

Date: 20081126

Docket: IMM-2078-08

Citation: 2008 FC 1321

Ottawa, Ontario, November 26, 2008

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

CHANG QING SONG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to s. 72 (1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of a decision of a Board of the Refugee Protection Division of the Immigration Refugee Board (Board), dated April 2, 2008 (Decision), refusing the Applicant's application to be deemed a Convention refugee or a person in need of protection under section 96 and section 97 of the Act.

BACKGROUND

[2] The Applicant is a 48-year-old citizen of the People's Republic of China. He is married with one daughter.

[3] The Applicant's father passed away in June 2005. His death prompted the Applicant's introduction to Christianity and a house church through his friend, Wei Zhou. The Applicant attended his first house church service on June 19, 2005 and continued to attend regularly until May 2006. The church was not registered with the government of China, so precautions were taken not to be discovered.

[4] The Applicant's wife did not share his Christian faith and chose not to join the house church. The Applicant was baptized on January 15, 2005 at the church and took Holy Communion when his pastor made visits.

[5] The church was discovered by the Chinese police on May 21, 2006. The Applicant was late for the service on that day because he had taken his mother to the hospital. He noticed police cars nearby and chose to turn around and walk away out of caution.

[6] Later that evening, the Applicant received a phone call from his friend, Wei Zhou, and learned that the church had been raided, but Wei Zhou had managed to flee. He suggested that the Applicant go into hiding to be safe. The Applicant went into hiding at his uncle's home in a different village.

[7] While in hiding, the Applicant learned from his wife that the Public Safety Bureau (PSB) had been to their home looking for him in connection with illegal religious activities. The Applicant's wife had denied to the PSB that he had participated in illegal religious activities, but the

PSB told her that they had already arrested three believers and they had sufficient evidence against the Applicant.

[8] Upon receiving that information from the PSB, the Applicant's family hired smugglers to smuggle him out of China. The Applicant fled China on October 2, 2006.

[9] He arrived in Canada on February 10, 2006 in Vancouver. In October 2006, he began attending Toronto Living Water Assembly Church in Toronto, where he attends every Sunday. The Applicant was also baptized at this church on Christmas Day 2006.

[10] The Applicant's daughter is now studying in Japan and has been encouraged by the Applicant to take up Christianity since she is now living in a free and democratic country. She has been learning about Christianity in Japan since May 2007.

[11] A refugee hearing was held on March 26, 2008 for the Applicant. He testified through a Mandarin/English interpreter. At his hearing, the Applicant gave oral testimony about his Christian activities in both China and Canada. On April 17, 2008, the Applicant received a negative decision on his claim for refugee protection.

[12] The Applicant acknowledges that he was nervous at the hearing and forgot to mention that there was a Benediction at the end of the service at his church.

DECISION UNDER REVIEW

[13] The Board concluded that the Applicant was neither a Convention refugee nor a person in need of protection.

[14] The Board found that the Applicant's oral testimony and the supporting documentation he had filed established his identity as a national of the People's Republic of China. However, on a balance of probabilities, the Board found that the Applicant is not, and never was, a member of an underground Christian church in the People's Republic of China.

[15] This conclusion was based on several points of information before the Officer:

- 1) The Applicant, after only two conversations with a friend, and knowing he could face arrest and incarceration and cause problems for his family, decided to join the underground Christian church;
- 2) The Applicant failed to mention if a Benediction was said at the end of the service;
- 3) The PSB is not, nor has ever been, interested in arresting the Applicant for religious activities;
- 4) The Applicant was able to leave the People's Republic of China using his own passport, even though he maintained that the smugglers obtained his passport and Canadian visa illegally;
- 5) It is not plausible that the smugglers could have bribed officials at the Beijing Airport to get the Applicant through, as this would involve bribing hundreds of

officials with no guarantees as to which boarder police would be on duty or which line the claimant would be directed to.

[16] The Board concluded that any knowledge the Applicant had acquired about Christianity could have been easily acquired in Canada in order to manufacture his claim. There were no other reasons before the Board as to why the Applicant feared persecution in the People's Republic of China and, therefore, no serious possibility that the Applicant would be persecuted or subjected to a risk to his life, or a risk of cruel and unusual treatment or punishment, or to a danger of torture by any authority in the People's Republic of China.

[17] In addition, the Board found that the Applicant could return to the People's Republic of China without fear of persecution and, if he did want to become a Christian, practise that religion in the People's Republic of China freely in a registered church.

[18] The Board cited documentary evidence which indicated there were tens of millions of Protestants in the People's Republic of China who attend registered churches. Also, there was evidence that house churches are discouraged but increasingly tolerated.

[19] The Board found that the Applicant's claim was not made in "good faith" and rejected it.

ISSUES

[20] The Applicant raises the following issues:

- 1) Did the Board commit a reviewable error in its assessment of the Applicant's credibility?
- 2) Did the Board commit a reviewable error in finding that the Applicant could practise his Christian religion at the Patriotic Church in China?

STATUTORY PROVISIONS

[21] The following provisions of the Act are applicable in these proceedings:

Convention refugee

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

Définition de « réfugié »

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

country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

Personne à protéger

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

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

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

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

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

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

(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,

(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) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles

accepted international standards, and

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.

Person in need of protection

Personne à protéger

(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.

STANDARD OF REVIEW

[22] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, the Supreme Court of Canada recognized that, although the reasonableness *simpliciter* and patent unreasonableness standards are theoretically different, “the analytical problems that arise in trying to apply the different standards undercut any conceptual usefulness created by the inherently greater flexibility of having multiple standards of review” (*Dunsmuir* at para. 44). Consequently, the Supreme Court of Canada held that the two reasonableness standards should be collapsed into a single form of “reasonableness” review.

[23] The Supreme Court of Canada in *Dunsmuir* also held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to the

particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[24] Thus, in light of the Supreme Court of Canada's decision in *Dunsmuir* and the previous jurisprudence of this Court, I find the standard of review applicable to this issue to be reasonableness. When reviewing a decision on the standard of reasonableness, the analysis 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* at para. 47). Put another way, the Court should only intervene if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law".

ARGUMENTS

The Applicant

Credibility

[25] The Applicant submits that it is a basic and central principle of refugee law that, when a refugee claimant swears to the truth of certain allegations, there is a presumption of truthfulness unless there are valid reasons to rebut the claimant's allegations: *Permaul v. Canada (Minister of*

Employment and Immigration), [1983] F.C.J. No. 1082 (F.C.A.) and *Armson v. Canada (Minister of Employment and Immigration)*, [1989] F.C.J. No. 800 (F.C.A.).

[26] The Applicant argues that the Board did not have sufficient reasons to set aside the presumption of truthfulness in this case. This is particularly so since the support for the negative credibility finding is primarily based upon the Applicant's failure to mention a Benediction when describing a house church service in China. The Applicant did testify that he was very nervous and this is a credible explanation as to why he initially did not mention that a Benediction took place when he was describing a service.

[27] The Applicant says that the Board was overly critical in relying on the forgotten Benediction and cites and relies upon the decision of this Court in *Gjota v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 1299 at paragraph 5:

5. ...As held in *Attakora v. Canada (Minister of Employment and Immigration)* (1989), 99 N.R. 168 (F.C.A.), the Board must be diligent to not be overzealous to find instances of contradiction in an applicant's testimony and should not be overly vigilant in undertaking a microscopic examination of the evidence of claimants who testify through an interpreter. In this case, I am satisfied that the Board was too microscopic in its examination of the applicant's testimony in this regard.

[28] It is further submitted by the Applicant that the Board committed a reviewable error in finding that it was implausible that the smuggler could have bribed officials at the airport. The Applicant notes that this Court has dealt with the same finding by the same Board in a recent case

called *Zhang v. Canada (Minister of Citizenship and Immigration)* 2008 FC 533 that was overturned by this Court on review.

[29] The Applicant says he did not acquire his Christian knowledge while in Canada. The Applicant again quotes *Zhang*, at paragraph 13, for the proposition that unless a tribunal can cite or provide facts to prove that its inference, then the tribunal is simply engaging in speculation. That is what the Board did in the present case.

[30] The Court in *Zhang* held that Ms. Zhang could have acquired her knowledge of Falun Gong in Canada or China. The Court found that the board had not cited or proven any facts that would allow it to infer that it was more probable that Ms. Zhang's knowledge was acquired in Canada. Therefore, the Court found the board's conclusion that Ms. Zhang's knowledge of Falun Gong was acquired in Canada to be speculative.

[31] The Applicant concludes that the Board's negative credibility assessment should be set aside and the reasoning applied from the cases cited above.

Practising at the Chinese Patriotic Church

[32] The Applicant submits that he has been attending the Living Water Assembly Church in Toronto for over a year and a half. He testified that the Patriotic Church of China offends his Christian beliefs, and that the Patriotic Church is not a true Christian Church because it is controlled by the Communist Party, which is atheist. Also, in the Patriotic Church, the Communist Party is placed before God, which is a violation of the Ten Commandments.

[33] Reverend Ko of the Living Water Assembly Church states in his January 20, 2008 letter, which was before the Board, that he has been to mainland China several times and knows that Christians are being persecuted in China and that real Christians cannot practise their religion openly and freely.

[34] The Applicant goes on to discuss documentary evidence placed before the Board which supports his position. He contends that, although the Board acknowledges the documentary evidence, it does not mention any of the documentation that supports the Applicant's assertions of ongoing religious repression and persecution in China. The Applicant says that this selective use of the documentation was a reviewable error by the Board.

[35] The Applicant also notes that in the Board's reasons it cites information pertaining to Shanghai, when the Applicant is from Tianjin. The Applicant submits the Board performed "a cut

and paste” job from another decision that is not applicable to the case at hand. Hence, the Board committed several reviewable errors of law in its assessment of this claim.

The Respondent

Credibility

[36] The Respondent says that the Board did not err in finding that the Applicant was not credible. As well, the Board is obliged to state its adverse credibility findings in clear and unmistakable terms with examples to support its doubts about the evidence: *Hilo v. Canada (Minister of Employment and Immigration)*, [1991] F.C.J. No. 228.

[37] The Respondent says that the Board based its findings on, amongst other things, the Applicant’s lack of knowledge of a Christian ceremony, as well as on how the Applicant alleged he left China with his own genuine passport while he was wanted by the PSB.

[38] The Respondent cites *Maldonado v. Canada (Minister of Employment and Immigration)*, [1980] 2 F.C. 302 (F.C.A.) at 305 for the principle that an application of the presumption that testimony is truthful is predicated on there being an absence of reasons to doubt its truthfulness. The Respondent contends that the Board had numerous reasons to doubt the truthfulness of the Applicant’s evidence. In particular, the Board found it implausible that the Applicant would join an underground Christian church after only two conversations with a friend, especially in light of the well-known risks that would accompany such action. In addition, the Applicant gave three different

answers to questions about how he made it through security checks at the airport with his own passport even though he was wanted by the PSB. The Board also rejected the evidence of the Applicant that a smuggler illegally obtained a passport in the Applicant's own name, and that the Applicant returned this passport to the smuggler after he cleared Canadian customs.

[39] The Respondent cites *Aguebor v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 732 at paragraph 4 for the principle that nobody is in a better position than the Board to gauge the credibility or plausibility of an account and to draw the necessary inferences.

[40] The Respondent submits that where any of the Board's inferences and conclusions are reasonably open to it on the record, this Court should not interfere, whether or not it agrees with the inferences drawn by the Board: *Aguebor*. The Applicant simply disagrees with the Board's conclusions that were based on the evidence before it. The Court's intervention is not warranted: *Brar v. Canada (Minister of Employment and Immigration)*, [1986] F.C.J. No. 346 (F.C.A.) and *Ye v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 1233. If a central incident is disbelieved, any other alleged errors are of no consequence: *Yang v. Canada (Minister of Employment and Immigration)*, [1995] F.C.J. No. 121 (F.C.A.).

[41] The Respondent submits that the Board is a specialized tribunal and that the evidence of country conditions and other questions of fact fall within its expertise. Therefore, the Board is entitled to determine the weight to be assigned to each piece of evidence and to draw its conclusions

based on the evidence. This Court should not substitute its views for that of the Board: *Shehzad Khokhar v. Canada (Minister of Citizenship and Immigration)* 2008 FC 449 and s. 162 of the Act.

[42] The Respondent also says that the Applicant has failed to establish that the Board ignored or misinterpreted his evidence. His arguments amount to saying that the Board did not weigh the evidence in his favour. Questions of credibility and the weight of evidence are within the jurisdiction of the Board and it is not this Court's function to reweigh the evidence: *Brar; Bela v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. 902 at para. 13; *Fernando v. Canada (Minister of Citizenship and Immigration)*, [2002] FCT 993; *Castro v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 787 (F.C.T.D.) and *Nosa v. Canada (Solicitor General)* 2004 FC 1248.

[43] The Respondent cites and relies upon Chief Justice Thurlow (as he then was) in *Brar* at paragraph 1:

In our opinion, the points argued by counsel for the Applicants raise only questions of credibility and of the weight of evidence and afford no legal basis upon which this Court could properly interfere with the decision of the Immigration Appeal Board.

[44] The Respondent submits that the Board had evidence before it that, taken as a whole, supports its negative assessment of the Applicant's credibility. In light of the evidence, its findings were reasonable and it drew reasonable inferences from that evidence. Therefore, the Court should not interfere with this Decision: *Larue v. Canada (Minister of Employment and Immigration)*,

[1993] F.C.J. No. 484; *Sidhu v. Canada (Minister of Citizenship and Immigration)* 2001 FCT 685 and *Sharif v. Canada (Minister of Citizenship and Immigration)* 2001 FCT 542.

[45] The Respondent also submits that the Decision should not be read microscopically. The Board made findings regarding the credibility of the Applicant based on the evidence, which findings were reasonably open to it on the record.

[46] The Board found the Applicant was not a member of an underground Christian church who feared persecution because his story was implausible. Even if the explanation given by the Applicant was plausible, it is open to the Board to find otherwise: *Krishnapillai v. Canada (Minister of Citizenship and Immigration)* 2007 FC 563 at para. 11. Therefore, the Board's conclusions regarding the plausibility of the Applicant's story were reasonable.

Practicing at the Chinese Patriotic Church

[47] The Respondent submits on this issue that the Board weighed the evidence before it regarding the ability of Protestants to worship in China. The Board found that there was no evidence that registered church members are constrained from practicing their religion freely, and further that there was evidence that house churches are discouraged. They are increasingly tolerated. The Board relied on information from the *Christian Science Monitor*, "China: Situation of Protestants and Treatment by Authorities, particularly in Fujian and Guagndong (2001-2005)", CHN 100387.E, CTR, pages 56-58 which included the following:

- [T]wo new Protestant churches were being built in Beijing in 2004 to hold between four thousand and five thousand congregants;
- There were plans for at least five additional churches in Beijing as of 2004; Along the southeast coast of China, Protestants in the unofficial Church held Bible study groups and choir rehearsals, and organized volunteer groups;
- While acknowledging that arrests of church leaders occasionally take place in China, the executive secretary of the Hong Kong Christian Council stated in correspondence to the Research Directorate that the current view of the central government is that unregistered, Christian groups should be discouraged but also tolerated;
- Officials are well aware of the activities of unregistered religious groups; Arrests of leaders take place not as a result of religious policies, but when unregistered meetings “become too aggressive or high-profile” or when local officials attempt to extort money from unregistered churches;
- A relaxation of authorities’ treatment of unregistered Protestants in major cities was noted in 2004.

[48] The Respondent submits that, even if this Court finds that the Board erred in concluding that the Applicant could worship at a registered church, which the Respondent denies, this finding was not central to the main conclusion that the Applicant had not established he was a member of an underground church.

[49] The Respondent concludes by stating that the Applicant has provided no evidence that the Board performed a “cut and paste” job from another decision. The Respondent submits that while the Board may have made a typographical error, nothing turns on that error. The determinative issue was credibility and the Applicant’s place of birth was irrelevant to the Board’s credibility finding.

ANALYSIS

[50] I accept the Respondent’s position that the plausibility and credibility findings of the Officer in this case are cumulative and that in accordance with *Aguebor v. Canada (Minister of Citizenship and Immigration)* (1993), 160 N.R. 315 (F.C.A.) at paragraph 4 “[a]s 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.” In other words, the Board’s credibility findings in the present case are entitled to a high degree of deference and the burden rests upon the Applicant to show that the inferences drawn by the Board could not reasonably have been drawn.

[51] Having accepted that, I must nevertheless conclude that, on the basis of the facts and the inferences drawn by the Board in the present case, the Decision is unreasonable and does not fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law. I come to this conclusion for several reasons.

[52] First of all, because this is a Decision in which the Officer takes stock of cumulative implausibilities to make credibility findings, it means that an unreasonable mistake causes a break in the chain and casts doubt upon the Decision as a whole.

[53] Secondly, there is a number of important findings that are just not reasonable.

[54] For example, with regards to the Officer's finding that he rejects the Plaintiff's explanation for failing to mention the Benediction, the explanation is that "the Claimant alleges to have attended the underground Christian church every week from June 19, 2005 until May 2006, a period of approximately one year" and "the Benediction is an important and significant moment in a church service."

[55] The Plaintiff said he was nervous and explained that he had forgotten to mention the Benediction but, when asked if there was a Benediction, he unhesitantly confirmed that there was one at his church.

[56] This is a picayune point upon which to base a negative credibility finding. The fact that the Plaintiff accurately and, without hesitation, described the rest of the service is left out of account and an omission is singled out for use by the Officer who also boldly asserts, without evidence or explanation, that "the Benediction is an important and significant moment in a church service." There is no explanation or justification offered as to why it is any more significant that, say, the

reciting of the Lord's Prayer, readings from the Bible, discussions about the Bible, and arranging the next meeting, all of which the Applicant recounted without hesitation and all of which he got right.

[57] This point would not, in itself, render the Decision unreasonable but, just as the Respondent contends that it is the cumulative impact of the plausibility and credibility findings in this case that is important, it is also the cumulative effect of the mistakes that render the Decision unreasonable. Read in context the Benediction finding reveals that the Officer was overzealous to find ways to rebut the presumption of truthfulness and attached a greater significance to the Benediction issue than it can reasonable bear. See *Gjota*.

[58] The Officer also bases his credibility findings on the fact that the Applicant "joined an illegal organization after only two conversations and knowing the risks" The strange thing about this finding is that, as revealed at page 225 of the Certified Tribunal Record, the Board agreed with the submissions of Applicant's counsel that the Applicant's explanation as to how and why he became a Christian was "not inherently implausible." The Board's response to counsel's submissions was "That is so subjective, I can't disagree with you on that."

[59] And yet, in the reasons, the Board does disagree and provides no explanation for such an extreme change of position. Applicant's counsel was left with the understanding at the hearing that this issue was decided in favour of the Applicant. Had he been told otherwise, it might well have affected his submissions. The unexplained change of position suggests, once again, that the Board

was searching for ways to bolster conclusions that the Applicant was not entitled to the presumption of truth rather than examining evidence objectively.

[60] The Board actually moves to its next point in the reasons by saying “[t]o buttress my finding that the claimant was not, nor ever was, a member of an underground Christian church in the People’s Republic of China” The Board is not in the business of looking for ways to “buttress” its previous findings. The Board is in the business of assessing evidence objectively.

[61] The following finding is highly material to the Board’s overall assessment of the Applicant’s credibility:

When asked as to how he was able to leave the People’s Republic of China via the Beijing Airport, in October 2006, if he was wanted by the Public Security Bureau as of June 2006, the claimant indicated that the smuggler had bribed officials. I reject this explanation. Although the People’s Republic of China does have a problem with corruption, I do not find it plausible that the smuggler would be able to bribe, possibly hundreds of officials, as there would be no guarantee as to which border police would be on duty or as to which line the claimant (and smuggler) would be directed to.”

[62] The strange thing about this finding is that the Board was specifically directed by Applicant’s counsel to written evidence which showed precisely how the Applicant’s explanation was supportable.

[63] Information Request CHN36091.E described the security and exit control procedures at Beijing Airport:

The exit control system at Beijing Airport is computerized and all names are supposed to be checked through the computer system. Like any system, errors can be made or names not entered correctly, so people who are wanted should not be able to depart, but it could happen.

[64] In fact, Justice Dawson has dealt with this very point in *Zhang* where she concluded as follows at paragraph 11:

In view of this evidence, the Board engaged in speculation when it concluded that possibly hundreds of officials had to be bribed. One official with access to the computer system would be sufficient.

[65] Exactly the same point and the same conclusion applies in the present case. In fact, when this was drawn to the Board's attention by counsel for the Applicant at the hearing the Board responded as follows:

Counsel: Like any system errors can be made or names not entered correctly so people who are wanted should not be able to depart but it could happen. So there is, it acknowledges that it could happen.

Presiding Member: It's a possibility.

Counsel: Right, but this is his evidence and it says it could.

Presiding Member: Yeah, okay, fair enough.

[66] The Board accepts at the hearing that it could happen but, in its reasons, relies upon pure speculation to conclude that the smuggler would have to bribe "possibly hundreds of officials" if the Applicant's account were true.

[67] And this finding regarding the Applicant's account of how he managed to negotiate his way through the Beijing Airport is crucial for the Decision as a whole.

[68] Similarly, with respect to the Board's findings regarding the Applicant's Christian knowledge and where he acquired it, the Board relies upon pure speculation to rebut the presumption of truthfulness that favours the Applicant's account that he became a Christian and acquired his knowledge of Christianity in China. The same point came up in *Zhang* where Justice Dawson dealt with it as follows at paragraph 13:

Finally, it is possible that Ms. Zhang acquired her knowledge of Falun Gong in Canada. It is equally possible that her knowledge was acquired in China. There was no proven fact, and certainly none cited by the Board, from which the Board could infer that it was more probable that Ms. Zhang's knowledge was acquired in Canada. It was, therefore, speculative, and not grounded in the evidence, for the Board to dismiss Ms. Zhang's knowledge about Falun Gong. On the evidence it was possible, but not established to be probable, that her knowledge of Falun Gong was acquired in Canada.

[69] There was nothing about the Applicant's religious practises in Canada that contradicted his account of how he became a Christian in China and acquired his religious knowledge. There was nothing before the Board to support its speculative conclusion that he could have acquired his religious knowledge in Canada rather than China.

[70] The Respondent argues that the Board's findings that the Applicant could freely practise his religion in China at a state approved church is an alternative ground for the Decision. But a reading of the Decision as a whole reveals that the Board's approach to this issue is consistent with its speculative findings that disregard highly material evidence put forward by the Applicant.

[71] The Board asserts that “[t]here is no evidence that registered church members are constrained from practicing their religion freely.” Yet there was ample evidence before the Board that religion is not practised freely within registered churches in China and that members of underground churches are persecuted. This is not a question of a mixed bag of contrary evidence that has to be weighed and assessed by the Board. A China Aid article cited by the Applicant makes it clear that “the state is the heard of the Church” and that “religious messages are to be made ‘compatible with socialism.’” This means that “Pastors are discouraged from preaching about Jesus’ divinity, miracles or resurrection, so that believers and non-believers can be united together to build a prosperous Socialist China”:

As a result, more and more believers abandoned TSPM churches and began meeting in their homes. Most Christians are now in house churches. They preach, worship and evangelize, risking the loss of jobs and homes, arrest, imprisonment, torture and death

[72] In the face of this evidence, the Board feels it can reasonably conclude that “[t]here is no evidence that registered church members are constrained from practicing their religion freely.” In my view, if Jesus’ divinity, miracles and resurrection are discouraged, so that believers have to turn to underground churches, then registered Church members are being constrained from practising and believing fundamental tenets of the Christian religion. This does not look like religious freedom to me and, in this regard, the Board’s conclusions at this point are beyond the range of reasonable conclusions that can be drawn from the evidence.

[73] Even on a “mixed-bag” approach, the Board should have addressed the very cogent evidence that refutes its own conclusions in accordance with the principles in *Cepeda-Gutierrez v.*

Canada (Minister of Citizenship and Immigration), [1998] F.C.J. No. 1425, paragraphs 14-17 and 27.

[74] The Board engaged in a selective view of the evidence in order to “buttress” its own conclusions.

[75] I am well aware that some of the Board’s findings against the Applicant are not unreasonable. But, viewed cumulatively, I think there are more than enough findings that are unreasonable to undermine the whole Decision. Hence, this matter should be returned for reconsideration.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. This Application is allowed and the matter is returned for reconsideration by a different officer.
2. There is no question for certification.

“James Russell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2078-08

STYLE OF CAUSE: *CHANG QING SONG v. MCI*

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: October 21, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** JUSTICE RUSSELL

DATED: November 26, 2008

APPEARANCES:

Mr. Mark Rosenblatt	FOR THE APPLICANT
Eleanor Elstub	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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