

Federal Court



Cour fédérale

Date: 20110726

Docket: IMM-4746-10

Citation: 2011 FC 935

Ottawa, Ontario, July 26, 2011

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

AI PING RU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of the decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated 16 July 2010 (Decision), which refused the Applicant's application to be deemed a Convention refugee or a person in need of protection under sections 96 and 97 of the Act.

BACKGROUND

[2] The Applicant alleges that she is a national of the People's Republic of China. She was married and gave birth to a son in 1996. Her relationship with her husband was not a happy one. They began living with the Applicant's in-laws in 2003.

[3] In February 2007, a friend introduced the Applicant to Christianity and the Bible and, on 25 March 2007, she began attending an underground house church in her home province of Guangdong. On Christmas Day in 2007, the house church was raided by the Public Security Bureau (PSB). The Applicant escaped and went into hiding.

[4] Two days later, the PSB came searching for the Applicant at her home. They told her husband that she must surrender herself to them. The PSB returned to her home with greater frequency and, eventually, she decided to flee from China. She enlisted the assistance of a smuggler and arrived in Canada on 8 February 2008.

[5] On 14 April and, again, on 14 July of 2010, the Applicant appeared before the RPD. She was represented by counsel and an interpreter was present. In a written Decision, dated 16 July 2010, the RPD found that the Applicant had "failed to produce sufficient credible documents and evidence to establish her identity as a national of China as required by section 106 of the ... Act and Rule 7 of the ... Rules." In light of the Applicant's failure to succeed on this threshold issue, the RPD found that it need not determine whether she was a Convention refugee or a person in need of protection. Her claim was rejected. This is the Decision under review.

DECISION UNDER REVIEW

[6] The RPD stated that, in assessing the Applicant's credibility, it had a duty, under s. 106 of the Act and Rule 7 of the Rules, to consider whether she had acceptable documentation establishing her identity and, if such was lacking, to consider whether she had provided a reasonable explanation for why the documentation was lacking or had taken reasonable steps to obtain the documentation. The RPD relied on *Rasheed v Canada*, 2004 FC 587 [*Rasheed*], for the proposition that documents purportedly issued by a competent foreign public official are evidence of their content unless the RPD has a reason to doubt their authenticity. The RPD also relied on *Sertkaya v Canada*, 2004 FC 734, which confirms that the RPD may consider the authenticity of the documents as well as the ability of an Applicant to obtain fraudulent documents. In the instant case, the RPD observed that there is a wide variety of fraudulent documents available to Chinese refugee claimants.

[7] The determinative issue in this case is the credibility of the Applicant's oral testimony, her Personal Information Form (PIF) narrative and amendments to it and her CIC intake record. The RPD found that the identity documents provided by the Applicant did not establish her identity as a Chinese national.

Problems with the RIC

[8] The RPD noted four problems with respect to the Applicant's Resident Identity Card (RIC). First, when the Applicant went to the PSB in 2005 to obtain a new RIC, she brought as proof of her address an outdated hukou (i.e., Chinese household registration system booklet) which listed as her

address a residence in which she had not lived since 2003. The RPD found that the Applicant's presentation of this inaccurate hukou warranted a negative credibility inference. Second, the Applicant's testimony regarding the number of RICs that had been issued to her and when they had been issued, in the RPD's view, evolved into a correct version only after she had been prompted by the RPD, which warranted a negative inference. Third, the Applicant hesitated in her description of the process for acquiring a RIC, and her description was inconsistent with the documentary evidence. From this, the RPD drew a negative inference. Fourth, the RPD states that the Applicant could not easily or fully recall the type of information and the design on the face of her RIC, despite the fact that one might reasonably expect a Chinese national to have a "clear knowledge" of the RIC, as it is required for "almost every function in China." The RPD drew a negative inference from this. Although the RIC appeared to be authentic, the RPD commented that RICs can be obtained fraudulently.

Problems with the Hukous

[9] The Applicant presented three hukous as evidence of her residence in China at the material time, one each belonging to the Applicant, the Applicant's husband and the Applicant's father-in-law. The documentary evidence indicates that the PSB requires Chinese residents to update the hukou whenever there is a change in address or in the number of residents living at a particular address. Applicant's counsel suggested that, in reality, people may not comply with this rule. The RPD observed that a comparison of the documents in evidence revealed "many inconsistencies" regarding addresses and dates. It accepted counsel's submission that people may not comply with the rule to update their hukous but nevertheless found that the claimant did not honour her legal

obligation regarding hukous in China and that, on a balance of probabilities, the Applicant's documents and testimony were not credible evidence of her residence in China.

[10] With respect to the Applicant's own hukou, which was the major focus of the RPD's hukou analysis, the RPD gave it no probative value as evidence of the Applicant's residency in China. The Applicant's address on this hukou was the same as the address on her RIC but was different from the address provided in her PIF and at the hearing. The Applicant explained that the hukou address was a permanent address while the other address was temporary—she lived there for only four years. The RPD rejected this explanation and drew a negative inference from it, finding that four years was not “temporary” and that it was reasonable to expect the Applicant to have entered into evidence a hukou that reflected an address of four years' duration. The Applicant also introduced lease agreements to show that she had actually lived at this “temporary” address, but the RPD afforded them no probative value because they did not indicate who resided at that address or what the purpose of the rental was and because the receipts for the payment of rent were not numbered sequentially. Ultimately, the RPD concluded that all three hukous were fraudulent in that they did not indicate that the claimant actually resided in China from 1999 to 2008 when she departed for Canada.

Rejection of Marriage and Birth Certificates

[11] The RPD rejected the certificates offered as proof of the Applicant's marriage and the birth of her son because they lacked security features to validate their authenticity and “[b]ecause of previous concerns regarding the [Applicant's] credibility.” Fraudulent documents are easily

obtained in China. Although the RPD acknowledged that the son's Birth Certificate "appear[ed] to be accurate," it shows only that the Applicant was in China for the birth of her son and not that she was a resident of China during the material time or that she is a Chinese national.

Conclusion

[12] The Applicant's identity was the determinative issue. She provided no reliable documentary evidence and no credible oral evidence to demonstrate that she was a Chinese national at the times indicated in her PIF and oral testimony. The RPD concluded that, since identity is the first step in claiming refugee protection and since the Applicant failed to establish her identity, there was no longer any need to assess whether she faced persecution or was a person in need of protection.

ISSUE

[13] The Applicant raises the following issue:

Whether, in finding that the Applicant had not established her identity as a Chinese national, the RPD erred by:

- i. Basing its Decision on evidence incidental to the claim;
- ii. Failing to consider information regarding the nationality of the Applicant that was in the possession of Citizenship and Immigration Canada (CIC);
- iii. Confusing the question of the Applicant's identity as a Chinese national with the question of the date of her residence in China;
- iv. Failing properly to assess the documentary evidence of the Applicant's identity; and

- v. Failing properly to consider relevant evidence of the Applicant's identity.

STATUTORY PROVISIONS

[14] The following provisions of the Act are applicable in these proceedings:

Convention refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Person in need of protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality,

Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a

their country of former habitual residence, would subject them personally

pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Person in need of protection

Personne à protéger

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une

is also a person in need of protection.

catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

[...]

[...]

Credibility

Crédibilité

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.

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.

[15] The following provisions of the *Refugee Protection Division Rules*, SOR/2002-228 (Rules), are applicable in these proceedings:

Documents establishing identity and other elements of the claim

Documents d'identité et autres éléments de la demande

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.

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.

STANDARD OF REVIEW

[16] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9, held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to the particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[17] At issue in this application are the RPD's findings of fact and credibility and its assessment of the evidence. These considerations attract a standard of reasonableness. See *Elmi v Canada (Citizenship and Immigration)*, 2008 FC 773 at paragraphs 19-21.

[18] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at paragraph 47; and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraph 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

ARGUMENTS

The Applicant

The Decision is Based on Evidence Incidental to the Claim

[19] The Applicant argues that the identity documents on their face provided no indication whatsoever of fraud and, indeed, that the RPD found no problem with the physical documents themselves. The RPD's findings regarding the Applicant's identity were based on incidental information, gleaned from the Applicant's testimony, which was not determinative of authenticity. The RPD was aware of this Court's statement in *Rasheed*, above, that foreign documents are presumed valid unless there is a reason to doubt their validity.

[20] In *Bouyaya v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1042 [*Bouyaya*], reasons similar to those cited in the instant case were offered to support the RPD's finding that the Applicant had failed to establish his identity: fraudulent documents were easily obtained in the country of origin; the Applicant offered inconsistent accounts of how he obtained his identity documents; and certain of the documents lacked security features. Justice James O'Reilly found at paragraph 11 of *Bouyaya* that, although the RPD had "good reason to be suspicious," there was no evidence that the documents were fraudulent:

[T]he Board erred when it failed to respect the presumption that foreign identity documents are valid. The Board was entitled to find that some of the documents provided weak proof of identity, but it had no basis for rejecting all of Mr. Bouyaya's identity evidence, particularly those items that included Mr. Bouyaya's photograph, [which] appeared to be regular and provided strong evidence of his identity

[21] Similarly, in *Zheng v Canada (Minister of Citizenship and Immigration)*, 2008 FC 877

[*Zheng*] at paragraphs 18-19, Justice Danièle Tremblay-Lamer recognized that, although it is within the discretion of a tribunal to weigh the evidence, it must make an effort “to ascertain the authenticity of ... documents”:

[W]hile the Board makes the general statement that none of the documents submitted have security features, these documents do in fact contain security features in the form of official stamps. While these official stamps may not be as secure as other authenticity features, a careful analysis of the identity documents submitted was all the more important in the present case given the statement made by the Refugee Protection Officer during the hearing that she had no concerns with respect to these documents.

It is true that the production of fraudulent documents in China is a concern; however, given the obligation incumbent upon the RPD to make identity determinations based on the totality of the identity evidence, it was not reasonable for it to dismiss all of the identity evidence without examining these particular documents in order to ascertain whether they were indeed fraudulent.

The RPD Failed to Consider Objective Identity Information

[22] The Applicant argues further that the RPD had before it objective evidence from Citizenship and Immigration Canada (CIC), attesting to her identity as a national of China. The Applicant has three family members with status living in Canada and, in 1996, her mother sponsored her to come to this country. CIC’s FOSS notes, which were before the RPD, indicate that a sponsorship took place and that the Applicant was from China. The Applicant submits that, if there was any concern that she was not who she claimed to be, it would have been reflected in the FOSS notes. While the

FOSS notes would not prove that the Applicant was resident in China in 2007, it would prove that she was a Chinese national.

The RPD Confused the Issues: Identity versus Date of Residence in China

[23] The Applicant also argues that the RPD dealt more specifically with whether the Applicant was in China at the material time, as opposed to whether she was a Chinese national. These are two different considerations. Documents may establish one's identity even though they may not establish that one was present in the country of origin at a particular time. Moreover, even if the documents do not establish the latter, this does not make them fraudulent.

[24] In addition, if the RPD wanted to establish that the Applicant was not resident in China at the time of the alleged events precipitating her fear of persecution, it could have done so and supported this credibility finding with evidence in the record. Such a finding demands an inquiry into the substance of the Applicant's claim, however, which the RPD did not undertake.

[25] The RPD's findings on time of residency do not support its determination that the Applicant is not a Chinese national.

The RPD Failed Properly to Assess the Identity Documents

[26] The Applicant argues in the alternative that, even if the RPD did not err in the manner outlined above, it nevertheless erred in its assessment of the identity documents.

[27] The RPD's concerns regarding the RIC were "purely circumstantial" and do not support a finding that the RIC is fraudulent. The RPD emphasizes the fact that the address on the RIC was not current. The Applicant replies that having a current address on the RIC is not important. This is borne out by the documentary evidence, which indicates that a person who moves to a new residence during the validity period of her card need not amend her RIC.

[28] The Applicant further argues that the RPD misconstrued her evidence regarding her ability to recall what information appeared on the card. She did not say that she could not recall this information. Rather, she first indicated that the card contained her photo and her address and, when she was asked if there was any other information on the front, she first said that she could not remember and then immediately added address, date and photo. She was then asked which date, and she responded "my date of birth and also my ID number."

[29] The Applicant points out that, with respect to the difference between her actual place of residence and the address listed on her hukou, the documentary evidence supports her explanation that such a difference is not unusual in China. The Applicant also questions why the RPD did not accept her explanation for not updating her hukou, when it had already accepted counsel's submission that, in practice, some Chinese nationals may not update the hukou. The RPD's negative credibility finding appears to be aimed at penalizing the Applicant for not updating the hukou, even though there is no evidence that this is a serious infraction or subject to any penalty in China. The RPD acted unreasonably in drawing a negative credibility inference on this basis.

[30] The Applicant also argues that the RPD erred in dismissing the Marriage Certificate and the Birth Certificate as valid simply because they did not contain security features and because the RPD had determined that other identity documents were fraudulent. The RPD's lack of familiarity with assessing the authenticity of Marriage and Birth Certificates does not, in itself, justify a finding that they are fraudulent. In *Lin v Canada (Minister of Citizenship and Immigration)*, 2006 FC 84 [*Lin*], Justice Carolyn Layden-Stevenson held that the RPD was required to determine the authenticity of all documents as proof of an applicant's identity even where the RIC was found to be fraudulent, which was not the case here.

[31] The Applicant also argues that the RPD erred in rejecting the lease agreement and rental receipts because, even though they indicate that the Applicant's husband leased the apartment from 2003 to 2010, they do not indicate the purpose of the rental or the people who resided there and because the dates on the receipts were not in sequence. It is unreasonable to expect that such rental documents will necessarily indicate the purpose of the rental and the people residing at the address; there is no basis for this expectation in the documentary evidence. Further, the RPD's conclusion regarding the sequence of the rental receipts unreasonably assumes that whoever issued the receipts did so in sequential order and from only one book. These conclusions are based on mere speculation.

[32] The Applicant submits that she provided evidence of her permanent residence (which she owned) and her temporary address (which her husband leased). It is difficult to know what more she could have provided in the way of evidence regarding her residence.

The Respondent

The Applicant Failed to Establish Her Identity

[33] The Respondent submits that the Applicant bore the burden of establishing her identity through credible and trustworthy evidence. The RPD examined each of the Applicant's identity documents both on their face and in light of the explanations offered for the inconsistencies among them. The RPD was not required to accept the Applicant's explanations for these inconsistencies. See *Yang v Canada (Minister of Citizenship and Immigration)*, 2009 FC 681 at paragraph 8. The RPD's conclusion that the documents did not prove her identity and that her testimony was not credible were grounded in the evidence. The RPD's expertise in the assessment of credibility is well-established in this Court's jurisprudence. Even where the occasional explanation is accepted as plausible, the RPD is entitled to base its credibility findings on the cumulative weight of all explanations. See *Ahmad v Canada (Minister of Citizenship and Immigration)*, 2004 FC 808 at paragraph 23. The Applicant is simply asking the Court to reweigh the evidence.

[34] None of the documents corroborated the residence information provided in the Applicant's PIF, and none of the documents placed the Applicant in China at the time of the alleged raid on the house church which precipitated her flight from China. However, contrary to the Applicant's assertions, this was not the basis for the RPD's finding that the documents were fraudulent. The RPD found that the documents were fraudulent because the Applicant demonstrated a poor knowledge of the process for obtaining a RIC, a document that is required for "almost every function in China." This finding was strengthened by the fact that the three hukous failed to corroborate the RIC. The Applicant presented well at the hearing and has nine years of formal

education. It is not unreasonable to expect that she would be able to articulate accurately and clearly how she obtained her RIC and the information thereon.

[35] The RPD reasonably relied on the documentary evidence that Chinese citizens have an obligation to update the hukou, and the Applicant failed to provide a satisfactory explanation for why she did not fulfill this obligation.

[36] The Respondent notes that the RPD's findings regarding the Marriage Certificate and Birth Certificate were not made in isolation, but in relation to the other documentation, which was found to be fraudulent, and upon the Applicant's lack of credibility. Even if the certificates were accepted as valid by the RPD, they do not establish the Applicant's identity as a Chinese national at the time of flight in 2008 and, therefore, the Decision would be unchanged. The RPD is entitled to decide adversely with respect to the Applicant's credibility on the basis of contradictions and inconsistencies within her story, between her story and the documentary evidence and on the basis of implausibility in her testimony. See *Sheikh v Canada (Minister of Employment and Immigration)* (1990), 112 NR 61, [1990] 3 FC 238 (FCA).

[37] The Applicant argues that the Board failed to consider the information in the CIC FOSS notes. However, the fact that someone with the Applicant's name was sponsored by her family in Canada in 1996 is not conclusive evidence of the Applicant's identity as a Chinese national at the material time.

[38] The Applicant has not demonstrated that the RPD's negative credibility inferences were unreasonable. It is not enough for the Applicant to suggest an alternate inference or line of reasoning; she must point to a conclusion that is unsupported by the evidence, and she has not done so.

ANALYSIS

[39] At the core of this application is the issue of whether documentation which is authentic on its face can be disregarded as a result of testimony by an applicant that is inconsistent or implausible regarding the ways in which the documentation was obtained.

[40] In essence, the RPD rejects important documents produced by the Applicant (Resident Identity Card (RIC); Hukous; Marriage Certificate; Birth Certificate) either because of negative inferences drawn from the Applicant's account of what lay behind these documents or because, in the case of the Marriage Certificate and the Birth Certificate, the documents lacked security features.

[41] The RPD's concerns over documentation were driven by its (undisputed) assertions that fraudulent documentation is easily obtained in China.

[42] As the RPD acknowledges, *Rasheed*, above, indicates that there is a presumption of validity in regard to foreign documents: the RPD is entitled to doubt their validity only if there is a valid reason to do so. In this case, the RPD found that the Applicant's account of how she came by the

identity documents, their inconsistencies with other documents and their lack of security features were valid reasons to reject the authenticity of the Applicant's documents.

[43] The RPD made a series of negative credibility findings regarding the Applicant's knowledge about the information found on the RIC and about its issuance, namely:

- a. The Applicant had not lived at the address listed on her RIC since 2003. The Applicant did not present any up-to-date documentation that would corroborate her residency in China at the time of her alleged flight;
- b. The Applicant's testimony regarding the number of RICs that were issued to her evolved only at the prompting of the RPD and was not spontaneous;
- c. The Applicant hesitated when she testified about the process she went through to acquire the RIC presented to the RPD. In describing the process, the Applicant was inaccurate and required prompting by the RPD. Further, her testimony was inconsistent with the documentary evidence before the RPD;
- d. The Applicant was unable to describe the information on the face of her RIC or the design on the reverse side. The RPD drew a negative inference from this lack of knowledge because the RIC is necessary for almost every function in China.

[44] In the present case, consistent with section 106 of the Act and section 7 of the Rules, the RPD considered the Applicant's explanations as to why the address on the RIC and why the hukous submitted into evidence did not correspond to her other evidence. However, the RPD chose to rely on objective documentation stating that residents of China must report changes in their hukous to

the PSB. The Applicant allegedly obtained a RIC in 1996 or 1997. She obtained her next RIC in 2005 and, in the intervening years, her residency and household information changed. However, she failed to ensure that the hukou she used to obtain the RIC in 2005 reflected these information changes and could not provide a satisfactory explanation for this. Further, the hukou that the Applicant submitted for her father-in-law, with whom she allegedly lived since 2003, does not corroborate that she actually did live with him from 2003 to the time she went into hiding in 2007.

[45] The RPD made a series of negative credibility findings with respect to the following aspects of the Applicant's testimony regarding the three hukous submitted into evidence:

- a. The Applicant submitted only one hukou for herself, issued 12 July 1999. The residents listed are the Applicant and her son. There is a notation indicating that her son went to live at his grandfather's address in November 1999. However, the hukou of the Applicant's father-in-law does not show that the Applicant's son did in fact live there;
- b. The Applicant testified that the address listed on her hukou was a fixed address and that her place of residence from 2003-2007 was a temporary address. The RPD was not persuaded by this explanation because the Applicant lived at this address for four years, not a temporary period of time;
- c. At the first sitting of the Applicant's hearing, the Applicant did not produce documentation that corroborated her residency at a rental apartment. At the second sitting, she produced rental receipts and a copy of the lease showing that the Applicant's husband rented the apartment. The Applicant did not submit a hukou to indicate the residents of this address;

- d. The Applicant then testified that her parents-in-law lived at the rental property, but the address on the hukou of the Applicant's father-in-law does not correspond to the address on the lease agreement or the rental receipts;
- e. The Applicant's husband's hukou does not list him as residing at the same address as the Applicant and their son. Applicant's counsel submitted documentation that husbands and wives living at the same address could have separate hukous, with one designated rural and the other urban. The RPD, however, relied on documentation stating that there is an obligation on Chinese citizens to report to the hukou police any changes in address and in the names of the residents who move in or out of an address.

[46] The Applicant says that the RPD committed a reviewable error by "basing its findings regarding identity on circumstantial information not determinative of the authenticity of the documents before it when the documents on their face provided no indication whatsoever of fraud."

[47] It is, of course, well established that the assessment of the weight to be given to documents is a matter within the discretion of the tribunal assessing the evidence. See, for example, *Zheng*, above, at paragraph 18.

[48] In the present case, my reading of the Decision suggests that, in the weighing process, the RPD left the apparent genuineness of the documents themselves almost entirely out of account. The only documents questioned on their face are the Marriage Certificate and the Birth Certificate, both of which the RPD says do not have security features.

[49] My review of the Marriage Certificate reveals that the English translation says that the original does bear an official seal or stamp. Likewise, the Birth Certificate also appears to have an official stamp. As Justice Tremblay-Lamer pointed out in *Zheng*, above, at paragraphs 18-19, official stamps are recognized as security features:

Although it is true that the assessment of the weight to be given to documents is a matter within the discretion of the tribunal assessing that evidence (*Aleshkina v. Canada (Minster of Citizenship and Immigration)*, 2002 FCT 589, [2002] F.C.J. No. 784, (QL), at para. 13), I do not observe any effort on the part of the Board to ascertain the authenticity of these additional documents (*Lin*, above, at para. 12). More particularly, while the Board makes the general statement that none of the documents submitted have security features, these documents do in fact contain security features in the form of official stamps. While these official stamps may not be as secure as other authenticity features, a careful analysis of the identity documents submitted was all the more important in the present case given the statement made by the Refugee Protection Officer during the hearing that she had no concerns with respect to these documents.

It is true that the production of fraudulent documents in China is a concern; however, given the obligation incumbent upon the Board to make identity determinations based on the totality of the identity evidence, it was not reasonable for it to dismiss all of the identity evidence without examining these particular documents in order to ascertain whether they were indeed fraudulent.

[50] As regards the RIC and the hukous in the present case, the RPD acknowledges that, on their face, these documents appear to be genuine: “The RIC presented as evidence does not appear to be fraudulent, but according to our documentation, RICs can be obtained fraudulently.”

[51] The situation in the present case has many similarities, in my view, to *Bouyaya*, above, at paragraphs 10-11, where Justice O’Reilly found as follows:

This evidence gave the Board good reason to be suspicious about the documentation Mr. Bouyaya supplied. However, there was no evidence before the Board that actually indicated that the identity

documents were fake. To the contrary. For example, Mr. Bouyaya's National Identity Card matched in every detail the official description. Still, the Board concluded that it could place "little trust" in Mr. Bouyaya's documents.

In my view, the Board erred when it failed to respect the presumption that foreign identity documents are valid. The Board was entitled to find that some of the documents provided weak proof of identity, but it had no basis for rejecting all of Mr. Bouyaya's identity evidence, particularly those items that included Mr. Bouyaya's photograph, appeared to be regular and provided strong evidence of his identity

[52] In addition, the RPD in the present case entirely overlooked the security features that appear on the Marriage Certificate and the Birth Certificate in the form of an official stamp.

[53] The core identification documents presented by the Applicant were found to be fraudulent by the RPD, not because of any concerns arising on the face of the document but because of background inconsistencies and because the RPD felt that the Applicant's account of how she obtained the documents did not accord with the RPD's reading of the objective evidence as to how such documents are usually obtained. The negative credibility findings relied upon to negate completely what appear to be genuine documents are, at times, dubious. For example, the RPD faults the Applicant because the address on her hukou was different from her actual place of residence. The Applicant explained that she lived at a different address from the one on her hukou but that this is not uncommon in China. The National Issue Package, item 3.7, indicates the following at 7.2:

Except for persons who are performing their military service, household registration is issued by the PSB office in the place of permanent Hukou registration (Canadian consulate general in Hong Kong 9 Dec. 2004), which is sometimes not the place of residence (Wang 9 Jan. 2005).

This is strong support for the Applicant's position, but it was entirely overlooked by the RPD.

[54] I also agree with the Applicant that the RPD committed reviewable errors in its assessment of particular documents. I can certainly understand why the RPD would be suspicious, given the Applicant's account of how she obtained her RIC. However, one of the hukous, the RIC and the PIF all indicate that the Applicant lived at 8 Jiang Street. In other words, there is consistency where the RPD seems to believe there is none, and this puts in doubt the RPD's finding that no probative value should be afforded to the documents as evidence of the Applicant's place of residence. In addition, I agree that the RPD mischaracterizes in its Decision what the Applicant needed to be told about what appears on her RIC. She did not recount everything but she was able to provide many of the important features of her RIC.

[55] As regards the address issue, there was objective evidence before the RPD that supported the Applicant's explanation as to why she was not a resident at the address that appears on her hukou. The RPD even acknowledged the reality in China that sometimes the place of residence is not the address that appears on a hukou. Whatever the law is, people do not necessarily follow it. The Applicant's account was not implausible given this evidence, and yet the RPD appears to have left such evidence completely out of account when assessing the Applicant's credibility and the genuineness of her hukou.

[56] When it came to the Marriage Certificate, the RPD gave it no probative value because, according to the RPD, it had no security features and "because of previous concerns regarding the claimants credibility." This conclusion was based upon a fundamental mistake of fact because the

Marriage Certificate does have a security feature in the form of an official stamp. Also, the Marriage Certificate is not assessed in its own right because of previous negative findings on credibility in relation to the RIC and the hukou. As Justice Layden-Stevenson pointed out in *Lin*, above, at paragraph 12:

The fact that the first RIC was found to be fraudulent does not necessarily mean that the second RIC, the child's Birth Certificate, the school certificate and the household registration card are also fraudulent. As noted, the Board rejected all of the tendered documents on the basis that the RIC was fraudulent and because of the prevalence of fabricated Chinese documentation. No effort was made to ascertain the authenticity of the other documents.

[57] In the present case, no effort was made to assess the authenticity of the Marriage Certificate.

[58] The RPD also makes the same mistake of fact with regard to the son's Birth Certificate when it says that there "are no security features on the birth certificate to validate its authenticity." Once again, the Birth Certificate has an official stamp which is at least an indication of authenticity. The RPD then goes on to reject the Birth Certificate as being indicative of residence and/or Chinese nationality of the Applicant because "[d]ue to the lack of credibility and inconsistencies in documentation, there has been no valid evidence submitted that indicates the claimant was a resident of China during the time that she alleges, nor that she is a citizen of China." Hence, the Birth Certificate is also rejected based upon findings regarding other documents. It is not assessed in its own right, notwithstanding an acknowledgment by the RPD that the "information on the Birth Certificate appears to be accurate."

[59] The use made of the lease agreement and the rental receipts is also of concern. The RPD's findings in this regard are entirely speculative. There was no evidentiary foundation to suggest that

these documents should be rejected because the lease does not state a purpose for the rental or say who will be living at the address, nor is there any evidentiary basis to reject the rental receipts because they were not in sequence. The RPD cannot base conclusions upon speculation. See *G.U. v Canada (Minister of Citizenship and Immigration)*, 2005 FC 58 at paragraph 29. The lease agreement and rent receipts are evidence that the Applicant lived where she said she lived. Once again, these documents are not conclusive, but they cannot be left entirely out of account and should have been included in the weighing process that the RPD correctly identified needed to be done in this case.

[60] The RPD also leaves entirely out of account the documentation that the RPD introduced into the proceedings concerning the Applicant's previous sponsorship application. No mention is made of the FOSS notes in the Decision. The FOSS notes and the sponsorship information are relevant because they disclose the Applicant's name and identify the same mother and sister that the Applicant identified in her refugee claim. The RPD did not have to accept this evidence as conclusive proof of identity, but it had to be taken into account.

[61] In conclusion, I believe the RPD has committed several reviewable errors in this Decision. It has overlooked entirely the security features that appear on the Marriage Certificate and the Birth Certificate. It has also, when assessing the genuineness and weight to be given to the RIC and the hukou, left entirely out of account the fact that these documents appear to be authentic. In reaching its negative credibility conclusions, the RPD also appears to have overlooked what is said in the objective documentary package about the place of permanent registration for a hukou not always being the place of residence.

[62] The Applicant raises other issues for review but I feel there is no need to address them because I have found reviewable error with regard to the core issue of the identity documentation.

[63] Both sides agree that there is no question for certification and the Court concurs.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is allowed. The decision is quashed and the matter is returned for reconsideration by a differently constituted RPD.

2. There is no question for certification.

“James Russell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4746-10

STYLE OF CAUSE: AI PING RU

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: April 4, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT** **Russell J.**

DATED: July 26, 2011

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