**

1. The application is dismissed;

2. There is no question to be certified.

"Orville Frenette"
Deputy Judge

**FEDERAL COURT**
**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-1027-08 |
| **STYLE OF CAUSE:** | **FANG CHEN v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION** |
| **PLACE OF HEARING:** | Toronto, Ontario |
| **DATE OF HEARING:** | October 1, 2008 |
| **REASONS FOR JUDGMENT AND JUDGMENT:** | Frenette, D.J. |
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**APPEARANCES:**

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|---|---|
| Mr. Michael Korman | FOR THE APPLICANT<br>FANG CHEN |
| Ms. Judy Michaely | FOR THE RESPONDENT<br>MINISTER OF CITIZENSHIP AND IMMIGRATION |

**SOLICITORS OF RECORD:**


| | |
|---|---|
| Mr. Michael Korman<br>Otis & Korman<br>41 Madison Avenue<br>Toronto, ON M5R 2S2<br>Fax: (416) 979-3778 | FOR THE APPLICANT<br>FANG CHEN |
| Department of Justice<br>The Exchange Tower<br>130 King Street West<br>Suite 3400, Box 36<br>Toronto, ON M5X 1K6<br>Fax: (416) 954-8982 | FOR THE RESPONDENT<br>THE MINISTER OF CITIZENSHIP AND IMMIGRATION |