

Federal Court



Cour fédérale

Date: 20110707

Docket: IMM-3052-10

Citation: 2011 FC 836

Ottawa, Ontario, July 7, 2011

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

BO HE

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of Milton Israel (the Member), of the Immigration and Refugee Board, Refugee Protection Division (the Board), dated April 28, 2010. In that decision, the Board determined that the Applicant is neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] For the reasons that follow, this application is dismissed.

I. Background

A. *Factual Background*

[3] The Applicant, Bo He, was born on October 20, 1988, in Fuqing city, Fujian Province, People's Republic of China.

[4] According to the Applicant, his father's business failed, and thereafter, his father would beat him and his mother. The Applicant became distracted from his studies, so his school grades began to decline. He began to feel sad, hopeless, and lonely.

[5] On December 19, 2002, when the Applicant was 14, his friend approached him and asked him why he was sad. His friend told him about the tenants of the Christian faith according to the gospels. The friend explained the difference between formal churches, controlled by the Chinese government, and underground churches where God could truly be worshipped.

[6] The Applicant was not entirely convinced of what his friend had told him about God. But the friend visited again, on Christmas Eve, December 24, 2002. After the second visit, the Applicant came to believe in God, and joined his friend's church that day. The church was run out of different members' homes. The church had 10 other members when the Applicant joined, and grew to 17 members by the time he fled China.

[7] On April 4, 2007, four members of his church were arrested during their worship by the Public Security Bureau (the PSB). The Applicant did not attend that evening because he was visiting his sick grandmother in the hospital. His father's friend told the Applicant's mother of the arrest on April 7, 2007, and she informed the Applicant the same day. After receiving this information, the Applicant went into hiding at his uncle's house. The PSB visited the Applicant's home on May 4, 2007, and then thirteen or fourteen times thereafter. They did not provide a summons.

[8] In mid-December 2007, The Applicant's friend arranged for a snakehead to smuggle him out of China. He met the snakehead on February 25, 2008, to arrange his flight from China. On April 3, 2008, the Applicant left his uncle's home with the snakehead. They flew to Hong Kong on April 4, and departed the same day. The Applicant travelled using a fake Japanese passport.

[9] The Applicant arrived in Canada on April 8, 2008, and was interviewed by an Immigration Officer of the Canada Border Services Agency (CBSA) on the same day.

[10] The Applicant's Personal Information Form (PIF) Narrative was received by the Board on May 5, 2008, and amended by the Applicant on March 29, 2010. The Applicant fears being arrested if returned to China.

B. *Impugned Decision*

[11] The Applicant's hearing in front of the Board took place on April 20, 2010. On April 28, 2010, the Board rejected the Applicant's claims as a Convention refugee and a person in need of protection. The Board found the Applicant to be lacking in credibility in many regards, including his identity as a Christian and his being sought by the PSB.

II. Issues

[12] There are three issues to be determined on this application:

- (a) Did the Board err in its assessment of the Applicant's credibility?
- (b) Did the Board err in its assessment of the Applicant's identity as a Christian?
- (c) Did the Board err in its assessment of religious freedom?

III. Standard of Review

[13] It is well-established that decisions of the Board as to credibility and identity are factual in nature and are therefore owed a significant amount of deference. The appropriate standard of review is a standard of reasonableness (*Dong v Canada (Minister of Citizenship and Immigration)*, 2010 FC 55 at para 17; *Lawal v Canada (Minister of Citizenship and Immigration)*, 2010 FC 558 at para 11; *Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315, 42 ACWS (3d) 886 (FCA) at para 4).

[14] As a question of mixed fact and law, the last question will also be reviewed against the reasonableness standard.

[15] As set out in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47, reasonableness requires a consideration of the existence of justification, transparency, and intelligibility within the decision-making process. It is also concerned with whether the decision falls within a range of acceptable outcomes that are defensible in respect of the facts and law.

IV. Argument and Analysis

A. *Did the Board Err in its Assessment of the Applicant's Credibility?*

[16] The Applicant submits that the Board erred in drawing a negative credibility inference from the omission of certain information from his PIF. The Applicant explains that the PIF only included the most important events and the information that is missing is not material to his claim. The Applicant argues that oral testimony is generally allowed to provide additional details of a refugee claimant's narrative (*Selvakumaran v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 623, 114 ACWS (3d) 714).

[17] The Applicant further submits that the Board's credibility findings are unreasonable. The adverse credibility finding based on the Applicant's conversion to Christianity within a matter of days ignores his particular circumstances, while the negative inference drawn from the three day delay between the arrests and the Applicant learning of them lacks justification.

[18] Additionally, the Applicant submits that the documentary evidence before the Board does not support the Board's finding of a lack of credibility due to the Applicant's inability to produce a summons issued by the PSB. The documentary evidence indicates that police officers often do not leave summons, as they are not aware of the procedure or are lazy. Indeed, the documentary evidence indicates that there is a great variability and arbitrariness in the way law enforcement is administered in China.

[19] Finally, the Board erred in making a negative credibility finding on the basis that the Applicant amended his PIF. Amendments to PIFs are permitted until the time of the hearing, and in this case, the amendment was minor.

[20] The Respondent submits that the Board's credibility findings were reasonable.

[21] First, in the Respondent's view the omissions in the Applicant's PIF were material. For example, the reason that he had been absent from his church the day it was raided, and details regarding his conversion to Christianity were only provided at the hearing. It was open to the Board to draw a negative inference from the Applicant's failure to provide this information in his PIF (*Sanchez v Canada (Minister of Citizenship and Immigration)*, 98 ACWS (3d) 1265, [2000] FCJ No 536 (QL) (FC)).

[22] Second, the Respondent argues that it was open to the Board to find that the Applicant's conversion to Christianity within a matter of days lacked credibility because the Applicant's story is

implausible. Similarly, the Board was reasonable in finding that the Applicant's testimony as to how he found out about his fellow churchgoers were arrested lacked credibility.

[23] With regards to the police not leaving a summons, the Respondent submits that Board noted that the Applicant testified that the PSB attended his home 13 or 14 times. The documentary evidence is clear that a summons is generally left with an absconding person's family. The Board found that this practice is not always followed, but that in the context of the unusually high number of visits, it was reasonable to assume that a summons would have been left at some point. The Respondent submits that the Board reasonably drew a negative credibility inference.

[24] Furthermore, the Respondent submits that the Board reasonably based its credibility finding on other inconsistencies, such as the Applicant's contradictory evidence as to where he lived between April 2007 and April 2008. In his PIF, the Applicant stated that he lived in unknown countries outside of China, but during the hearing in front of the Board, the Applicant explained that he lived at his uncle's home in China. The Applicant's explanation was that the snakehead told him to lie. The Board rejected this statement, as the Applicant's PIF was filled out long after the Applicant arrived in Canada. This was reasonable. The Applicant also failed to remember the name on his allegedly fraudulent passport. The Court has held that not knowing that type of detail is a cause for concern (*Su v Canada (Minister of Citizenship and Immigration)*, 2007 FC 680, 158 ACWS (3d) 800), and that the Board is entitled to make reasonable findings based on implausibilities, common sense, and rationality (*Oduro v Canada (Minister of Employment and Immigration)*, 66 FTR 106, 41 ACWS (3d) 384).

[25] I agree with the Respondent. The information omitted from the Applicant's responses during an interview with a CBSA officer, his PIF, and his amended PIF was material to his claim. That information included key details about the Applicant's conversion to Christianity and circumstances under which his fear of being returned to China emerged, that is, the arrest of fellow members of his congregation. The Applicant's PIF also contains a direct contradiction to his testimony at the hearing, namely, where he went for approximately a year after learning about the arrest of his friend and others from his church. The Board's negative credibility findings based on comparing his PIFs to his oral evidence are reasonable.

[26] Contrary to the Applicant's argument, the Board does not draw a negative credibility inference from the fact that the Applicant amended his PIF, per se, but based on the information in the amended PIF vis-à-vis his evidence at the hearing.

[27] The Board's finding that it was probable that the PSB would have left a summons one time out of the purported 13 or 14 visits to the Applicant's house, and the resulting credibility finding, are reasonable. There is no reviewable error on the part of the Board.

B. *Did the Board Err in its Assessment of the Applicant's Identity as a Christian?*

[28] The Applicant submits that the Board based its assessment of the genuineness of the Applicant's Christianity on the Applicant's hasty conversion and his lack of knowledge regarding the Pentecostal Church. This was in error. Since the Board had no information before it regarding

the practices of the Pentecostal Church it was impossible to gauge the Applicant's responses as correct or incorrect, or as reasonable or unreasonable.

[29] The Respondent argues that it was open to the Board to find, on a balance of probabilities, that the Applicant was not a genuine Christian. It was reasonable, according to the Respondent, to base this conclusion on the Applicant's sudden conversion, the unbelievable story surrounding his house church, and his limited knowledge of his religion.

[30] According to the Applicant, he went from being entirely unconvinced of Christianity after his friend's first visit to wholeheartedly accepting the religion and becoming a member of an underground, prohibited church days later. I share the position of the Respondent -- it was reasonable for the Board to find this implausible. Regarding the issue of Pentecostal knowledge, I acknowledge that there might be legitimate concerns about how an applicant's devotion to a religion is assessed. In this case, the Applicant was unable to explain a specific doctrine of the Pentecostal church. However, I am equally conscious of the difficult task faced by the Board and find that in any case, the credibility finding based on the Applicant's inability to recite a church teaching is immaterial to the outcome of the Applicant's claim. Having upheld the Board's other credibility findings, it is clear that the Board reasonably impugned the foundation of the Applicant's claim for protection.

C. *Did the Board Err in its Assessment of Religious Freedom?*

[31] The Applicant submits that the Board failed to consider whether the Applicant would be able to freely practice his religion in China. In the Applicant's view, the Board focused only on documentary evidence indicating how many people were arrested for their religious practices in Fujian Province rather than making a finding related to whether the Applicant could freely practice his religion. The Applicant relies on *YJC v Canada (Minister of Citizenship and Immigration)*, 2010 FC 258 in which the Court held that a person is being persecuted if he or she is required to hide and ensure that one is not seen when practicing his or her religion. Even if the Applicant is not facing arrest, he may still be facing religious persecution (*Zhou v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1210, 87 Imm LR (3d) 64).

[32] The Respondent takes the position that the Board was entitled to prefer the documentary evidence, which did not show that members of small Christian churches in Fujian province were being targeted, over the problematic testimony of the Applicant. The Respondent agrees that religious persecution can happen absent the risk of detention, but argues that the key issue for the Board was that there was no objective evidence that the Applicant was being persecuted or risked being arrested. The facts in *YJC*, above, are distinguishable. Here, the Board did not find that the Applicant would not be at risk so long as he only practiced his religion in secret. Rather, the Board found that there was no evidence that members of house churches are at risk in Fujian province. In any case, the Board did not accept that the Applicant was a practicing Christian.

[33] Once again, I accept the Respondent's submissions. The Applicant misconstrues the Board's purpose in reviewing the documentary evidence on the tolerance of non-governmental religious organizations in Fujian Province. The Board did not use this evidence, as the Applicant suggests, to draw a conclusion on the authorities' tolerance of Christianity practiced by genuine adherents. Rather, the documentary evidence was used to make a finding of fact, namely, to test the likelihood of the Applicant's claim that his small, underground church was raided by the PSB. Based on the documentary evidence and the Applicant's evidence, this was a reasonable conclusion.

[34] As the Applicant failed to persuade the Board of his identity as a Christian, the Board did not need to consider whether the Applicant had a subjective and objective fear of being persecuted as a Christian in Fujian Province. The Board's decision was reasonable and the intervention of the Court is not warranted.

V. Conclusion

[35] No question to be certified was proposed and none arises.

[36] In consideration of the above conclusions, this application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

“ D. G. Near ”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3052-10

STYLE OF CAUSE: BO HE v. MCI

PLACE OF HEARING: TORONTO

DATE OF HEARING: APRIL 5, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** NEAR J.

DATED: JULY 7, 2011

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