

Federal Court



Cour fédérale

Date: 20100430

Docket: IMM-2567-09

Citation: 2010 FC 476

Ottawa, Ontario, April 30, 2010

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

FEIFEI FENG

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Ms. Feifei Feng came to Canada from China in 2002 as a student. She returned to China in 2004 and got married, and then came back to Canada a few months later with her husband. She learned that her mother began practising Falun Gong back in China after her divorce from Ms. Feng's father. When a family friend visited Ms. Feng in Toronto in 2006, Ms. Feng sent some Falun Gong materials back with her to be given to Ms. Feng's mother. In 2007, Ms. Feng found out that

her mother had been arrested for her Falun Gong activities. The Public Security Bureau (PSB) discovered that some of her materials had originated with Ms. Feng. Now, Ms. Feng claims, the PSB wants to arrest her if she returns to China.

[2] Ms. Feng explained her situation to a panel of the Immigration and Refugee Board in her claim for refugee protection in Canada. She also expressed concern for her child, who would she felt not have any rights in China if Ms. Feng had to return there. The Board found her not to be a credible witness.

[3] Ms. Feng argues that the Board's findings were unreasonable and asks me to order another panel to reconsider her claim. However, I can find no basis for overturning the Board's decision and must, therefore, dismiss this application for judicial review.

[4] The only issue is whether the Board's decision was reasonable.

II. Analysis

(1) The Board's Decision

[5] The Board found that Ms. Feng had not actually sent Falun Gong materials to her mother. According to Ms. Feng's testimony, she inserted the materials into a gift box, which she then wrapped and gave to her mother's friend. She was aware that inspections at the airport were lax, so she felt sure that the materials would not be discovered when her mother's friend returned to China.

She did not mention to the friend what was in the box, because she thought the friend would not want to be involved in importing contraband materials.

[6] The Board found it implausible that Ms. Feng, an educated and intelligent young woman, would put her mother and her mother's friend at serious risk by her conduct. In addition, her assertion that authorities would probably not find the materials was contradicted by her efforts to secrete them in a gift box. Ms. Feng had printed the materials from the Internet and provided the Board with a copy. But the Board noted that the materials before it had been printed only eight days prior to the hearing and could not, therefore, serve to prove what she had allegedly sent to her mother two years earlier.

[7] The Board also found that the PSB was not actually looking for her. Ms. Feng had claimed that the PSB was looking everywhere for her – at her home, and at the homes of friends and relatives. However, in her written narrative, Ms. Feng had merely stated that the “PSB was looking for me”, with no reference to any particular locations. The Board drew a negative inference from this discrepancy. The Board also wondered why the PSB would be looking for her in China, given that she had left with an exit permit. Surely, the Board concluded, authorities would know she was out of the country.

[8] Further, the Board concluded that Ms. Feng had deliberately failed to keep immigration authorities informed of her whereabouts, knowing that she was living in Canada without status. The Board drew a negative inference from her intention to mislead authorities.

[9] While Ms. Feng had not actually made her concern about her child part of her refugee claim, the Board considered whether her concern was valid. The Board concluded from the documentary evidence that Ms. Feng's worry might have been valid if she and her husband had violated China's one-child policy, but they had not. There was no evidence that Ms. Feng or her child would suffer any adverse consequences on return to China.

(2) Was the Board's Decision Reasonable?

[10] Ms. Feng argues that the Board's conclusions were not supported by the evidence. Further, she suggests that the Board made gratuitous findings about her lack of status in Canada. This issue was irrelevant to her refugee claim.

[11] Having reviewed the record, I cannot agree with Ms. Feng's assertion that the Board's findings were not based on the evidence. Its conclusion that Ms. Feng had not sent materials to her mother was based on Ms. Feng's testimony. The Board's finding that her explanation was implausible arose from her testimony about her intentions and actions regarding the Falun Gong materials. It was not an unreasonable finding in light of that evidence. Further, with regard to the evidentiary value of the printed materials put before the Board, I cannot see any error in the Board's observation that these materials could not corroborate Ms. Feng's description of the literature she had sent or the fact that she had sent it.

[12] With respect to the finding that the PSB was not looking for her, again, the Board based its finding on omissions in Ms. Feng's written narrative, on her oral testimony and on the documentary evidence. I cannot agree that the Board's finding was unsupported by evidence.

[13] Regarding the Board's discussion of her immigration status, I agree with Ms. Feng that this issue was not particularly relevant to her refugee claim. However, Ms. Feng's overall credibility was a central issue to be decided by the Board and, for that reason, I cannot fault it for considering her testimony about her immigration status even though it was, strictly speaking, peripheral to her claim.

[14] Therefore, I cannot conclude that the Board's decision was unreasonable.

III. Conclusion and Disposition

[15] The Board's conclusions fell within the range of acceptable outcomes based on the facts and the law and, for that reason, I find that it was reasonable. Accordingly, I must dismiss this application for judicial review. 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 dismissed;
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2567-09

STYLE OF CAUSE: FENG v. MCI

PLACE OF HEARING: Toronto, ON.

DATE OF HEARING: February 2, 2010

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

DATED: April 30, 2010

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