

Federal Court



Cour fédérale

Date: 20101022

Docket: IMM-538-10

Citation: 2010 FC 1033

Ottawa, Ontario, October 22, 2010

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

WANG YING

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Ms. Wang Ying arrived in Canada from China in 2008. She claimed refugee protection on grounds of religious persecution, stating that she was sought by the Public Security Bureau (PSB) in China because of her membership in an underground Christian church.

[2] A panel of the Immigration and Refugee Board dismissed her claim for two reasons: First, Ms. Ying had been unable to establish her identity to the Board's satisfaction. Second, the Board did not believe her testimony regarding her experiences in China.

[3] Ms. Ying argues that the Board erred in dismissing her evidence of identity by failing to consider documentary evidence consistent with her testimony. Ms. Ying also submits that the Board unreasonably concluded that her claim of religious persecution was not supported by credible evidence.

[4] I am satisfied that the Board's conclusion regarding the lack of evidence of Ms. Ying's identity was reasonable. Therefore, I must dismiss this application for judicial review. It is unnecessary to consider Ms. Ying's second argument.

[5] The sole issue, therefore, is whether the Board's conclusion that Ms. Ying had not established her identity was reasonable.

II. Was the Board's Conclusion Regarding Ms. Ying's Identity Reasonable?

[6] The Board must consider whether a refugee claimant has proved his or her identity with acceptable documentation and, if not, whether the claimant has a reasonable explanation for its absence, or has taken reasonable steps to acquire that evidence (*Immigration and Refugee Protection Act*, SC 2001, c 27 s. 106; *Immigration and Refugee Protection Rules*, SOR/93-22, Rule 7).

[7] Ms. Ying did not possess a Resident Identity Card (RIC) which all Chinese citizens over the age of 16 to 18 must have. Ms. Ying stated that the PSB seized her RIC when it searched her home. At the same time, she testified that she always carried her RIC with her. Later, she stated she only carried it when she went out of town. The Board drew an adverse inference from her conflicting statements.

[8] Ms. Ying also testified that Chinese citizens were given new RICs after each census. By contrast, documentary evidence suggested that RICs are issued at age 16, when a citizen loses a card, or when the card has expired. Ms. Ying also seemed unsure of the information contained on an RIC.

[9] The Board also found that Ms. Ying had not been issued a house register (hukou). She did not seem to know what a hukou looks like, what information is contained in it, or when it is issued.

[10] Ms. Ying argues that the Board failed to consider documentary evidence suggesting that Chinese citizens do not have to carry their RICs on their person at all times. If the PSB asks a person to present it, he or she may return home to retrieve it. In addition, documentary evidence states that when the PSB seizes an RIC, it does not always provide the person with a receipt for it.

[11] In my view, the documentary evidence does not contradict any of the Board's findings on credibility. The Board drew an adverse inference from Ms. Ying's contradictory testimony about whether she carried her RIC on her person. The fact that she may not have been legally obliged to

do so did not figure in the Board's finding. In addition, the question whether Ms. Ying possessed a receipt for her allegedly seized RIC was not addressed by the Board. The documentary evidence she cites on that point is irrelevant to the Board's conclusion.

[12] In addition, of course, Ms. Ying's assertions do not affect the Board's other findings that led to its overall conclusion that she had not established her identity with acceptable documentation, and had not provided a reasonable explanation for having failed to do so. The Board's conclusion was reasonable in light of the evidence, and the absence of evidence, before it.

III. Conclusion and Disposition

[13] Given Ms. Ying's testimony and the absence of documentary evidence, the Board's conclusion that her identity had not been established was reasonable. 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

Annex

Immigration and Refugee Protection Act, SC 2001, c 27

Credibility

106. The Refugee Protection Division must take into account, with respect to the credibility of a claimant, whether the claimant possesses acceptable documentation establishing identity, and if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain the documentation.

Refugee Protection Division Rules (SOR/2002-228)

Documents Establishing Identity and Other Elements of the Claim

Documents establishing identity and other elements of the claim

7. The claimant must provide acceptable documents establishing identity and other elements of the claim. A claimant who does not provide acceptable documents must explain why they were not provided and what steps were taken to obtain them.

Loi sur l'immigration et la protection des réfugiés, LC 2001, ch 27

Crédibilité

106. La Section de la protection des réfugiés prend en compte, s'agissant de crédibilité, le fait que, n'étant pas muni de papiers d'identité acceptables, le demandeur ne peut raisonnablement en justifier la raison et n'a pas pris les mesures voulues pour s'en procurer.

Règles de la Section de la protection des réfugiés (DORS/2002-228)

Documents d'identité et autres éléments de la demande d'asile

Documents d'identité et autres éléments de la demande

7. Le demandeur d'asile transmet à la Section des documents acceptables pour établir son identité et les autres éléments de sa demande. S'il ne peut le faire, il en donne la raison et indique quelles mesures il a prises pour s'en procurer.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-538-10

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AND JUDGMENT:** O'REILLY J.

DATED: October 22, 2010

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