

Federal Court



Cour fédérale

Date: 20101210

Docket: IMM-2131-10

Citation: 2010 FC 1258

Ottawa, Ontario, December 10, 2010

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

**FU LIN HAN
(A.K.A FULIN HAN)**

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) of a decision of the Refugee Protection Division (the Board), dated March 17, 2010, where the Board found that the applicant is not a Convention refugee nor a person in need of protection.

[2] The application for judicial review shall be allowed for the reasons that follow.

[3] The applicant is a citizen of the People's Republic of China (China) who fears persecution for having assisted a Tibetan separatist.

[4] The determinative issues in this claim are the credibility of the claimant's oral testimony and Personal Information Form (PIF) as well as his risk of persecution if he were to return to China.

[5] The Board's decisions on credibility should be reviewed on a standard of reasonableness (*Aguirre v Canada (Minister of Citizenship and Immigration)*, 2008 FC 571, [2008] F.C.J. No. 732 (QL) at para 14). Accordingly, the Court will only intervene if the decision does not fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para 47).

[6] In this case, the Court cannot accept that the Board's negative findings fall within a range of possible and acceptable outcomes.

[7] First, the Board, relying on its own experience in hundreds of cases (para 6 of the decision) that people absconding from the police use a taxi or a passing motorcyclist to take them away from pursuing police, assumes that the applicant's employee would want to get away from pursuing police as quickly as possible. This may be true, but in this case there is a reasonable explanation why the employee chose to wait for the applicant. The answer can be found at page 483 of the tribunal's record. The applicant asked that question to his employee and this latter replied that he

was afraid to be caught by the police because there had been a meeting about a demonstration, the next day and it was discovered by the police. There was a raid, while running to escape he fell and hurt his arm and his wrist got dislocated. The Court finds that this is a plausible explanation.

[8] Second, in reading the transcript, the Court cannot accept the Board's conclusion that the applicant gave an inconsistent testimony concerning the date that the police was aware that its employee was allegedly involved in Tibetan separatist activity (tribunal's record, pages 487 and 488).

[9] Third, the Board stated that it was either implausible or not credible that the applicant would contact a stranger who advertises travel services in the press and told this man about his alleged problem before he was aware if this man was involved in fraudulent travel documents. At page 491 of the tribunal's record, the applicant explains that he had to tell the truth to this stranger because he was afraid that when he would pass customs, he would be arrested. The negative inferences drawn by the Board on this is not supported by the evidence.

[10] Finally, the Court is of the opinion that this matter should be remitted for reconsideration because at paragraphs 11, 12 and 13 of its decision, the Board made an analogy between assistants of Falun Gong practitioners and Tibetan supporters, concluding that they were in no greater jeopardy than those who assist Falun Gong practitioners. In so doing, the Board referred to country conditions documents on Falun Gong practitioners.

[11] There is not a word in the decision about country conditions documents related to China's human rights record in Tibetan areas of China (pages 82, 113, 332 and 477, tribunal's record). No analysis was made by the Board as to whether or not these country conditions could apply to the applicant.

[12] The Court's intervention is warranted.

[13] The parties did not propose question for certification and none arise.

JUDGMENT

THIS COURT ORDERS that the application for judicial review be allowed. The matter is remitted back for re-determination by a newly constituted Board. No question certified.

“Michel Beaudry”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2131-10

STYLE OF CAUSE: FU LIN HAN (A.K.A. FULIN HAN)
and
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: December 6, 2010

REASONS FOR JUDGMENT: BEAUDRY J.

DATED: December 10, 2010

APPEARANCES:

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