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| Federal Court |  | Cour fédérale |
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Date: 20100512

Docket: IMM-5052-09

Citation: 2010 FC 524

Toronto, Ontario, May 12, 2010

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

LIANYUE ZHONG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The present Application concerns a rejection of the Applicant's claim for protection based on his fear of return to China as a Roman Catholic.

[2] In its decision the Refugee Protection Division (RPD) noted contradictions between the Applicant's PIF and his oral testimony. The Applicant based his claim on being a member of an

underground Roman Catholic Church. The contradictions arose with respect to the particulars of the Applicant's evidence on details such as: whether church services were held inside or outside, whether the Applicant knew the priest's actual name, how often the priest attended, and whether the Applicant knew at the time he first started attending church that it was illegal. With respect to these contradictions, the RPD made the following statements:

[6] [...] I was unable to adequately clarify these contradictions at the hearing as the claimant was not well and was unable to continue. The hearing was adjourned to another date. However, on that date, though the claimant appeared, he was completely unresponsive and was unable to testify. His daughter, Guixia Zhong, was appointed as his Designated Representative at this time.

[7] I have considered the above noted contradictions in the claimant's testimony and the fact that he has not provided a reasonable explanation for any of these contradictions due to his medical state, which is noted in two medical reports submitted. I also note that the claimant has provided a baptismal certificate, issued by Rev. Paul Son, from his church in China. I have considered this baptismal certificate and I do not find it plausible that an underground church or the priest who presides over an underground church would provide any written documentation regarding activities of that church, considering the serious consequences of being discovered. Having considered this implausibility, as well as the claimant's statement at the hearing that the church met outside in a courtyard and that while he was attending the church, he was not aware that this was an illegal organization, I find, on a balance of probabilities, that the church the claimant attended in China was not an illegal underground Roman Catholic church. I further find, on a balance of probabilities, that the church the claimant attended in China was a legal organization and was therefore not raided by the Chinese authorities.

[3] Quite apart from the issue of due process related to the Applicant's inability to "adequately clarify" the contradictions due to his illness, the RPD found that "the claimant was not a credible witness" (Decision, p. 5). With respect to this global finding, and considering the implausibility

findings also made, in my opinion, it was illogical for the RPD to determine that the Applicant is a Roman Catholic who attended a legal church that was not raided by the Chinese authorities. The importance of this determination has an impact in the decision under review which, I find, in my opinion, works an injustice:

[10] I have considered whether the claimant can return to China and practice his faith there. I have found that the church he attended in China was not an illegal organization and was not raided by the authorities as alleged. I further find, on a balance of probabilities, that if he were to return to China, he would legally be able to practice his religion at that church.

[4] The RPD's negative credibility findings do not conform to the law which is well established: the RPD is under a duty to give its reasons for casting doubt upon a claimant's credibility in clear and unmistakable terms with clear reference to the evidence (*Hilo v. Canada (M.E.I.)* (1991), 15 Imm. L.R. (2d) 199 (F.C.A.); and *Leung v. Canada (M.E.I.)* (1994), 81 F.T.R. 303 at paragraph 14). In my opinion, the RPD did not meet this standard in the decision rendered, and, as a result, I find that the decision is made in reviewable error.

ORDER

THIS COURT ORDERS that:

The decision under review is set aside, and the matter is referred back to a differently constituted panel for re-determination.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5052-09

STYLE OF CAUSE: LIANYUE ZHONG v. THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: May 12, 2010

**REASONS FOR ORDER
AND ORDER:** CAMPBELL J.

DATED: MAY 12, 2010

APPEARANCES:

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FOR THE APPLICANT

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