Federal Court  Cour fédérale

Date: 20121116

Docket: IMM-669-12

Citation: 2012 FC 1324

Ottawa, Ontario, November 16, 2012

PRESENT: The Honourable Madam Justice Gleason

BETWEEN:

XUE LIANG CHEN (A.K.A. XUELIANG CHEN)

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant is a citizen of the People's Republic of China from Fujian province. He left China in 1999, for the United States, where he worked and resided until 2009, when he came to Canada. While in the U.S., the applicant and his girlfriend had a child. The applicant claims that he converted to Christianity while residing in the U.S. and that he joined a Pentecostal church in 2008.

[2] Five days after arriving in Canada, the applicant made a refugee claim, arguing that as a Christian he would be at risk if returned to Fujian province in China. He also asserts that by reason

of China's One Child Policy, he would be forcibly sterilized if returned to China as he and his girlfriend wish to have more children.

[3] In a decision dated January 3, 2012, the Refugee Protection Division of the Immigration and Refugee Board [the RPD or the Board] rejected his claim, holding that because the applicant currently only has one child, he was not at risk of sterilization because he is not currently in violation of China's One Child Policy. With respect to the potential risk posed to him by reason of being a Christian, the Board found the applicant's conversion to be genuine but held that he would not be at risk if returned to Fujian province. The decision contains an analysis of the documentary evidence regarding risk to Christians in Fujian province that is substantially similar to the analyses contained in other RPD decisions (see e.g. *Chen v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1218; *Liang v Canada (Minister of Citizenship and Immigration)*, 2011 FC 65). The Board concluded that the applicant would not be at risk if returned to Fujian province because the weight of the evidence indicated that members of small house churches were not subject to persecution in Fujian. The RPD noted in this regard that "there [was] no persuasive information suggesting that religious persecution is occurring for groups that are similar to the claimant's" (decision at para 9). It also went on to state that there was no persuasive evidence that "groups such as the claimant's, which are small and not required to register, are being raided and individuals being jailed or facing other forms of persecution in Fujian province" (decision at para 10).

[4] There is a major problem with the Board's analysis in this regard because, of course, having converted to Christianity in the United States, the applicant never belonged to a house church in

China and thus there was no evidence before the Board regarding the size of church the applicant would join if returned to China or, indeed, regarding what "group" the applicant would join. While the applicant did imply he would practice his faith in an unregistered church, the documentary evidence before the Board indicated that there is a considerable variety in such churches and that those who joined large non-state-sanctioned congregations might be at risk, depending on the circumstances. As the Board noted, "[h]ouse churches faced more risks when their membership grew, they arranged for regular use of facilities for religious activities, or forged links with other unregistered groups or coreligionists overseas" (decision at para 9).

[5] The Board accordingly failed to assess the applicant's actual situation and whether the applicant would need to join a particular type of church in Fujian to be free from risk. As a result, it further failed to consider whether being required to join a particular type of church and thus practice his faith in a certain manner might give rise to a valid refugee claim. There is authority from this Court which holds that limitations on the manner which an individual practices his or her faith can constitute persecution, depending on the circumstances. For example, in *Zhu v Canada (Minster of Citizenship and Immigration)*, 2008 FC 1066, [2008] FCJ No 1341, Justice Zinn held that the Board erred in finding that the applicant was not subject to persecution because she could practice in a state-sanctioned church when she preferred to practice in a non-state sanctioned underground church that she felt placed God first. (See also, to somewhat similar effect, *He v Canada (Minster of Citizenship and Immigration)*, 2012 FC 148 (Rennie) [*He*] and *Yin v Canada (Minster of Citizenship and Immigration)*, 2010 FC 544 (Russell) [*Yin*].) While limitations on the type of congregation as opposed to the size of a congregation may well be of greater concern, the RPD nonetheless should have considered whether the possible restrictions the applicant would face in

being able to safely practice his faith in Fujian province might amount to persecution on the basis of religion. In failing to address this issue, the RPD erred.

[6] The RPD's decision must therefore be set aside and the matter remitted for reconsideration so these issues can be addressed by the Board (see *Turton v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1244 at para 101, [2011] FCJ No 1526; *He* at para 13; *Yin* at para 99).

[7] This case highlights the dangers inherent in copying country-related analyses from one decision to the next. While there is nothing inherently improper in the Board quoting from previous decisions on issues relating to a particular country, doing so is only appropriate where the previous analysis fits the situation of the claimant before it in the subsequent case (*Cordova v Canada (Minister of Citizenship and Immigration)*, 2009 FC 309 at para 24, [2009] FCJ No 620; *Canada (Minister of Citizenship and Immigration) v Abdul*, 2009 FC 967 at para 55, [2009] FCJ No 1178). That is not the case here, and the lack of care in cutting and pasting from a previous award has caused the Board to commit a reviewable error.

[8] For these reasons, this application for judicial review is granted. No question for certification under section 74 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 was suggested by either party and none arises in this case.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted;
2. The RPD's decision is set aside;
3. The applicant's refugee claim is remitted to the RPD for re-determination by a differently constituted panel of the Board;
4. No question of general importance is certified; and
5. There is no order as to costs.

"Mary J.L. Gleason"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-669-12
STYLE OF CAUSE:	*Xue Liang Chen (a.k.a. Xueliang Chen) v The Minister of Citizenship and Immigration*
PLACE OF HEARING:	Toronto, Ontario
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