

Federal Court



Cour fédérale

Date: 20120515

Docket: IMM-6066-11

Citation: 2012 FC 578

Ottawa, Ontario, May 15, 2012

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

XIAO FAN WU

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*, SC 2001, c 27 [the Act] for judicial review of the decision rendered by the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated August 10, 2011, which refused the applicant's claim to be deemed a Convention refugee or a person in need of protection under sections 96 and 97 of the Act.

[2] The applicant seeks an order setting aside the decision and remitting the matter for redetermination by a differently constituted panel of the Board.

Factual Background

[3] Ms. Xiao Fan Wu (the applicant) is a fifty (50) year old citizen of the People's Republic of China. The applicant lived in Enping City, Guangdong Province, where she worked as a farmer. The applicant seeks protection in Canada as she fears persecution in China due to her religious beliefs and her activities with an illegal underground church.

[4] The applicant submits that she was first drawn to Christianity after suffering through several set-backs, including failed business ventures and failed relationships. In November of 2008, the applicant met an old friend and former schoolmate, Zheng Liu, in the market, who informed the applicant of her religious beliefs and adherence to the Christian faith.

[5] Subsequently, the applicant alleges that she met regularly with her friend and the two discussed Christianity together. On December 20, 2009, the applicant was invited by her friend to attend an underground church. Though the applicant knew underground churches to be illegal, her friend assured her that safety precautions were taken to avoid detection.

[6] In February of 2010, the applicant shared her faith with another friend, A Jiao, and invited her to the church.

[7] On August 22, 2010, the applicant was baptized by Pastor Chen with the underground church.

[8] On November 20, 2010, the applicant asserts that while she was out, she received a call from her brother informing her that the Public Security Bureau (PSB) had discovered the underground church and had arrested other church members. The applicant alleges that her brother had also informed her that the PSB had searched their home and had demanded that the applicant report to them as soon as possible.

[9] After learning of the arrests, the applicant fled to Guangzhou and went into hiding. The applicant then sought the services of a smuggler in order to travel to Canada. The applicant left China on January 7, 2011 and arrived in Canada the next day. The applicant then filed for refugee status on January 12, 2011.

[10] Since her arrival in Canada, the applicant submits that she has been attending the Living Water Assembly, Pentecostal Christian Church, since February 6, 2011. The applicant alleges that she attends church every week and submits that she was baptized by Reverend David Ko on April 23, 2011. Furthermore, the applicant maintains that since her arrival in Canada, the PSB have continued their efforts to search for her in China and have searched for her on eight (8) separate occasions.

[11] The applicant's refugee claim was heard by the Board on July 4, 2011.

Decision under Review

[12] In its decision, the Board's central focus was the credibility of the applicant and the risk of persecution encountered by Christians in the province of Guangdong, China.

[13] On the issue of the applicant's credibility, the Board noted that several of the applicant's allegations contradicted the documentary evidence. The Board noted that though the applicant testified that some of her fellow believers had been arrested, she was not able to provide details regarding the number of individuals arrested or regarding the sentences they received. The Board deemed two main aspects of the applicant's testimony to be implausible: 1) that the PSB had never left a summons or warrant with the applicant's family; and 2) that the PSB had never threatened the applicant's parents or removed access to any services in the course of their eight visits to her family home. Moreover, the Board concluded that the applicant had failed to establish the genuineness of her belief in Christianity and gave little evidentiary weight to the documentary evidence submitted by the applicant in this regard.

[14] With respect to the issue of the risk of persecution, the Board found that in light of the documentation on the country conditions in China, the applicant could return to China and practice her faith freely and openly and that there was no serious possibility that the applicant would be persecuted as a Christian. After reviewing the documentary materials and recent case law from the Federal Court, the Board noted that while there was evidence of interference with Christian practices in other parts of China, there was little evidence of such interference in the province of Guangdong.

Issues

[15] The issues are the following:

- i. Did the Board err in its evaluation of the credibility of the applicant?
- ii. Did the Board err in its assessment of the risk of persecution faced by Christians in the Guangdong province?

Statutory Provisions

[16] The following provisions of the *Immigration and Refugee Protection Act* are applicable in these proceedings:

REFUGEE PROTECTION, CONVENTION REFUGEES AND PERSONS IN NEED OF PROTECTION	NOTIONS D'ASILE, DE REFUGIE ET DE PERSONNE A PROTEGER
<p>Convention refugee</p> <p>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,</p> <p>(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</p> <p>(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.</p>	<p>Définition de « réfugié »</p> <p>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 :</p> <p>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;</p> <p>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.</p>

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 accepted international standards, and
- (iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

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 infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
- (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 is also a person in need of protection.	(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

Standard of Review

[17] As the matter at hand pertains to the Board's assessment of the applicant's credibility and the risk of persecution, the standard of reasonableness applies as they are both questions pertaining to a determination of facts (*Aguebor v Canada (Minister of Employment and Immigration)* (FCA), [1993] FCJ No 732, 160 NR 315; *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339; *Lin v Canada (Minister of Citizenship and Immigration)*, 2012 FC 157, [2012] FCJ No 167). As Justice Frenette reiterated in the case of *Chen v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1168 at para 11, [2008] FCJ No 1454, "[w]hen the issue involves matters of facts or law applied to facts, a judicial review is not to be granted if the decision falls within the range of acceptable assessments of the facts."

Analysis

i. ***Did the Board err in its evaluation of the credibility of the applicant?***

[18] With respect to the matter of the genuineness of the applicant's religious beliefs, the Court is of the view that the Board assessed the applicant according to an erroneously high standard of religious knowledge. While on the one hand the Board acknowledged the applicant's knowledge of

religious matter (Board's decision, para 12), on the other hand, it found that the applicant's inability to provide more information regarding three (3) specific questions in relation to the Pentecostal story was fatal and thus, the applicant was not a genuine Christian and not credible. The Court is of the view that, in the circumstances, the Board adopted an over vigilant microscopic examination of a few points and this approach is clearly contrary to the case law of this Court (*Huang v Canada (Minister of Citizenship and Immigration)*, 2008 FC 346, [2008] FCJ No 452; *Wu v Canada (Minister of Citizenship and Immigration)*, 2009 FC 929, [2009] FCJ No 1143; *Wang v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1030, [2011] FCJ No 1291). The Court also observes that the evidence includes a letter from the pastor of the applicant's current Pentecostal church and her certificate of baptism and that the applicant only has three (3) years of formal education.

[19] Also, on the issue of summons, the Board found that it would have been reasonable for the PSB to issue a summons to the applicant. However, the document CHN42444.E (Tribunal Record, pp. 81-84) that the Board relied upon contains contradictory information as to when a summons is issued. The Board relied upon certain portions of the document which supported its findings but ignored other pieces of information that corroborated the applicant's allegations (*Mui v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1020, [2003] FCJ No 1294; *Shu v Canada (Minister of Citizenship and Immigration)*, 2011 FC 958, [2011] FCJ No 1174).

[20] Further, the Court notes that the Board provided unclear and somewhat contradictory and speculative statements on the subject of the lack of summons in paragraph 11 of its decision:

... In addition, the summons is the documentary basis for the subsequent issuance of an arrest warrant if the person in whom they are interested does not respond to the summons. Although this policy is not always implemented, or implemented with consistency, it is reasonable that one would have been issued in respect of the claimant given that the claimant testified that the PSB had gone to her home in search of her on eight occasions. ...

2) *Did the Board err in its assessment of the risk of persecution faced by Christians in the Guangdong province?*

[21] Finally, the Board made an unreasonable assessment of the facts regarding freedom of Christian faith in Guangdong in ignoring conflicting documentary evidence and failing to address why it did not rely and consider the contradictory evidence.

[22] More particularly, the Board considered the document CHN103500.E (Tribunal Record, pp. 96-98) which indicated that in Guangdong province, there have been incidents between 2007 and 2009. Also, the China Aid Association (CAA) report identifies Christian targets of religious persecution in the Guangdong province (Tribunal Record, p 192) and makes clear reference to various incidents of persecution in Guangdong. Yet, the Board held the following at para 16: “the panel is satisfied that if the claimant were to return back to China, she could openly and freely practice her faith”. While it was open to the Board to come to that conclusion, it failed to explain how or why it concluded that the applicant could openly and freely practice her faith if she were to return to China despite the incidents noted and recorded in connection with the Guangdong province.

[23] For all of these reasons, the application for judicial review will therefore be granted.

[24] As neither party has proposed a question for certification, none will be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is granted;
2. The matter is referred back to the Immigration and Refugee Board to be determined by a new and different constituted Board;
3. There is no question for certification.

“Richard Boivin”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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