

Federal Court



Cour fédérale

Date: 20091216

Docket: IMM-3037-09

Citation: 2009 FC 1276

Ottawa, Ontario, December 16, 2009

PRESENT: The Honourable Mr. Justice Mainville

BETWEEN:

SHAODAN LIN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This concerns an application brought by Shaodan Lin (the “Applicant”) pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act* for judicial review of a decision by a panel of the Refugee Protection Division of the Immigration and Refugee Board (the “Panel”) dated May 13, 2009 that determined that the Applicant was not a convention refugee and was not a person in need of protection.

Background

[2] The Applicant is a citizen of China who claims that she participated in an underground Christian church in China from the summer of 2006 until her arrival in Canada. The Applicant

came to Canada with the assistance of a smuggler on September 17, 2007 and made a claim for refugee protection on September 18, 2007, in Vancouver.

[3] The Applicant claims that she faces persecution in China because she belonged to an unauthorized underground church. Upon entry into Canada she stated that she had lost her employment in China as a kindergarten teacher because she affirmed God's existence in her classroom when questioned by her students about where the world came from. She states that on September 2, 2007, the Chinese police entered her aunt's home where meetings of the small congregation were being held. The Applicant further alleges that her aunt was arrested and that she herself was being sought by the police because of her association with the underground church.

[4] The Applicant subsequently submitted a letter purportedly from her employer and dated July 30, 2007 confirming that she had been dismissed for her Christian activities. She also produced another letter purportedly from her father's employer dated October 15, 2007 in which it is stated that her father had lost his employment because of the Applicant's Christian activities. A purported police summons to the Applicant ordering her to report for questioning on September 10, 2007 was also produced. Finally, a certificate of baptism from the Rosewood Baptist Church was produced certifying that the Applicant has been baptized in Toronto on December 21, 2008.

The decision under review

[5] A hearing was held before the Panel by way of videoconference on March 12th, 2009 and a decision rejecting the Applicant's claim was issued dated May 13, 2009.

[6] The decision stands on four pages, much of it comprised of the reproduction of the Applicant's port of entry interview held on September 18, 2007 shortly after her arrival in Canada. The salient aspects of the decision are reproduced below almost in their entirety.

[7] Based on the transcript of the port of entry interview, the Panel found that the Applicant was not credible and had concocted the allegations of persecution in order to enter Canada. The relevant paragraphs of the Panel's decision are the following:

[7] The panel does not find the claimant's testimony credible for reason that the claimant gave inconsistent and evasive answers and had no satisfactory explanation for discrepancies between her Personal Information Form (PIF) narrative, her testimony and her statements in her port of entry interview with an Immigration Officer on September 18, 2007.

[8] The following questions and answers are recorded in the claimant's Port of Entry interview:

Q: Have you tried to come to Canada before?

A: Yes

Q: When?

A: Feb-Mar 2007

Q: How?

A: Get married to local people and my intention was to come to Canada

Q: Is that the person you are married to?

A: Yes, I don't know him I just married him to come to Canada

Q: How much did you pay him to come to Canada?

A: \$10,000 USD

[9] The panel notes that the Minister filed a Disclosure on February 23, 2009 which included CAIPS notes regarding the claimant's attempt to immigrate to Canada as a sponsored spouse. The panel accepts the Minister's submission that this document shows that the claimant was involved in a non-bona fide, bad faith marriage in order to obtain status in Canada. In answer to PIF question 19(a) (Did you apply for a visa to Canada?) the claimant ticked off the box stating 'No'. The claimant offered no satisfactory explanation for this

discrepancy when it was specifically put to her. The panel also accepts the Minister's submission that a check on their computer systems revealed that no appeal was filed against the visa officer's refusal of the sponsorship application.

[10] In the circumstances the panel finds that the evidence indicates that once the bad faith marriage did not work for the claimant, and she was given notice of the visa officer's refusal letter in January 2008, the claimant found a smuggler ("snakehead" referred to in the PIF) and concocted the allegations of persecution to be used after she arrived in Canada.

[8] Concerning the objective basis for persecution, the Panel refers again to the port of entry interview and concludes that the police summons and the loss of the Applicant's kindergarten job as a result of her Christian activities all fall short of providing an objective basis that can support a finding of a well-founded fear of persecution:

[11] The following sequence of questions and answers in the claimant's Port of Entry was put to the claimant at the hearing:

Q: How did you get your new passport?

A: The old one expired and I applied for a new one.

Q: How did you get a new passport if the police were after you?

A: Because the police do not want to arrest me, they want to check up on me.

Q: How can you be scared of them if you don't know why they are coming?

A: They just came to check up on me

Q: So you are really not scared of them?

A: I don't know why they keep coming I think they are looking for evidence

Q: What evidence?

A: Evidence of the illegal meeting

Q: Why are you running when you don't even know why they are coming to your house?

A: I told them it was an illegal meeting. It was just my aunt and some people from the church.

[12] In her testimony, the claimant confirms the above answers. The only other piece of evidence regarding the Public Security Bureau's interest in the claimant is the "Order of Summon" issued by Fu Zhou City Public Security Bureau. This document required that the claimant "must attend to Gu Shan Police Station for question at 10 am on September 10th of 2007 with this summon."

[13] The only other consequence suffered by the claimant as a result of her Christian activities was the loss of her kindergarten job, which she attributed to possible complaints by the parents of her students.

[14] The panel finds that the totality of this evidence falls well short of providing an objective basis that can support a finding of well-founded fear of persecution.

Positions of the parties

[9] The Applicant argues that the Panel made no determination on her identity as a Christian and therefore committed a reviewable error based on *Chen v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 480; [2002] F.C.J. No. 647 (QL). Further, the Panel took no account of her baptismal certificate in Canada and no account of the country conditions documentation. In a nutshell, the Applicant argues that the Panel made a negative credibility finding based on her prior application for residency in Canada, and denied the refugee claim essentially on this basis without considering the risks she could encounter in China as a practicing Christian.

[10] The Respondent answers that the Panel did indeed recognize that the Applicant was a Christian when the decision is read as a whole and particularly in paragraph 13 thereof reproduced above, and therefore did make a determination as to her identity as a Christian. The Respondent adds that having so determined the Applicant's religious identity, the Panel found there was insufficient evidence submitted to it to support the allegation of persecution. Furthermore, having

found that the Applicant was not credible, the Panel was not required to review the country conditions.

Standard of review

[11] The applicable standard of review to refugee determination decisions of the Panel based on issues of credibility and assessment of evidence has consistently been held to that of reasonableness: see, among other decisions, *Aguebor v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 732; [1993] 160 N.R. 315; *Wang v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1153; [2008] F.C.J. No. 1433 at para. 4. As noted in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 at paragraphs 57 and 62, it is not required in every case to determine the proper standard of review when such standard has been satisfactorily determined by jurisprudence. I will therefore proceed to this judicial review of the decision of the Panel on a standard of reasonableness.

Analysis

[12] The principles applicable to this case have been clearly set out in *Jiang v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 635; [2008] F.C.J. No. 808 at paragraph 15:

Case law establishes the obligation incumbent upon the Board to make a determination on the central element of the claim. In a line of jurisprudence following *Chen v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 480, [2002] F.C.J. No. 647(QL), this Court has consistently held that even when the Board has determined that an Applicant's claim of religious persecution in his country of origin is not credible either because he was found not to have been a member of the particular religious group, or because he was found not to be persecuted, the Board still must determine either implicitly or explicitly whether he is

now in fact a member of that group and whether he would face persecution upon their return (*Li v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 266, [2008] F.C.J. No. 338 (QL); (*Huang v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 132, [2008] F.C.J. No. 164 (QL); (*Li v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 544, [2007] F.C.J. No. 739 (QL); (*Lin v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 510, [2007] F.C.J. No. 692 (QL); (*Liu v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 695, [2006] F.C.J. No. 880 (QL); (*Yang v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 971, [2003] F.C.J. No. 1236 (QL)) [Emphasis added].

[13] In *Huang v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 132; [2008] F.C.J. No. 164, a case bearing some similarity to the one here, Justice O'Reilly noted the following at paragraph 8:

In my view, even if the Board's finding that Mr. Huang had not been a member of an underground church was supported by the evidence, that finding did not justify a conclusion that Mr. Huang was not entitled to refugee protection. While the Board speculated that Mr. Huang's general knowledge of Christianity might have been acquired in Canada in order to substantiate his refugee claim, it did not make a definitive finding that Mr. Huang was not a genuine Christian. In my view, therefore, the Board failed to consider whether Mr. Huang might encounter religious persecution if sent back to China, whether or not he had previously been a member of an underground church. (See *Chen v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 480, [2002] F.C.J. No. 647 (F.C.T.D.) (QL)).

[14] The Panel does not appear to have made a finding as to the Applicant's Christian practices in China or as to her Christian convictions in Canada. The Panel does not appear to have carried out an analysis regarding these matters or made findings as to the whether the Applicant might encounter religious persecution if sent back to China.

[15] The Respondent argues that the Panel did find that the Applicant is a practicing Christian in paragraph 13 of its decision where it noted that the Applicant had lost her kindergarten teaching position because of her beliefs. However that paragraph simply reiterates the Applicant's claim, and in it the Panel does not make a determination as to the Applicant's beliefs or religion. This paragraph alone cannot be taken as a determination by the Panel of the central issue at stake in the case.

[16] The Respondent also calls upon this Court to review the country documentation showing that the treatment of Christians in China has considerably improved. However, it is not the Court's role to engage in such an analysis where the Panel has not done so. It was the Panel's responsibility to first review and analyze the country conditions and to clearly set out in its decision why these conditions do or do not constitute a threat for the Applicant. That analysis would of course be itself subject to review before this Court.

[17] The issue here is with the intelligibility and justification of the Panel's decision. Nowhere in its reasons does the Panel clearly state its position as to the Applicant's religious beliefs and practices in China, nowhere does it review country conditions in China regarding Christians, and nowhere does it address the current religious beliefs of the Applicant, including the baptismal certificate supplied by the Applicant.

[18] Reasonableness in judicial review principally concerns the existence of justification, transparency and intelligibility within the decision making process. *Dunsmuir*, *supra* at paragraph 47:

Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. [Emphasis added]

[19] For the foregoing reasons, I find the decision does not meet the standard of reasonableness set out in *Dunsmuir*, and consequently the application for judicial review is allowed.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is allowed; and
2. The matter is returned for a new hearing and re-determination before a different Panel of the Refugee Protection Division of the Immigration and Refugee Board.

"Robert M. Mainville"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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**REASONS FOR JUDGMENT
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