

Federal Court



Cour fédérale

**Date: 20091130**

**Docket: IMM-2332-09**

**Citation: 2009 FC 1225**

**Ottawa, Ontario, November 30, 2009**

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

**BETWEEN:**

**GANG 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 subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 of a decision of a Pre-Removal Risk Assessment officer (PRRA officer) dated March 30, 2009 rejecting the Applicant's Pre-Removal Risk Assessment application (PRRA application) for protection in Canada.

**Factual Background**

[2] The Applicant is a 45 year old citizen of China who is a Falun Gong practitioner and a Christian. The Applicant started practicing Falun Gong in February 2002. On November 26, 2003,

the Applicant came to Canada on a work permit as a chef. The Applicant received a telephone call from his wife advising him that his Falun Gong practice group had been raided by the Public Security Bureau (PSB) and that they were looking to arrest him.

[3] The Applicant made a refugee claim on July 9, 2004 and sought protection based on a well-founded fear of harm in China at the hands of the government authorities because of his political opinion as a Falun Gong practitioner.

[4] On March 2, 2005, the Refugee Protection Division of the Immigration and Refugee Board (RPD) rejected the Applicant's refugee claim. Leave for application to judicially review that decision was denied on May 20, 2005.

[5] In April 2005, the Applicant was introduced to Christianity by a friend in Canada and in August 2007 he was baptised into the Christian faith.

[6] On August 16, 2007, the Applicant was served with a PRRA application in preparation for his removal.

[7] On August 23, 2007, the Applicant filed a humanitarian and compassionate (H&C) application for permanent residence.

[8] On August 26, 2007, the Applicant filed his Pre-Removal Risk Assessment application, seeking protection in Canada as he fears being persecuted, tortured, and/or being subjected to cruel and unusual treatment or punishment in China because he is a Falun Gong practitioner and a practicing Christian.

[9] On April 23, 2009, the Applicant was advised of the negative PRRA decision and on April 29, 2009, he was informed of the negative H&C application. On May 8, 2009, the Applicant filed applications for leave to judicially review the PRRA and H&C decisions. The negative PRRA determination forms the basis of this application.

#### Impugned Decision

[10] The PRRA officer found some of the Applicant's submissions pre-dated the decision of the RPD in 2005. The officer decided the documentary evidence which pre-dated the RPD decision and concerns the issue of Falun Gong would not be considered in the PRRA determination as this evidence would have been reasonably available for the Applicant to provide to the RPD for their consideration. The Applicant did not provide an explanation as to why this evidence was not submitted to the RPD for consideration. However, all the evidence regarding the Applicant's Christian faith was considered by the PRRA officer, as this was a new risk cited by the Applicant which was not before the RPD.

[11] The RPD established that the determinative issue in the Applicant's refugee claim was credibility. The RPD found that the Applicant "... never was, nor is, a Falun Gong practitioner" due to the Applicant's lack of knowledge about Falun Gong.

[12] The PRRA officer found the Applicant submitted little information to support the personal risk of persecution he would face as a Christian in China. The Applicant provided a letter from Reverend David Ko, dated August 27, 2007, which speaks to the general country conditions for Christians in China. However, the PRRA officer found the letter does not discuss the Applicant's specific situation and he gave this letter little probative value.

### Issues

[13] The Applicant raises the following issues:

1. Is the PRRA officer's decision that the Applicant would not be at risk of persecution or torture or cruel and unusual treatment or punishment in China because he is not a Christian leader or leader in the practice of Falun Gong the result of unreasonable and unsustainable construction of the documentary evidence regarding the treatment of Christians and Falun Gong practitioners in China?
2. Did the PRRA officer err by failing to consider whether the restrictions placed upon the free practice of Christianity by the Chinese authorities itself constitutes either persecution or cruel and unusual treatment or punishment?

Relevant Legislation

[14] The relevant legislation provides as follows:

*Immigration and Refugee Protection Act, S.C. 2001, c. 27:*

Consideration of application

**113.** Consideration of an application for protection shall be as follows:

(a) an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection;

(b) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;

(c) in the case of an applicant not described in subsection 112(3), consideration shall be on the basis of sections 96 to 98;

(d) in the case of an applicant described in subsection 112(3), consideration shall be on the basis of the factors set out in section 97 and

(i) in the case of an applicant for protection who is inadmissible on grounds of serious criminality, whether

Examen de la demande

**113.** Il est disposé de la demande comme il suit :

a) le demandeur d'asile débouté ne peut présenter que des éléments de preuve survenus depuis le rejet ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet;

b) une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires;

c) s'agissant du demandeur non visé au paragraphe 112(3), sur la base des articles 96 à 98;

d) s'agissant du demandeur visé au paragraphe 112(3), sur la base des éléments mentionnés à l'article 97 et, d'autre part :

(i) soit du fait que le demandeur interdit de territoire pour grande criminalité constitue un danger pour le public au Canada,

they are a danger to the public in Canada, or

(ii) in the case of any other applicant, whether the application should be refused because of the nature and severity of acts committed by the applicant or because of the danger that the applicant constitutes to the security of Canada.

(ii) soit, dans le cas de tout autre demandeur, du fait que la demande devrait être rejetée en raison de la nature et de la gravité de ses actes passés ou du danger qu'il constitue pour la sécurité du Canada.

*Immigration and Refugee Protection Regulations, SOR/2002-227 :*

New evidence

**161.** (2) A person who makes written submissions must identify the evidence presented that meets the requirements of paragraph 113(a) of the Act and indicate how that evidence relates to them.

Nouveaux éléments de preuve

**161.** (2) Il désigne, dans ses observations écrites, les éléments de preuve qui satisfont aux exigences prévues à l'alinéa 113a) de la Loi et indique dans quelle mesure ils s'appliquent dans son cas.

Applicant's Arguments

[15] The Applicant submits that, if returned to China, he has a well-founded fear of persecution, pursuant to section 96 of the Act and that there are serious grounds to believe that he faces a risk described in section 97 of the Act.

[16] The Applicant submits the documentary evidence relied upon by the PRRA officer to support her decision does not substantiate the conclusion that only Falun Gong leaders are at risk of persecution in China, whereas members or ordinary adherents are not. The Applicant argues the documentary evidence relied upon contradicts the PRRA officer's conclusion regarding the risk for

ordinary Falun Gong members in China, and to a lesser extent, does the same regarding the PRRA officer's conclusion about the risk of ordinary Christian practitioners in China.

[17] The Applicant disagrees with the Respondent that the PRRA officer followed the RPD's previous negative assessment of the Applicant's credibility. The Applicant submits the PRRA officer cannot simply follow the RPD's credibility assessment. Rather, the PRRA officer must make his own assessment of the Applicant's credibility and if it is a negative assessment, the PRRA officer must convoke an interview to allow the Applicant an opportunity to address the officer's credibility concerns.

#### Respondent's Arguments

[18] The Respondent first notes that in their reasons, the RPD specifically found the Applicant not to be a credible Falun Gong practitioner. The PRRA officer makes no finding in her reasons that the Applicant is a Falun Gong practitioner or a genuine Christian convert but merely assesses the grounds of persecution alleged by the Applicant.

[19] The Respondent further notes that, although the PRRA officer recognized there is objective evidence of persecution of Falun Gong members, the officer concluded the Applicant had not established that he would be at personal risk of persecution because he failed to explain why he would personally be at risk and he offered no details as to his practice of Falun Gong and whether it would attract attention.

[20] The Respondent submits the PRRA officer did not specifically accept that the Applicant's religious affiliation was legitimate and genuine. The Applicant did not establish what his practice of Christianity in China would be or why it would attract the attention of the authorities there.

[21] The Respondent further submits that the PRRA officer made no error by referencing the RPD's negative credibility findings in her decision as she did not base her decision on credibility, but on the lack of evidence that the Applicant would personally be at risk in China.

#### Analysis

[22] Prior to the decision of the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 90, a PRRA decision was considered globally and the application of the relevant law to the facts was assessed on a standard of reasonableness *simpliciter* (*Figurado v. Canada (Solicitor General)*, 2005 FC 347, [2005] 4 F.C.R. 387 and *Demirovic v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1284, 142 A.C.W.S. (3d) 831). It was also held that questions of fact were to be reviewed on a standard of patent unreasonableness, questions of mixed fact and law on a standard of reasonableness, and questions of law on a standard of correctness (*Kim v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 437, 272 F.T.R. 62 at par. 19).

[23] Following *Dunsmuir*, the review of PRRA decisions should continue to be subject to deference by the Court and are reviewable on the newly articulated standard of reasonableness. As a result, this Court will only intervene to review a PRRA officer's decision if it does not fall "within a



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

[24] The risk assessment to be carried out at the PRRA stage is not to be a reconsideration of the Board’s decision, but instead, is limited to an evaluation of new evidence that either arose after the Applicant’s refugee hearing or was not previously reasonably available to the Applicant (*Hausleitner v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 641, 139 A.C.W.S. (3d) 115).

[25] The basis of the officer’s decision appears to be that nothing submitted with the PRRA application changes what the RPD decided. A review of the PRRA officer’s decision at issue here makes it clear that her decision was not based on credibility, but on the lack of evidence of personalized risk to the Applicant.

[26] The PRRA officer concluded that the Applicant is not a Falun Gong practitioner with a profile that would bring him to the attention of the Chinese authorities. The PRRA officer then considered the new evidence of the Applicant’s adherence to Christianity and she concluded there was insufficient objective evidence showing a personalized risk to the Applicant if he were to return to China because he is a practicing Christian. For instance, the Applicant merely reiterated that the practice of Falun Gong is important for him but failed to provide any new information. Also, the evidence submitted by the Applicant including the letter by Reverend Ko (August 27, 2007) does

not provide any convincing information regarding the Applicant's current practice of the Christian religion in Canada.

[27] Although the Applicant submitted news articles and country reports from various Internet sources, he failed to indicate how that evidence relates to him (paragraph 113(1) of the Act and subsection 161(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227). It is insufficient to simply refer to country conditions in general without linking such conditions to the personalized situation (*Dreta v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1239, 142 A.C.W.S. (3d) 493; *Nazaire v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 416, 150 A.C.W.S. (3d) 902). Accordingly, and the Court agrees with the Respondent, the fact that the documentary evidence shows that the human rights situation in a country can be problematic does not necessarily mean there is a risk to a particular individual (*Ahmad v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 808, 134 A.C.W.S. (3d) 493; *Gonulcan v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 392, 131 A.C.W.S. (3d) 507; *Rahim v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 18, 148 A.C.W.S. (3d) 113). A review of the decision also clearly confirms that the officer had section 97 of the Act in mind when she wrote her decision and that the officer found that there are no substantial grounds to believe that the Applicant faces torture, nor are there any reasonable grounds to believe the Applicant faces a risk to life or of cruel and unusual treatment or punishment.

[28] Having considered the PRRA officer's reasons and the submissions, I am of the opinion that the officer's decision to dismiss the Applicant's claim was reasonable. The officer considered all the

evidence before her and her conclusion was reasonable. The objective evidence assessed by the officer is insufficient to demonstrate a personalized risk for the Applicant if he were to return to China.

[29] Therefore, this judicial review application will be dismissed. There is no question for certification.

**JUDGMENT**

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

"Richard Boivin"

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Judge

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

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**REASONS FOR JUDGMENT:** BOIVIN J.

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**APPEARANCES:**

Mr. Michael Korman FOR THE APPLICANT

Ms. Nicole Rahaman FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Michael Korman FOR THE APPLICANT  
Barrister and Solicitor

John H. Sims, Q.C. FOR THE RESPONDENT  
Deputy Attorney General of Canada