

Federal Court



Cour fédérale

Date: 20090730

Docket: IMM-4573-08

Citation: 2009 FC 787

Ottawa, Ontario, July 30, 2009

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

ZHANG, LI YONG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant came to Canada in 2005 from the People's Republic of China on a student visa. During a return trip to China, he alleges that he became involved in a Falun Gong demonstration. As a result, he claims to have been beaten by the Public Security Bureau (PSB) and that he is now being sought by the PSB. The Applicant made application for refugee protection only after he was detained by Canadian authorities who questioned his status as a student in Canada. He

claims refugee protection on the basis of a fear of arrest and persecution by the Chinese authorities if he returns to China.

[2] In a decision dated September 23, 2008, a panel of the Refugee Protection Division of the Immigration and Refugee Board (the RPD or the Board) dismissed the Applicant's claim. The key conclusion of the Board was that the Applicant "was not a credible witness". Of particular significance, the Board found that the demonstration described by the Applicant never took place. In addition, many other aspects of the Applicant's testimony were found to lack credibility.

[3] The Applicant seeks judicial review of this decision, asserting that the Board erred by:

1. Failing to give its reasons in clear and unmistakable terms;
2. Finding that the demonstration never took place due to a lack of corroborating documentary evidence; and
3. Finding the "call card" and "notice" fraudulent.

[4] In my opinion, the Board's determination that the Applicant was not a Convention refugee or a person in need of protection was reasonable.

[5] It is trite law that decisions of the RPD attract a high degree of deference since it is up to the Board to weigh an applicant's testimony and to assess their credibility. It is not for the Court to reweigh the evidence or otherwise dictate the elements to which the Board should have attributed

more weight (see *Kumar v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 643 at para. 3).

[6] When I read the decision as a whole, it is clear that the Board had a grasp of the issues and came to a reasonable decision based on the evidence before it. Contrary to the submissions of the Applicant, the Board gave clear reasons to support its finding that the Applicant was not credible. It found that the Applicant's testimony was implausible and unreasonable as it related to his alleged participation in Falun Gong activities in China and lack of participation in similar activities in Canada, his alleged attendance at educational institutions in Canada and the method by which he obtained the documents that were tendered in support of his refugee claim. In light of the Board's concerns with the Applicant's credibility, the Board acted reasonably by searching for confirmatory evidence (see *Ortiz Juarez v. Canada*, 2006 FC 288 at para. 7). In this case, there was no corroborating evidence from either the Applicant or the objective documentary evidence to support the Applicant's allegation that Falun Gong practitioners had been arrested in China on August 29, 2006 and that a public demonstration was held on September 11, 2006. The Board reasonably concluded that such incidents would have been included in the well-documented treatment of Falun Gong practitioners in China.

[7] Lastly, the Board did not err by concluding that the "Call Card" and "Notice" submitted by the Applicant were likely fraudulent. The Board had already concluded that the Applicant was not credible with respect to the main element of his claim that he attended and had been beaten by police at a public demonstration in China. The Board also considered the documentary evidence, which suggested that fraudulent documents are manufactured and easily purchased in China. In my view, it properly weighed this evidence and reached a conclusion that fell within "a range of

possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 47).

[8] For these reasons, the application for judicial review will be dismissed. The parties do not propose a question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. the application for judicial review is dismissed; and
2. no question of general importance is certified.

“Judith A. Snider”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4573-08

STYLE OF CAUSE: ZHANG, LI YONG
v. THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: July 29, 2009

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

DATED: July 30, 2009

APPEARANCES:

Ms. Vania Campana

FOR THE APPLICANT

Mr. David Joseph

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Otis & Korman
Barristers and Solicitors
Toronto, Ontario

FOR THE APPLICANT

John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Ontario

FOR THE RESPONDENT