

Federal Court



Cour fédérale

Date: 20120502

Docket: IMM-5918-11

Citation: 2012 FC 510

Ottawa, Ontario, May 2, 2012

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

YU CHEN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 (Act) for judicial review of the decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated 22 July 2011 (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 is a 22-year-old citizen of the Peoples' Republic of China (PRC). Before he came to Canada, he lived in Liaoning Province in the PRC. The Applicant seeks protection in Canada on the basis of the persecution he says he will suffer in the PRC because he is a Christian.

[3] In 2008, the Applicant witnessed one of his co-workers lose a leg in an industrial accident and he fell into depression as a result. He says that his best friend, Guang Yao Zhao (Zhao), shared Christianity with him in early 2009, and that this helped him to cope with the trauma of the accident. After he converted to Christianity, the Applicant says he began attending an unregistered underground Christian church in January 2009.

[4] On 10 May 2009, agents of the Public Security Bureau (PSB) raided the Applicant's church. He says that, before the raid began, a lookout notified the church leader that the PSB agents were closing in on them. The Applicant and several others escaped because they had planned an escape-route before the meeting. After his escape, the Applicant says he went into hiding at the house of his maternal uncle.

[5] After he went into hiding, PSB agents went looking for the Applicant at his parents' home on 12 May 2009. The agents said the Applicant was involved in illegal religious activities and that they had arrested other members of his church, and had evidence against him. After this event, the Applicant and his parents decided together that he should flee the PRC. He hired a smuggler and travelled first to Tokyo and then to Toronto. He arrived in Canada on 14 September 2009 and claimed protection on 22 October 2009.

[6] Before the RPD heard his claim, the Applicant provided several documents as evidence. He gave the RPD his Resident Identity Card (RIC), Household Registration Booklet (Hukou), a Graduation Certificate, and an Employee ID card. He also submitted a letter from the Pentecostal church he attended in Canada, a Baptism Certificate, and several photos of him participating in church activities.

[7] The RPD heard the Applicant's claim on 17 June 2011. At the hearing, the Applicant, his legal counsel, and an interpreter were present. The RPD considered his claim and, on 22 July 2011, rejected it. The RPD notified the Applicant of the Decision on 12 August 2011.

DECISION UNDER REVIEW

[8] The RPD denied the Applicant's claim for protection because it found he was not a Christian and he did not face a risk of persecution in the PRC.

Credibility

[9] The RPD focussed its analysis on the Applicant's credibility. After reviewing a number of inconsistencies between his oral testimony and his Personal Information Form (PIF), the RPD found that he was not a credible witness.

[10] The RPD noted that the Applicant has 12 years of formal education and may have faced difficulties at the hearing from cultural factors, the hearing room atmosphere, and the stress of oral questioning. It said it had taken these factors into account when assessing his credibility.

[11] In his PIF, the Applicant wrote that his friend Zhao, who had been a Christian for a year, had shared the gospel with him in January 2009. At the hearing, the Applicant said that Zhao had not told him about Christianity sooner for fear he would unintentionally tell someone else. The RPD asked the Applicant why Zhao trusted him more in 2009 than in 2008, and he said that his friend saw he was depressed and wanted to help him. The RPD found this explanation was not credible because it would be reasonable to expect Zhao to have confidence in him, and it is every Christian's duty to spread the Gospel.

[12] The Applicant also wrote in an amendment to his PIF that Zhao told him about the underground church on the second occasion when they talked about Christianity. However, at the hearing and in his unamended PIF, the Applicant said he learned about the underground church the first time Zhao and he talked about Christianity. Although the Applicant explained this discrepancy by saying he was told about the church the first time and about the whole process of the service the second time, the RPD rejected this explanation. The RPD noted that the Applicant confirmed he was told about the church the first time, but also amended his PIF to say it was the second time. From these inconsistencies, the RPD drew a negative inference.

[13] The RPD asked the Applicant what he understood God to be when his friend first told him about Christianity. He answered that he had not believed in God before, but he trusted Zhao and so believed what he said. The Applicant also said that he did not know if God was human or a god, but Zhao told him the story of the lost sheep, so he began to understand the truth. He said he came to believe that all will be saved, regardless of what wrong things have been done. The RPD said the Applicant was unable to describe his concept of God when he learned about Christianity, and so it drew a negative inference.

[14] The RPD also asked the Applicant to describe a typical service at his church. He said that the believers would pray, read and hear about the Bible, pray together, and recite the Apostles Creed. He also said they would arrange the next meeting place. Later in the hearing, the Applicant said that he had acted as a lookout once; he also explained the lookouts' role and said a lookout was appointed near the end of meetings. The RPD noted that, when he first described a typical service, he had not mentioned how or when lookouts were appointed. From this omission, the RPD drew a negative inference, saying it was reasonable to expect the Applicant to mention lookouts when he talked about arranging the next venue.

[15] When the RPD asked him about the raid on his church, the Applicant first said that the lookout alerted the leader when the believers were discussing the story of the calming of the storm. In his PIF, he wrote that the call came in while they were sharing testimonials. When pressed on this inconsistency at the hearing, he said that they had just finished sharing their testimonials and were about to discuss the story. The RPD said he had not mentioned testimonials the first time he described the service. It rejected his explanation and drew a further negative inference; the RPD found the raid had never occurred.

[16] The Applicant said that, when the PSB raided his church, the leader told the believers that the venue was surrounded. He also said that they went out the back of the building as provided by their escape plan. The escape plan called for the believers to escape out the back door of the building if the PSB came from the front, or the front door if the PSB came from the back. He said that if the building was surrounded they were to force their way out through the door with fewer PSB agents. He also said that the building could not be surrounded because of its location. He later

said that some believers were to flee, while those who stayed behind were to pretend that it was an ordinary, non-religious, gathering.

[17] The RPD found the Applicant's account of the raid and escape plan were implausible. It said that, if the PSB saw some believers fleeing, the agents could not reasonably be expected to believe that an ordinary social gathering was taking place. The Applicant's testimony on this point was confusing and evolving, so the RPD drew an additional negative inference.

[18] When he described his flight from the church after the raid, the Applicant said that he handed his Bible to the leader. He also said that the leader told everyone to hand their Bibles to her when the lookout called. He further said that not everyone gave the leader their Bibles, and she told them to put the Bibles on a desk because she could not hold them all. The Applicant then testified that he handed the leader his Bible and she put it on the desk right away. The RPD found that this aspect of his testimony also evolved, so it drew a further negative inference.

[19] The Applicant also said the escape plan included handing over the Bibles. The RPD drew a negative inference from his failure to mention handing over bibles when he described the plan earlier in the hearing.

[20] The Applicant said that he had told his parents about Christianity once and they believed what he said, but the RPD found that this was implausible. It was not plausible that his parents became Christians after hearing about Christianity from their son once. The RPD also found that his parents would have acted on their beliefs if they actually became Christians. They did not act on their beliefs, so the Applicant's story was not credible.

[21] In *Orelien v Canada (Minister of Employment and Immigration)*, [1991] FCJ 1158 (FCA) (QL) the Federal Court of Appeal held at paragraph 20 that “one cannot be satisfied that the evidence is credible or trustworthy unless satisfied that it is probably so, not just possibly so.” The RPD also noted that testimony from a witness does not have to be accepted simply because it is not contradicted. Further, the RPD is entitled to make reasonable findings based on implausibilities, common sense, and rationality. Based on all of its negative inferences, the RPD found that the Applicant had not attended an underground church in the PRC and was not wanted by the PSB.

Sur Place claim

[22] After examining the Applicant’s credibility, the RPD analysed whether the Applicant was a genuine Christian in Canada and whether he would be at risk if he were returned to the PRC.

[23] The RPD pointed out that there is a requirement of good faith on the part of refugee claimants and that claimants who manipulate circumstances to create a real chance of persecution show a lack of good faith. The RPD found that the Applicant had not made his claim in good faith.

[24] The RPD found that the Applicant had joined a Christian church in Canada solely to support a fraudulent refugee claim. It based this finding on its previous findings that he was not a practising Christian in the PRC and had not made his claim in good faith. In coming to this conclusion, the RPD also tested the Applicant’s knowledge of Christianity. It found that he did not have the knowledge to be expected of a person with a grade twelve education and who had practised Christianity for two years. The RPD found that the Applicant did not believe in the resurrection of the body – a Christian concept. He also said at the hearing that the soul, but not the body, would be

in heaven at the end of the world. The RPD pointed out that the New Testament says that, at the end of the world, the dead will rise again.

[25] At the hearing, the RPD also asked the Applicant about the Bible. He said that the Old Testament dealt with God's covenant with the Jews and that a covenant was conduct, control, or a benchmark for conduct. The RPD found that the Applicant had memorized some of the Old Testament's contents which he did not understand.

[26] When the RPD asked the Applicant about the New Testament, he said it included Corinthians I and II and Job. Because Job is actually a book in the Old Testament, the RPD pressed him on this answer; he said it might be in the Old Testament and that he had made a mistake. When asked what Corinthians I and II are about, the Applicant said that he did not know because he does not understand many things and needs to study the meaning of the Bible more. The RPD found that if he had read Corinthians he would remember it. The RPD also found that if he was reading the Bible every day, as he said he was, he would be familiar with the other books in the New Testament.

[27] The RPD asked the Applicant what holy days his church in Canada celebrated and he listed several days, including Passover. The RPD noted that this is not a holy day in the Pentecostal Church and that he had not mentioned Good Friday, which is a holy day in that church. The Applicant also said that Pentecost was a holy day, but he did not know where the story of Pentecost occurred in the Bible. The RPD found that he should have known where this story occurred because he attended a Pentecostal church where Pentecost had been celebrated the week before the hearing.

[28] The RPD also found that the Applicant did not have a clear concept of the Trinity. Although he knew that the Trinity consists of the Father, the Son, and the Holy Spirit, he did not know all three existed eternally. The Applicant said that before Jesus was born he was a star in the sky. The RPD said this was clearly wrong and if the Applicant had read the Gospel of John he would have known this was incorrect.

[29] Although the Applicant provided a letter from the pastor of his church in Canada and a baptism certificate from the same church, the RPD gave little weight to these documents because he lacked knowledge of Christianity and there was no indication of how the pastor had monitored his attendance. The RPD also said that these documents did not show the Applicant's motivation for attending church and for being baptised. Based on the conclusion that the Applicant was not a member of an underground church in the PRC, and that the PSB is not pursuing him, the RPD found that the Applicant had engaged in religious activities in Canada to manufacture a false refugee claim.

Risk in Liaoning Province

[30] In the alternative to its finding that the Applicant was not a genuine Christian, the RPD analysed the risk to him in Liaoning province if he returned to the PRC and became a genuine practising Christian.

[31] The RPD noted that the Executive Secretary of the Hong Kong Christian Council said on 14 June 2010 that authorities in the PRC demonstrate a high degree of tolerance towards unregistered Christian groups. The RPD relied on its own Request for Information (RIR) CHN103501.E – *Situation of Catholics and treatment by authorities, particularly in Fujian and Guangdong*. The

RPD also found that RIR CHN102492.E – *Reports of raids on Protestant house churches; frequency and location of raids* establishes that although incidents of persecution in the PRC were recorded between 2005 and 2009, none of the recorded incidents of persecution were in Liaoning Province. The RPD found that there was no persuasive, recent evidence of persecution in Liaoning Province and that if persecution had occurred in Liaoning it would have been documented.

[32] The RPD then examined the Applicant's description of his house church and its location in a province where there was no persuasive evidence of arrests or persecution. The RPD examined a report from the United States' Department of State, the *International Religious Freedom Report 2009*, which indicated that unregistered groups have expanded in the PRC and many do not practise in secret. The RPD concluded that the Applicant would be able to practise Christianity in the church of his choosing in the PRC without risk of persecution. The RPD said that it was guided by this Court's decisions in *Yu v Canada (Minister of Citizenship and Immigration)* 2010 FC 310 and *Li v Canada (Minister of Citizenship and Immigration)* 2010 FC 205.

[33] The RPD concluded that the Applicant had not established a serious possibility that he would be persecuted or that he faced a risk to his life or of cruel and unusual treatment or punishment if he were returned to the PRC. He also did not face a risk of torture on return. On this basis, the RPD denied the Applicant's claim for protection.

ISSUES

[34] The Applicant raises the following issues:

- a. Whether the RPD's assessment of his religious identity in the PRC was reasonable;
- b. Whether the RPD's assessment of his religious identity in Canada was reasonable;
- c. Whether the RPD's assessment of the risk the Applicant faces in Liaoning Province was reasonable.

STANDARD OF REVIEW

[35] 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 a 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.

[36] In *Aleziri v Canada (Minister of Citizenship and Immigration)* 2009 FC 38, Justice Maurice Lagacé held that the standard of review with respect to the findings of religious identity and risk in a *sur place* claim was reasonableness (see paragraphs 11 and 16). Further, in *Cao v Canada (Minister of Citizenship and Immigration)* 2010 FC 349, Justice Robert Mainville held that the standard of review on the question of a claimant's religious identity was reasonableness (see paragraphs 17, 19 and 20). The standard of review with respect to the first two issues is reasonableness.

[37] In *Sarmis v Canada (Minister of Citizenship and Immigration)* 2004 FC 110, at paragraph 11, Justice Michel Beaudry held that the standard of review on the risk of persecution was patent unreasonableness. Justice David Near made a similar finding at paragraph 9 in *S.A.H. v Canada (Minister of Citizenship and Immigration)* 2011 FC 613. The standard of review on the third issue is reasonableness.

[38] 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.”

STATUTORY PROVISIONS

[39] The following provisions of the Act are applicable in this proceeding:

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,

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) 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

[...]

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, their country of former habitual residence, would subject them personally

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

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

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

(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,

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

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;

[...]

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

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

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

(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) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles

accepted international standards, and

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.

[...]

[...]

ARGUMENTS

The Applicant

Christian Identity in the PRC

Introduction to Christianity

[40] The Applicant says that, when it found he was not a Christian in the PRC, the RPD unreasonably relied on its own beliefs about how Christians should think and act. In doing so, the RPD engaged in speculative reasoning, which this Court has said is unacceptable. The RPD correctly said that the Applicant's oral testimony about when Zhao told him about the underground church was inconsistent with his PIF. However, the RPD failed to link this inconsistency with his Christian faith. The RPD did not say whether the negative inference it drew from this inconsistency was in relation to the Applicant's identity, his PIF, or some other issue. In *Diaz v Canada (Minister of Citizenship and Immigration)* 2008 FC 1243, Justice John O'Keefe held at paragraph 16 that

It is trite law that all critical findings made by the Board must be supported with a clear evidentiary basis. Failure to lay out a clear and specific evidentiary basis is patently unreasonable and renders each of the findings to nothing more than sheer speculation [...].

[41] Since the RPD failed to give clear reasons for rejecting the Applicant's evidence, the Decision must be returned for reconsideration.

Underground Church Service

[42] It is improper for the RPD to draw negative inferences from omissions in testimony. The RPD drew a negative inference from the Applicant's failure to mention the appointment of lookouts when he was asked to describe the typical service at his underground church in the PRC. He points to *Mensah v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 1038 (FCA), where the Federal Court of Appeal said that

This seems to us, at first blush, to be a classic case of "Catch 22", from which it is impossible for the applicant to extricate himself: if he gives as few details at his hearing as at his examination under oath, his claim fails for lack of precision; if he gives more, it fails for lack of credibility.

[43] The Applicant also notes that Justice Beaudry held at paragraphs 29 to 31 of *Li v Canada (Minister of Citizenship and Immigration)* 2006 FC 868 that

The applicant's omission to mention his father's loss of employment in his PIF was certainly not helpful to his claim, but this kind of omission should not be fatal to his claim in the same way that a direct contradiction would be. It is further interesting to note that the Board does not comment on the credibility of the substance of the applicant's allegation.

Furthermore, while the applicant did apparently failed [*sic*] to include his addresses in Shanghai and in Guangdong province, he did mention that he fled there in his PIF.

Again, the Board relied on a technical omission rather than a contradiction to justify its adverse credibility finding, and failed to explicitly come to a finding regarding the credibility of his allegation of having fled to Shanghai and Guangdong.

[44] The RPD also erred by basing a negative inference on its own standard of behaviour. The RPD made a speculative finding when it found that the Applicant should have mentioned the lookout's appointment in his description of the underground church service. This is the same error the RPD made with respect to the inconsistency it identified in his testimony about when Zhao told him about the underground church. *Mahmood v Canada (Minister of Citizenship and Immigration)* 2005 FC 1526 cautions against this kind of error.

[45] When it drew a negative inference from the Applicant's failure to mention the appointment of lookouts, the RPD was overzealous and microscopic in its evaluation of the evidence. The Federal Court of Appeal cautioned against this kind of error in *Attakora v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 444, when it held that

I have mentioned the Board's zeal to find instances of contradiction in the applicant's testimony. While the Board's task is a difficult one, it should not be over-vigilant in its microscopic examination of the evidence of persons who, like the present applicant, testify through an interpreter and tell tales of horror in whose objective reality there is reason to believe.

[46] The Applicant says his testimony about a typical underground church service in the PRC was otherwise consistent, so the inconsistency in his testimony on this narrow point about lookouts should not have led the RPD to a negative inference about his overall credibility.

Bibles

[47] The RPD also unreasonably drew a negative inference from his failure to mention how Bibles were to be dealt in his description of the escape plan. Just as it was unreasonable for the RPD to draw a negative inference from his failure to mention the appointment of lookouts, it was also

unreasonable for the RPD to draw a negative inference from his failure to describe the plan for the Bibles.

Spreading the Gospel

[48] The RPD's treatment of the Applicant's testimony about sharing Christianity with his parents was also unreasonable. The RPD did not consider how this testimony established his religious identity. Although the RPD found that it was implausible that the Applicant's parents would convert to Christianity after being told once, the RPD did not draw any conclusions about the Applicant's beliefs from this evidence. The RPD also unreasonably based its assessment of this testimony on speculative assumptions about how his parents would act on their beliefs if they had actually converted to Christianity.

Sur Place Claim

[49] Even if the RPD's findings with respect to his Christianity in the PRC are reasonable, they are irrelevant to his refugee claim. The only thing that mattered to his claim for protection was his religious identity in Canada and the RPD unreasonably analysed this aspect of his claim.

[50] The RPD unreasonably based its assessment of his Christianity in Canada on its finding that he was not a Christian in the PRC. What mattered, however, was whether he was a Christian at the time of the hearing. The RPD's statement that

Having found that the [Applicant] is not a genuine practicing Christian in China [*sic*] and having found that his claim has not been made in good faith, I find on a balance of probabilities, and in the context of findings noted above, that the [Applicant] joined a Christian church in Canada only for the purpose of supporting a fraudulent refugee claim.

[51] When it failed to consider his *sur place* claim independently of its assessment of his Christianity in the PRC, the RPD acted unreasonably.

Knowledge of Christianity

[52] The RPD's assessment of his Christian faith in Canada was also unreasonable because it did not analyse whether his faith was genuine through questioning or by looking at the documentary evidence which was before it. Instead, the RPD looked at what he knew about Christianity and the Bible. In *Wu v Canada (Minister of Citizenship and Immigration)* 2009 FC 929, at paragraph 22, Justice Michael Kelen held that

A reading of the Board's reasons gives the impression that to be determined to be a Christian one should be able to retain at least some encyclopaedic knowledge of the Bible or Jesus' teaching. One cannot help but have sympathy for claimant who was struggling to understand and be understood through an interpreter. Determining whether one is a genuine Christian by way of "trivia" is clearly contrary to the above case law. This Court has often overturned a Board Member's decision as "unfair" and "unreasonable" because the applicant could not answer detailed questions about the Bible.

[53] In this case, the RPD's conclusion that the Applicant was not a genuine Christian was not open to it because he demonstrated a reasonable level of knowledge about Christianity.

Documents Submitted

[54] When the RPD assigned little weight to the Applicant's Baptism Certificate and the letter from his pastor in Canada, it acted contrary to the presumption of truth which the RPD is obligated to apply to claimants' documents and testimony. The conclusion that these documents did not reveal his motivation is also contrary to the RPD's own documents. The screening form the RPD gave the

Applicant before the hearing directed him to provide documents showing religious activities. If these documents were of little value in showing his religious identity, then it was pointless for the RPD to demand the Applicant produce them.

[55] Although the RPD correctly found that a pastor's assessment of someone's religious beliefs does not displace the RPD as trier of fact, this does not lead to the conclusion that the letter from the Applicant's pastor should be given little weight. The RPD misinterpreted the law in this regard.

[56] The RPD also unreasonably allowed its assessment of the Applicant's religious identity in the PRC to taint its assessment of his Christianity at the time of the hearing. Even if he had initially joined the church in Canada to support his claim, this was not relevant to whether he was a genuine Christian at the time of the hearing. If the Court accepts this line of reasoning, then it will preclude the possibility that a person who initially joins a church for fraudulent purposes could develop a genuine faith which would put him at risk of persecution. The RPD's failure to adequately consider the evidence surrounding the Applicant's Christianity in Canada means that the Decision should be returned for reconsideration.

Risk on Return

[57] The RPD's alternative finding that he would not face a risk of persecution if returned to the PRC was also unreasonable. The Applicant says that the RPD ignored a letter from Bob Fu, the President of the China Aid Association. This letter says that much of the religious repression in the PRC is unreported and it is incorrect to assume that underground churches can operate freely.

[58] The RPD also ignored evidence in its own National Documentation Package (NDP) on the PRC. The *International Religious Freedom Report 2009*, above, says that

Police and officials of local [Religious Affairs Bureaus] in some areas disrupted home worship meetings, claiming that participants disturbed neighbors or social order, or belonged to an “evil religion.” Police sometimes detained for hours or days worshippers attending such services and prevented further worship activities.

[59] The RPD relied on this report for its conclusion that the Applicant’s risk on return was low. However, this report shows that there was evidence before the RPD which shows restrictions on Christian practice in the PRC. The Applicant points to *Fosu v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 1813, where Justice Pierre Denault wrote at paragraph 5 that

The fact is that the right to freedom of religion also includes the freedom to demonstrate one's religion or belief in public or in private by teaching, practice, worship and the performance of rites. As a corollary to this statement, it seems that persecution of the practice of religion can take various forms, such as a prohibition on worshipping in public or private, giving or receiving religious instruction or, the implementation of serious discriminatory policies against persons on account of the practice of their religion. In the case at bar I feel that the prohibition made against Jehovah’s Witnesses meeting to practise their religion could amount to persecution. That is precisely what the Refugee Division had to analyze.

[60] The RPD did not appropriately address whether the Applicant could practise Christianity openly or freely in the PRC.

[61] The Applicant also points out that *Jin v Canada (Minister of Citizenship and Immigration)* 2005 FC 249 stands for the proposition that, even if there are no recent reports of persecution, this does not show that persecution does not occur. When the RPD analysed the risk he faced by comparing documented incidents of persecution in other areas of the PRC with the lack of documented incidents in Liaoning Province, it committed a reviewable error.

The Respondent

[62] The Respondent argues that the Decision is clear, cogent, and comprehensive, and that the RPD's findings of fact were open to it on the evidence before it. The Applicant has not shown that the RPD's findings were erroneous, perverse, or capricious. The Decision was reasonable and should stand.

ANALYSIS

[63] The Decision rests upon three principal findings:

1. The Applicant's story was not credible, so he could not establish subjective fear: "I find, on a balance of probabilities, that the claimant did not attend an underground church in China, and that he was not being pursued by the PSB on that account";
2. The Applicant was not a genuine Christian in China or in Canada and his "motives for engaging in religious activities is to manufacture of (*sic*) fraudulent refugee claim";
3. Alternatively, "if the claimant decides to become a genuine Christian and practice his faith upon his return to China" then "on a balance of probabilities... the claimant would be able to practice his religion in any church if he were to return to his home in Liaoning province in China and that there is not a serious possibility that he would be persecuted for doing so."

[64] These grounds are not mutually exclusive or stand-alone alternatives. The RPD rejected the genuineness of the Applicant's Christian identity in Canada at least in part because it found he "was not a member of an underground church in China, and that he is not being sought by the PSB on

that account” so that “the claimant’s motives for engaging in religious activities is to manufacture of [sic] fraudulent refugee claim.”

[65] In addition, one of the reasons the RPD says there is no evidence of arrests or incidents of persecution of Christians in Liaoning province is because it did not accept his personal narrative of persecution or that the PSB is looking for him. This led it to conclude that the Applicant is free to return and practise his religion there.

[66] As regards the genuineness of the Applicant’s Christianity in Canada, it is my view that the RPD committed an error similar to the one Justice Beaudry described in *Wang v Canada (Minister of Citizenship and Immigration)* 2011 FC 1030. In *Wang*, the RPD erroneously determined whether the Applicant was a genuine Christian by way of trivia and without balancing its negative findings against what the Applicant did know about Christianity:

4 The Board had several concerns regarding his credibility; especially, it found that the applicant was never a genuine practicing Roman Catholic. The applicant’s level of knowledge of the Catholic faith did not commensurate with someone who had been a Roman Catholic for three years. For example, the Board made note of the following (Board’s decision, paras 19-28, for a complete list):

- a. The applicant displayed little knowledge of mass;
- b. He was asked about the reading of the Gospel by the priest. The applicant testified that the previous Sunday's reading was from Exodus. The Board noted that this was incorrect, as the Gospel is always from the New Testament;
- c. He displayed little knowledge of the Old Testament;

- d. He had little knowledge of the Bible's characters, such as Mary, Elizabeth and Mary Magdalene;
- e. He did not know the story of the Good Samaritan;

5 At the resumption of the hearing, the applicant correctly answered questions pertaining to the rosary and to the seven sacraments. The Board gave little weight to the answers, as it concluded that the applicant could have been anticipating the questions.

[...]

10 Although the applicant proposes numerous issues to be decided, the Court is of the opinion that the Board's negative finding of the applicant's knowledge of the Roman Catholic faith is central to the applicant's dismissal of his claim.

11 In *Dong v. Canada (Minister of Citizenship & Immigration)*, [2010] A.C.F. no 54, at para 20, the Court stated:

In assessing a claimant's knowledge of Christianity, the Board should not adopt an unrealistically high standard of knowledge or focus on a 'few points of error or misunderstandings to a level which reached the microscopic analysis.

12 In that case, the Board drew a negative inference in relation to the applicant's identity as a practicing Christian because of his inability to easily describe the core elements of the Christian faith. The Court held that the Board's determination that the applicant was unable to demonstrate a reasonable level of Christian knowledge, and therefore was not credible, was unreasonable.

13 In the present case, the Court finds that the Board erred in determining that the applicant was not a genuine Roman Catholic by holding him to an unreasonably high standard of religious knowledge. For example, the applicant was asked if the wafer distributed during Holy Communion represented the body of Jesus or if it *was* the body of Jesus. The applicant answered that it represented the body of Jesus (transcript, Certified Tribunal Record, page 469, line 25). The Board found this answer to be incorrect. The Board erroneously determined the applicant's knowledge of the Catholic faith by way of "trivia". In assessing the

applicant's knowledge of Christianity, the Board "erroneously expected the answers of the applicant to questions about his religion to be equivalent to the Board's own knowledge of that religion" *Ullah v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 1918, para 11.

14 The applicant was asked several detailed questions about the Christian religion which he answered correctly, for example, the procedure of the Holy Communion (Certified Tribunal Record, page 468, line 45).

[67] The RPD committed similar errors in the present case. In addition, the RPD also based its genuineness finding upon its negative credibility finding, which I think was unreasonable.

[68] In this regard, I agree with the Applicant that, in its credibility analysis, the RPD engaged in speculation, microscopic analysis and inferences drawn from omissions in the Applicant's testimony. This flawed analysis taints the credibility finding to such an extent as to render the Decision unreasonable. The RPD also relied on peripheral matters to reject major aspects of the Applicant's claim.

[69] Paragraph 8 of the Decision is typical in this regard:

The claimant testified that the person who introduced him to Christianity was his best friend. However, the claimant did not know that his best friend had been a Christian for almost a year before spreading the Gospel to him. The claimant testified that the reason his friend did not tell him sooner that he is a Christian is because he was afraid that the claimant might inadvertently tell someone about it. The claimant was asked why his friend would trust him more to be discreet in 2009 than before. He testified that his friend told him about Christianity because he saw that he was quite depressed and wanted to help him. I find this explanation not credible since the duty of a Christian is to spread the Gospel and since this was his best friend, it would be reasonable to expect that his best friend would spread the Gospel to him and would have sufficient confidence in the claimant not to disclose fact of his friend's Christianity.

[70] Here we can see the RPD speculating and setting itself up as an authority on how best friends and Christians behave in China, and questioning the Applicant's testimony by using groundless assumptions based upon no evidence at all. In *Mahmood*, above, at paragraph 16, Justice Blanchard said "Plausibility findings should therefore be made only in the clearest of cases, that is, if the facts as presented are outside the realm of what could reasonably be expected." It is not outside the realm of plausibility for Zhao to have avoided sharing Christianity with the Applicant until he felt there was a need to do so.

[71] In paragraph 11 of the Decision, the RPD draws a negative inference from an omission in the Applicant's testimony:

The claimant was asked to describe the typical service at his church. He listed prayer, reading the Bible, discussing the Bible, the organizer explaining the Bible, praying together, reciting the Apostles Creed, and arranging the next venue. Later in the hearing, the claimant explained the role of the lookout. When asked when the lookouts were appointed, the claimant answered that the organizer arranges for the lookouts at the end of the gathering. The claimant had not mentioned appointing lookouts when asked to describe the gathering or the service, even though he had mentioned the organizer arranging for the next venue, and then had stated that there was nothing else. The claimant's explanation for the omission is that he believes he mentioned it. The claimant did not, and I draw a negative inference, as it is reasonable to expect that, when talking with the next venue, he would have at the same time talked about the appointment of the lookouts. I draw a negative inference.

[72] There is no basis for the conclusion that it would be reasonable to expect the leader to talk about lookouts when discussing the next venues. In addition, this hardly seems a material point when assessed in the context of what the Applicant did say about the rest of the church service. See *Li*, above, at paragraph 29. This kind of omission cannot be treated in the same way as a contradiction.

[73] The RPD also doubted the Applicant because he was unable to describe to the RPD's satisfaction what his conception of God was when his friend first told him about Christianity. Bearing in mind the complexities inherent in the Christian concept of God, it is hardly surprising that a neophyte might have a different understanding of God than the RPD, so it is no ground at all upon which to doubt his credibility.

[74] The Decision might still be salvageable if the final ground – the Applicant's freedom to practise his religion in Liaoning province if he returns – did not contain a reviewable error. However, in my view, it contains two reviewable errors that render it unreasonable.

[75] First, it is based upon a repeated assertion that the documentary evidence in the exhibits before the RPD contains no "recent evidence of arrests or incidents of persecution of Christians in Liaoning province." This finding is contradicted by direct evidence contained in the Annual Report of Persecution by the Government on Christian House Churches within Mainland China for 2007 which was before the RPD. The entry for Liaoning tells us that the following person was persecuted, arrested and sentenced to "one year of education through labor":

Ms. Gu Changrong from Qidaohe Village, Wandianzi Township, Qingyuan Manchurian Autonomous Cournty of Fushun City, was arrested for preaching the gospel to the village party secretary.

[76] Counsel for the Applicant referred the RPD to this entry but the RPD did not deal with it. It is impossible to know whether the RPD overlooked it or did not think it was material enough to change its general conclusion. Where the basis for the RPD's conclusion on risk was the absence of reported incidents of persecution, this information could have made a difference to the finding the Applicant was free to practise his religion in his home province.

[77] Second, there was evidence before the RPD that some religious persecution in China goes unreported. So the RPD's conclusions on this issue would surely have been entirely different if it had not made unreasonable findings on credibility and had found that the Applicant's narrative and assertion that the PSB was looking for him were believable. If the RPD had believed the Applicant, this would tend to show that, even though few incidents of persecution are reported in Liaoning province, persecution actually occurs there. This was material to the risk he faced, so the RPD's unreasonable conclusion means the Decision as a whole is unreasonable.

[78] All in all, I think the Decision is unsafe and that it should be returned for reconsideration.

[79] Counsel agree 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

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-5918-11

STYLE OF CAUSE: YU CHEN

- and - Applicant

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: March 6, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** HON. MR. JUSTICE RUSSELL

DATED: May 2, 2012

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