

Federal Court



Cour fédérale

**Date: 20120116**

**Docket: IMM-3769-11**

**Citation: 2012 FC 40**

**Ottawa, Ontario, January 16, 2012**

**PRESENT: The Honourable Mr. Justice Rennie**

**BETWEEN:**

**DAI, JUNGSHENG**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The applicant seeks an order setting aside the May 2, 2011 decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada (the Board), which found him to be neither a Convention (Convention United Nations' *Convention Relating to the Status of Refugees*, [1969] Can TS No 6) refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, 2001, c. 27 (*IRPA*). For the reasons that follow the application for judicial review is dismissed.

***Facts***

[2] The applicant is from Putian, Fujian Province in the Peoples' Republic of China (China). Before the Board the applicant testified that he joined an underground church in August 2003. The applicant's cousin introduced him to Christianity because of a pain the applicant was suffering in his foot that physicians could not alleviate. The applicant testified that he was baptized in the church in March 2004. In December 2005 the applicant moved to Ecuador to work in his uncle's store. The applicant claimed that he attended church in Ecuador and that he mailed Christian study materials to his cousin in China. In July 2007 the applicant came to Canada. The applicant claimed that on July 24, 2008 his mother informed him that the underground church which he attended had been raided by the Public Security Bureau (PSB). The applicant's mother told him that the PSB had left a summons for him and that his cousin had been arrested. Apparently the PSB returned several times searching for the applicant.

[3] On August 6, 2008 the applicant made a claim for refugee protection. On May 2, 2011 the applicant's claim was refused by the Board. Summarizing the basis for refusing the claim the Board found as follows:

Given that the claimant has been found not to be a genuine practicing Christian in China or in Canada; given that the claimant's allegation of being a wanted person by the PSB was found not to be credible; given the totality of the documentary evidence which provides limited persuasive evidence that members of unregistered churches face a serious possibility of persecution in Fujian Province; the panel finds, based on the balance of probabilities, that the claimant would not face a serious possibility of persecution should he return to Fujian to practice his religion as he sees fit. For the same reasons, the panel finds that the claimant would not be personally subject to a risk to life, or a risk of cruel or unusual treatment or punishment, or a danger, believed on substantial grounds to exist, of torture should he return to Fujian Province.

***Issue***

[4] The key issue in this case poses a mixed question of fact and law and attracts a reasonableness standard of review: *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190.

[5] The applicant challenges the Board's credibility findings; namely, that he was not a genuine practicing Christian in China or in Canada, and alternatively, that he would not face a serious possibility of persecution should he return to Fujian to practice his religion, and that he was advancing a fraudulent refugee claim.

***Analysis***

[6] I find the applicant's allegations of the Board's errors have no merit. I also do not find the decision unreasonable, nor do I find that the decision fails to demonstrate justification, transparency and intelligibility within the decision-making process.

[7] The Board found that "...the claimant has failed to provide sufficient credible or trustworthy evidence in support of his claim that he was wanted by the PSB in China." The Board noted that the applicant threw away the envelopes in which documents sent to him by his mother were contained, noting that "it is unreasonable that the claimant would throw away evidence which could confirm that his documents came from China given that he had the assistance of counsel before he submitted his refugee claim and it would be reasonable for him to have been told to keep all evidence." As a result the Board found that it could not place weight on the summons the applicant provided, particularly in light of a Response to Information Request (RIR) which indicated that fraudulent documents including summonses were readily available on the black market.

[8] The Board also noted that the applicant's mother mailed the summons and other documents to the applicant from China to Canada when the applicant and his mother knew that Chinese authorities screen and censor mail. The Board found:

... implausible that the claimant would risk himself and risk all of the documents in support of his identity and his claim by having the documents mailed to him under his name. The claimant was aware of threats against his family and police interest in him... Given the government's practice of monitoring mail, the panel finds that receiving mail under his own name from China undermined the claimant's allegations that he was a wanted person in China.

[9] In oral argument the applicant contended that the finding was unreasonable given his testimony that his mother had mailed the summons to him within a book. I find that this additional fact adds nothing to alter the reasonableness of the Board's finding. The credibility finding is made in respect of the plausibility of the applicant's mother sending him the summons, not with the form of the mailing. The finding is also predicated on the authenticity of the summons. In this regard, the Board also found that it could not place much weight on the summons considering the fact that the applicant only received it after being in Canada without status for nearly a year and after he had left China some five years earlier.

[10] The applicant provided three inconsistent explanations to the Board as to when he was required to report to the PSB based on the summons issued to him. Because of the inconsistent explanations the Board gave little weight to the applicant's testimony.

[11] The applicant also argues that the Board's finding that his inconsistent testimony about when to report based on the summons is contradicted by evidence in the RIR which the applicant submitted and the Board relied on in making its findings. The Board found:

The latest documentary evidence on summonses in Fujian indicates that the person being summoned needs to be at the designated place within 12 hours after he receives it. The claimant's summons was issued on July 26, 2008 and indicates that the claimant should report two days later on July 28, 2008. This does not conform to the documentary evidence. The panel considered counsel's submission that there is unequal application of rules and regulations throughout China. While this information was included in a previous RIR dated June 2004, the RIR the panel quoted which was issued in July of 2010 does not mention that authorities in Fujian do not follow the commonly used policy.

[12] In making such a finding, the applicant argues that the Board failed to consider the following passage from the very documentation the Board had cited in reaching its decision:

In 21 June 2010 follow-up correspondence, the same Official indicated that due to "wide administrative discretion throughout the country", there are discrepancies between legislation and its implementation in China (Canada 21 June 2010). The Official noted that "in some instances the individual may not receive a copy of the summons without specifically asking for it, or if the individual accompanies the PSB officers upon receiving a summons, he may not receive a copy afterwards" (ibid.).

[13] This does nothing to cure the credibility findings of the applicant. The Board's findings with respect to the applicant's credibility are not superseded by the Board's failure to rely on this passage. Stated another way, the credibility problems lie with the applicant, not the RIR documentation.

[14] The Board also drew negative credibility inferences from that fact and found that "it was implausible that the claimant risk his cousin's safety in order to send her church documents from

Ecuador. Furthermore [...] the omission of the fact that the documents were in Spanish and had to be translated into Chinese from his PIF undermined the credibility of this allegation.” These were reasonable factors upon which the Board could base its findings of credibility.

[15] There was additional evidence in the decision which supported the reasonableness of the determination on credibility. It was highly implausible for the applicant to have lived in a community and worshipped at a church for two years without at least knowing the name of the congregation. While it would have perhaps been unreasonable to have expected the applicant to learn Spanish, it is not unreasonable for the Board to have expected him to have at least known the name of the church he attended while he lived in Ecuador and, presumably, would have at least been curious about what was being said in the church services.

[16] The applicant also testified that he stopped attending English language school in Canada because he could not afford the fees. The applicant also claimed that he could not afford school materials. The Board also noted that the applicant could not reconcile these claims with the fact that all of his tuition, including accommodation and school materials had been pre-paid in full. His attendance in the class was well below 70%. The applicant ultimately stopped attending altogether. The Board found that the applicant did not demonstrate a *bona fide* intent to enter Canada for the purposes of studying English. This was a conclusion open to the Board on the evidence.

[17] When the applicant’s student visa expired in January, 2008 he remained in Canada without status. He claimed that his father, who remained in China, needed money so he remained in Canada to work. No effort was made by the applicant to return to China. The Board found that “the

claimant remained in Canada between January and July of 2008 (when he made his claim) for reasons other than a fear of Chinese authorities. This undermined the claimant's subjective fear as well as his overall credibility." This is not an unreasonable finding; even in light of the applicant's claim that he only became aware of the church raid in July 2008 and therefore may not have had reason, initially, to fear persecution by the PSB.

[18] The applicant also faults the Board for not considering a post-hearing decision by the Australian refugee tribunal. The Board is under no duty to follow or to be persuaded by decisions in a foreign jurisdiction regardless of their shared legal history.

[19] The Board also found that the applicant began attending church in Canada in November 2007, well after his arrival in Canada, and that his motivation for attending "was to establish the foundation for a non-genuine refugee claim." The Board also found that while the applicant had been baptized and had some Christian knowledge, any knowledge was gained only for the purposes of supporting a fraudulent refugee claim. In light of this finding, any error in the Board's analysis of the risk of persecution in China need not be addressed.

[20] The application for judicial review is therefore dismissed.

[21] There is no question for certification and none arises.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review be and is hereby dismissed. No question for certification has been proposed and none arises.

"Donald J. Rennie"

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3769-11

**STYLE OF CAUSE:** DAI, JUNGSHENG v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto

**DATE OF HEARING:** December 13, 2011

**REASONS FOR JUDGMENT  
AND JUDGMENT:** RENNIE J.

**DATED:** January 16, 2012

**APPEARANCES:**

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