

Federal Court



Cour fédérale

Date: 20100211

Docket: IMM-1441-09

Citation: 2010 FC 135

Ottawa, Ontario, February 11, 2010

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

XIAO HONG LIU

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Ms. Xiao Hong Liu sought refugee protection in Canada on grounds of religious persecution in China. She claims that she was a member of an underground Christian church and fled after the church was raided by the Public Security Bureau (PSB). A panel of the Immigration and Refugee Board disbelieved her account of events and rejected her claim. Ms. Liu argues that the Board's analysis of her evidence was faulty and its conclusion unreasonable. She asks me to order another hearing before a different panel of the Board.

[2] I agree with Ms. Liu that the Board's conclusion was unreasonable. I will, therefore, grant this application for judicial review.

II. Analysis

1. The Board's decision

[3] The Board found numerous areas of Ms. Liu's testimony that were problematic. First, Ms. Liu had stated that it was not until her second conversation with a new recruit that she explained that it was important to keep the unregistered church secret.

[4] Second, the Board found Ms. Liu's description of her escape from the PSB raid on the church "too fortuitous to be true". Ms. Liu had said that she left by way of a back door, found her way through the woods, then hailed a taxi and went to her aunt's home.

[5] Third, the Board noted that the PSB often leaves a summons with the family of a person being sought. The Board felt that if the PSB was looking for Ms. Liu it would have left a summons with her husband. Yet, it did not.

[6] Fourth, Ms. Liu testified that she understood that state-sanctioned Christian churches were controlled by the Chinese government. Accordingly, while she could not specifically identify the

differences between the registered and the unregistered churches, she preferred to attend the latter. However, the Board concluded that government control of registered churches is limited and that doctrinal differences are few. Therefore, there is no reason why she could not practice her faith in a state-sanctioned church.

[7] Fifth, the Board reviewed the documentary evidence and found that authorities in Fujian province were among the most liberal in China. Therefore, the chances of Ms. Liu's church coming to the attention of the PSB were relatively slight.

2. Was the Board's decision unreasonable?

[8] I am satisfied that some of the Board's findings were unsupported. In my view, these findings rendered the Board's conclusion unreasonable.

[9] For example, it is not clear from the Board's reasons why it found Ms. Liu's description of her escape from the PSB raid "too fortuitous to be true". Her testimony was not outlandish or inherently implausible.

[10] In addition, while the Board was entitled to note that the PSB sometimes leaves a summons with a suspect's family, the fact that no summons was left with Ms. Liu's family does not support a conclusion that she was not being sought. The evidence before the Board was that the PSB's practices were uneven.

[11] Ms. Liu's understanding that state-sanctioned Christian churches were controlled by the Chinese government, including in Fujian province, was supported by the documentary evidence. She testified that these churches place the state's interests ahead of God, which she found objectionable and contrary to the Ten Commandments. On its face, the notion that the state has a role in shaping church doctrine suggests a lack of religious freedom. Ms. Liu clearly found the concept of a state-supervised church repugnant. The Board's finding that she could practice her religion freely by attending one seems incongruous.

[12] In terms of the likelihood of persecution in Fujian province specifically, the Board correctly noted that the attitude toward Christianity there appears to be more tolerant than elsewhere in China. Further, small groups of people praying and studying the Bible were rarely targeted. Still, the documentary evidence cited by the Board also referred to the fact that:

- unregistered churches are illegal;
- prayer meetings are usually allowed but, in some areas, house churches with only a few members are proscribed;
- officials sometimes harass unregistered religious groups;
- while there were no reports of actual arrests or prosecutions of Christians in Fujian province in 2007, those who are persecuted often fail to report their mistreatment.

[13] In light of the equivocal nature of the documentary evidence, it was important that the Board refer to and weigh both the evidence supporting Ms. Liu's claim and that which contradicted it. Looking at the Board's findings as a whole, I must conclude that its decision was unreasonable.

III. Conclusion and Disposition

[14] In my view, given its various findings, the Board's decision falls outside the range of acceptable outcomes that are defensible both in fact and law. I must, therefore, allow this application for judicial review and order a new hearing before a different panel of the Board. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT’S JUDGMENT is that

1. The application for judicial review is allowed. The matter is referred back to the Board for a new hearing before a different panel.
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1441-09

STYLE OF CAUSE: Liu v. MCI

PLACE OF HEARING: Toronto, ON.

DATE OF HEARING: October 28, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: February 11, 2010

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