

Federal Court



Cour fédérale

Date: 20121121

Docket: IMM-8601-11

Citation: 2012 FC 1350

Ottawa, Ontario, November 21, 2012

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

YANNI YANG

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 28 October 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 41-year-old citizen of the People's Republic of China (China) from Guangdong province. She is a Protestant Christian and fears persecution in China for her religious beliefs. She also fears forced sterilization at the hands of government officials due to China's One Child Policy. The Applicant came to Canada in December 2009, and claimed refugee protection upon arrival.

PIF Narrative

[3] In May 2006, the Applicant found out she was pregnant with her second child. The Applicant was afraid that government officials would find out about her pregnancy and force her to have an abortion, as this pregnancy was in violation of the One Child Policy. The Applicant went to stay at her cousin's house and did not show up for her IUD check up scheduled for 31 May 2006.

[4] On 1 June 2006, birth control officials went to the Applicant's home looking for her and asking why she did not attend her appointment. On 3 June 2006, they came to her home again, and then again on 5 June 2006. On 5 June, they said that the Applicant must be pregnant, and that she had to attend at the hospital for an abortion on 21 June 2006.

[5] The Applicant did not show up for her scheduled abortion and stayed in hiding at her cousin's house. On 26 June 2006, birth control officials went to the Applicant's home and said that if she or her husband were caught they may face sterilization. The Applicant's husband feared sterilization, and made a refugee claim in Canada on 24 July 2006. His claim was rejected on 1 October 2008.

[6] On 23 December 2006, the Applicant gave birth to her second daughter. Due to medical problems following the birth of her daughter, the Applicant was not sterilized right away. The Applicant was fined 30,000 RMB for violating the One Child Policy, and was required to attend future check ups.

[7] After the Applicant's second child was born, she started feeling very weak and had little energy. She was taking medicine for her post-delivery health problems, but it was not helping very much. In January 2009, the Applicant's friend Xi Cai Huang told the Applicant about how she had turned to Christianity because she believed Jesus Christ had cured her of irregular periods, which she had suffered for years. Xi Cai Huang believed her recovery was due to the prayers of her Christian friends, as well as her own prayers. She told the Applicant her friends would be willing to pray for her, and encouraged the Applicant to give Christianity a try. The Applicant became involved in Christian prayer groups in mid-January 2009.

[8] The Applicant first went to an underground Christian church on 22 March 2009. She knew the church was illegal, but at that point it had never had any problems. The Applicant participated in services once a week and met Pastor Guo on a couple of occasions. She was scheduled to be baptised six months after joining the church.

[9] On 19 July 2009, the Applicant was at a church service when a member received a call that the Public Security Bureau (PSB) was on their way to the church. Everyone left and the Applicant went to a friend's house to hide. The Applicant was never personally seen by PSB officials, but she came to hear that they knew she was a member of an underground church and that they wanted to arrest her.

[10] On 20 July 2009, PSB officials showed up at the Applicant's house to arrest her. The Applicant was hiding at her friend's house, but they searched her home and asked her parents-in-law many questions about the church and her whereabouts. On 22 July 2009, the Applicant heard that Xi Cai Huang and the host of the gathering had been caught in the raid. They were both sentenced to serve time in prison.

[11] The PSB showed up again at the Applicant's home to arrest her on 26 July 2009. They said that the Applicant had violated religious regulations and had attempted to disturb the social order, and that they planned to continue pursuing her. The Applicant knew she could not return home and decided she must leave China. She hired a smuggler who provided her with documents and accompanied her to Canada.

[12] In mid-August 2009, the PSB went to the Applicant's mother's home looking for her. They went again at the end of August 2009, early October 2009, and 28 December 2009. The last time birth control officials looked for the Applicant and her husband was on 2 November 2009. The Applicant fears she will be detained, tortured, or jailed if caught by the PSB authorities, or forcibly sterilized if found by the birth control officials.

Documentary Evidence

[13] The Applicant submitted numerous documents pertaining to conditions in China for Christians. A China Aid Association (CAA) Annual Report discussed some incidents that occurred in Guangdong province. It specified that Pastor Wang Dao was assaulted and detained, and that his wife and daughter were called in for questioning. It also stated that there were churches that were

forced to close during the Asian Games, that one church was forced to meet outdoors, and that a delegate to the Lausanne congress was barred from leaving the country.

[14] The U.S. Department of State Report dated 17 November 2010 says that faith-based charities must register with the local religious affairs bureau, which often requires affiliation with one of the five patriotic religious associations. If a group is not registered it is not permitted to openly raise funds, hire employees, open bank accounts, or own property. If a religious group is registered, the government supports social service work performed by it. An example of such is the Amity Foundation, a state-approved, Protestant-affiliated registered group which helped to rebuild villages affected by the 2008 earthquake in the Sichuan Province.

[15] The RPD considered the Applicant's claim and rejected it on 28 October 2011.

DECISION UNDER REVIEW

[16] The RPD rejected the Applicant's claim because she did not face a risk of persecution in China for her religious beliefs, nor did she face a risk of forced sterilization.

Forced Sterilization

[17] The RPD found the Applicant was not a credible witness about her fear of sterilization by family planning officials in China, and that she is not being sought for sterilization.

[18] The RPD accepted the Applicant's evidence about her medical conditions that prevented sterilization in 2006. It noted that the Applicant submitted an amendment to her PIF which said that family planning officials started attending at her home again in 2010, requesting that she be

sterilized. The RPD found it implausible that these officials would wait three years to again approach the Applicant for sterilization, and drew a negative inference from the implausibility.

[19] The RPD considered the documentary evidence regarding China's One Child Policy and found that the predominant approach is to impose a social compensation fine for an out-of-plan birth. This is consistent with the Applicant's evidence that she paid 30,000 RMB after the birth of her second child. Further, the gender imbalance in China has become a significant concern, especially in Guangdong province. The policy in Guangdong is that if the first child is a girl, the parents are able to have another child. Both the Applicant's children are female. Further, there is no evidence of forced sterilization in Guangzhou City, where the Applicant is from. The RPD noted that there is a range of documentary evidence on the subject, and there have been mixed messages concerning government policy and action regarding the One Child Policy. However, the RPD was persuaded by the totality of the evidence, and found on a balance of probabilities, that the Applicant is not at risk of forced sterilization by family planning officials.

Persecution based on the Applicant's Christianity

[20] The RPD found the Applicant was a genuine Christian, but that she was not a credible witness about the persecution she claims to have faced in China based on her religious beliefs. The RPD found she would be able to practise Christianity in Guangdong province without a serious possibility that she would be persecuted for doing so.

[21] The documentary materials indicate that Guangdong province is tolerant towards practicing Christians. On 14 June 2010, an official from the Hong Kong Christian Council said that Chinese authorities are tolerant toward Christians, including those who practise in unregistered groups.

Although Christians had been arrested in China between 2005 and 2010, none of the arrests recorded were in Guangdong Province. The U.S. Department of State Report dated 17 November 2010 specifically reviews arrests of Christians and incidents of persecution, and no mention is made of any incidents in Guangdong province. The ChinaAid Association's *Annual Report of Persecution by the Government on Christian House Churches within Mainland China* also said there were no incidents in Guangdong province in 2010. This document describes incidents involving the closing of churches, but is clear that no one was arrested or abused in these incidents.

[22] There is reference to Pastor Dao of the Liangren church in Guangdong province in several of the documents submitted. These documents state that the church continues to be harassed by the authorities, and Pastor Dao has been arrested and interrogated several times. The materials suggest there is heightened interest in Pastor Dao because he aims to hold large services in public places. Thus, the incidents with Pastor Dao and the Liangren church are distinguishable from other underground churches which hold services in private settings. The PSB has also only ever been interested in Pastor Dao, and no one else from the Liangren church has been arrested.

[23] The RPD found the lack of information about any arrests or other forms of persecution of Christians in Guangdong was significant and convincing. On a balance of probabilities, had there been incidents of persecution of Christians in Guangdong there would have been some documentation of it by reliable sources. Although practising Christianity in an unregistered church is unlawful in China, the RPD noted that most Christian groups, the majority of which are unregistered, no longer operate in strict secrecy. In fact, many of them openly disseminate information and carry out social service work.

[24] The British Home Office Report notes that underground churches tended to have problems when membership grew, facilities were arranged for regular use, or links were formed with other groups. This does not apply to the Applicant's church, which had 20 members and a pastor that came to the church two or three times a year. The RPD found on a balance of probabilities that the Applicant's house church was never raided, and that she is not wanted by PSB authorities. If she returned to Guangdong province, the Applicant would be able to practise Christianity and would not face a risk of persecution for doing so.

[25] The RPD cited the Federal Court decisions in *Yang v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1274 and *Lin v Canada (Minister of Citizenship and Immigration)*, 2009 FC 254 [*Lin*] as authority for its position that, based on the detail of the documentation available regarding arrests of Christians in China it is reasonable to conclude that had persecution of members of underground churches occurred in Guangdong it would have been documented. The RPD also noted *Jiang v Canada (Minister of Citizenship and Immigration)*, 2010 FC 222, which found that the documentary evidence concerning Fujian province indicates that people are generally allowed to practice their religion freely, as well as *Yao v Canada (Minister of Citizenship and Immigration)*, 2011 FC 902, where Justice John O'Keefe found that the RPD's decision based upon insufficient details about the destruction of home churches was reasonable.

Conclusion

[26] The RPD found that, based on the totality of the evidence, the Applicant had not established that she faced a serious possibility of persecution or a risk to her life, a risk of cruel and unusual treatment or punishment, or a risk of torture. The RPD denied her claim for protection.

ISSUES

[27] The Applicant raises the following issues in this application:

- a. Whether the RPD's finding that the Applicant's underground church was not raided and she was not sought by the PSB was reasonable;
- b. Whether the RPD's finding the Applicant could freely practise Christianity in Guangdong was reasonable.

STANDARD OF REVIEW

[28] 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.

[29] The standard of review applicable to the two issues in this case is reasonableness. It is well established that the standard of review applicable to the RPD's findings on credibility is reasonableness. See *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (FCA); *Elmi v Canada (Minister of Citizenship and Immigration)* 2008 FC 773, at para 21, and *Wu v Canada (Minister of Citizenship and Immigration)* 2009 FC 929, at para 17. It is also well established that the standard of review applicable to a risk finding is reasonableness. See *Sarmis v Canada (Minister of Citizenship and Immigration)*, 2004 FC 110, at para 11; *S.A.H. v Canada (Minister of Citizenship and Immigration)*, 2011 FC 613; and *Qiu v. Canada (Minister of*

Citizenship and Immigration), 2009 FC 605 at para 17. Further, the standard of review applicable to all of the RPD's findings of fact is reasonableness (*Dunsmuir*, above, at para 53).

[30] 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 para 47, and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 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

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

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;

[...]

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;

[...]

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

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.

[...]

[...]

ARGUMENTS

The Applicant

[32] The RPD based its finding that the Applicant's church was not raided and that she is not wanted by the PSB on a review of documentary evidence that discloses an increasing level of tolerance for the practice of Christianity in China. The Applicant submits that the RPD had an obligation to make a specific finding regarding her personal evidence, and that it was not enough for its finding to be based solely on country conditions materials.

[33] In *Lin*, above, Justice Robert Barnes said at paras 14-15:

The Board's observation that it could not reconcile this part of Ms. Lin's evidence with the country condition evidence also represents an error of logic. Although the country condition evidence disclosed an increasing level of tolerance for the practice of Christianity in China, that evidence also recognized that the approach taken was uneven and was based on the attitudes of the local authorities. The Board had before it a significant body of evidence indicating that extremely harsh treatment was meted out from time to time to Christian practitioners throughout China. It was thus an error for the Board to say that Ms. Lin's account could not be reconciled with the country condition evidence, because some of that evidence was consistent with her risk narrative.

For the Board to fairly rely upon general evidence of a diminished risk of religious persecution in China it was critically important to make specific findings about the truthfulness of Ms. Lin's account of the police raid on her church. That is so because the generalized risk facing Christians in China had to be assessed against her particular profile including her past experiences with the authorities. It was not enough for the Board to find that the instances of persecution of individual Christian congregants are now fairly rare if the authorities in her community were of a persecutory persuasion as evidenced by their earlier behaviour directed at Ms. Lin and the others in her church. Her situation may well have been one of increased risk thus taking her case outside of the statistical norm in China, and it was an

error for the Board not to have conclusively resolved that point. It was also not a complete answer to Ms. Lin's alleged predicament to find that the local authorities would no longer be interested in her. What the Board needed to ask itself was whether, in her unique situation, she would be at risk of persecution if she returned home and resumed her religious practices.

[34] The Applicant submits the RPD committed the same error in this case as in *Lin*. The Applicant also points to paras 5-7 of the decision in *Jin v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1052 to support her position:

As a result, the RPD dismissed the Applicant's claim on the basis of an implausibility finding; it was implausible that the raid occurred as claimed by the Applicant. To support this finding the RPD made the following statement:

Documentation reveals that the treatment of house churches varies regionally. The documentary evidence indicates that Prayer meetings and Bible study groups held among friends and family in homes are not subject to raids. House churches experience difficulty when their membership grows and the claimant testified that the membership of the house church he attended never exceeded eleven members.

The claimant testified that although he had recruited a new believer to the house church, he described himself as a member of the church, testified that he played no leadership role and that services were never held in his home. The documentary evidence indicates that although members have been arrested, the police have concentrated on the arrest and punishment of church leaders and prominent Christians. In 2006 PSB officials detained leaders of house churches for extended periods of time, while releasing members shortly after interrogating them on the spot. There was also a reported decline in the number of arrests of house church Christians in China in 2006 compared with the previous year. Of the documented arrests of house church Christians, the majority were leaders.

(RPD Decision, pp. 3 - 4)

The standard for making a implausibility finding is stated by Justice Muldoon in *Valtchev v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 1131 (Fed. T.D.), at paragraph 7:

A tribunal may make adverse findings of credibility based on the implausibility of an applicant's story provided the inferences drawn can be reasonably said to exist. However, implausibility findings should be made only in the clearest of cases, i.e., if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant. A tribunal must be careful when rendering a decision based on a lack of plausibility because refugee claimants come from diverse cultures, and actions which appear implausible when judged from Canadian standards might be plausible when considered from within the claimant's milieu.

I find that the RPD's implausibility finding does not meet the *Valtchev* standard because, on the evidence on the record, the conduct the Applicant experienced in China could be expected on a balance of probabilities. That is, the Applicant's house church experience does occur at various times and places and it is not only church leaders that are persecuted by arrest and detention. As a result, in my opinion, the RPD was in error to find that that "the documentary evidence does not support that there is a serious possibility that [the Applicant] would be persecuted because of his religious belief." (RPD Decision, pp. 4 - 5).

[35] The Applicant submits that the RPD's conclusions were erroneous in her case because it failed to make a specific credibility finding concerning the evidence of the raid on her church, and because the RPD rejected the Applicant's evidence based solely on incompatibility with the country condition materials. There were incidents of persecution of Christians in Guangdong, and it was unreasonable for the RPD to reject the Applicant's evidence on this basis.

[36] The RPD also found that the Applicant could freely practise her faith in a church of her choosing and would not face more than a mere possibility of persecution for doing so. The Applicant submits that in reaching this finding the RPD relied on outdated evidence from both the China Aid Association (CAA) and the U.S. Department of State International Religious Freedom report. There were more recent versions of these reports before the RPD which were not considered.

[37] The most recent CAA document stated that, in Guangdong, Pastor Wang Dao was assaulted and detained, and his family was called in for questioning. It also said that many churches were forced to close during the Asian Games. This evidence contradicts the level of tolerance the RPD says exists in Guangdong.

[38] The Decision also cited the U.S. Department of State Report as saying that unregistered churches no longer operate in strict secrecy, and that many unregistered churches carry out a variety of social service work. However, this information was from an earlier version of the report, and the version that was dated 17 November 2010 and that was before the RPD stated that “religious groups not affiliated with an official patriotic religious association reported difficulties registering as nongovernmental organizations (NGOs) or performing social service work.” The Applicant submits that not only did the RPD rely on outdated information, the newer version of the report actually conflicts with the information upon which the RPD relied.

[39] To bolster her point, the Applicant points to paras 9-11 of the decision in *Zheng v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1359 [Zheng]:

Here, the Board relied upon a document, dated September 7, 2005, that was not disclosed to the applicant and was not found in the Board's national information request package for claims based on religious persecution in China. The document in question was the source of the Board's findings regarding the treatment of

underground churches in the applicant's home province. However, the document had been removed from the information package and replaced by an updated version dated June 30, 2010. References to Fujian having a liberal policy on the practise of Christianity had been removed in the updated document based on more recent reports which indicated that such a conclusion would be misguided.

As indicated in *Bokhari*, above, at paragraphs 23-24 and *Mancia v. Canada (Minister of Citizenship and Immigration)*, [1998] 3 F.C. 461 (Fed. C.A.) at paragraph 16, document disclosure is important for procedural fairness as it gives the applicant an opportunity to properly respond to the Board's concerns. See also *May v. Ferndale Institution*, 2005 SCC 82 (S.C.C.), at paragraph 92.

Here, the Board's concerns related primarily to the treatment of Christians in the applicant's home province. The earlier document presented a more favourable view of the situation in that province than later information reflected in the 2010 document would support.

[40] The Applicant submits that, as in the *Zheng* decision, the outdated information that the RPD relied upon painted a more positive picture than actually exists. The documents before the RPD indicated there were numerous restrictions on unregistered churches, and the individuals who practised in those churches were not able to declare their religious beliefs openly. It also stated that the government limited the distribution of bibles and that a prerequisite for a faith based charity obtaining registration is sponsorship by the local religious affairs bureau.

[41] The Applicant submits that performance of social service work is a way that an individual may manifest his or her religious beliefs, and these restrictions interfered with her right to practise her religion. The restrictions on the distribution of bibles also interfered with the Applicant's right to manifest her religious belief. The Applicant points out that the U.S. Department of State Report said that house churches loyal to the Vatican are not permitted to openly hold religious services unless they affiliate with a patriotic religious association. This document also said that proselytizing in public and in unregistered places of worship is not permitted. It was held in *Irripugge v Canada*

(Minister of Citizenship and Immigration), [2000] FCJ No 29 (FC) that being forced to practise one's religion underground amounts to persecution.

[42] The Applicant submits that the RPD did not understand how these restrictions interfered with her right to declare and disseminate her religious beliefs openly (*R v Big M Drug Mart Ltd*, [1985] 1 SCR 295). This was never properly considered by the RPD, and the Applicant submits that this error rendered the Decision unreasonable.

The Respondent

[43] The RPD found that the Applicant had not established either of her claims based on persuasive testimony or evidence. The RPD made multiple detailed and specific findings, including the following:

- i. The documentary evidence indicates there is a growing tolerance for Christianity in China;
- ii. The Applicant alleged that her church in Guangdong was raided and members were arrested; however, there was no documentation of any arrests in that area;
- iii. There was no persuasive documentary evidence of any recent arrests or any other form of persecution of lay Protestant Christians in Guangdong;
- iv. The evidence indicated that the persecution of the Liangren church in Guangdong province was limited to the harassment of a particular pastor and no lay Christians were arrested;
- v. The documentary evidence on the suppression of underground churches in China is mixed, but there is a complete lack of information regarding any instances of arrest or persecution in Guangdong;

- vi. The Applicant's description of her church was not consistent with the type of church the authorities usually target according to the country condition documents; i.e. it was not a large church, did not have connections to other churches, and did not have its own pastor;
- vii. Recent jurisprudence indicates that, given the significant detail in the documentation of arrests of Christians in China, it is reasonable for the RPD to conclude that if an incident of persecution happened in a particular region, it would have been documented.

[44] The RPD found that despite the Applicant's testimony that her church had been raided, this likely did not happen as the documentary evidence indicated there had been no arrests of Christians in Guangdong during the relevant period. The Applicant did not provide any corroborative evidence, and there was evidence before the RPD that brought her testimony into question.

[45] It was reasonable that the documentary evidence that indicated there had been no arrests of Christians in Guangdong in recent years led to an inference that no raid or arrests at the Applicant's church occurred. The RPD accepted the documentary evidence over the Applicant's testimony; there is no reason to say that this was unreasonable. Having formed the view that the documentary evidence was stronger and was to be preferred, the RPD did not need to make any explicit finding that the Applicant's evidence on this point was not credible; it did so indirectly (*Yu v Canada (Minister of Citizenship and Immigration)*, 2010 FC 310).

[46] The Court has held on many occasions that it is reasonable for the RPD to find that there is no more than a mere possibility of persecution for Christians returning to a specific province in

China where the documentation attests to a lack of evidence of arrests or raids on unregistered churches in that province. See *Yang*, above, at paras 30, 31, 33; *He v Canada (Minister of Citizenship and Immigration)*, 2010 FC 525 at paras 24-25; *Jiang*, above, at paras 7, 27, 35, 36; *Wang v Canada (Minister of Citizenship and Immigration)*, 2011 FC 636 at paras 20-22; *He v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1199 at para 16.

[47] The Applicant also alleges that the RPD erred by relying on outdated documents in reaching its Decision. It is true that the RPD relied on certain 2010 documents when versions from 2011 were available. However, the RPD's finding was based on the fact that there have been no documented arrests of Christians in Guangdong in many years; the Applicant did not submit anything that was capable of refuting this finding. She suggested that the RPD's findings were inaccurate in this regard, but did not submit any evidence of arrests of lay practising Christians in Guangdong.

[48] The Applicant suggests that the RPD erred by failing to appreciate the nature of freedom of religion, and that hindrances such as "difficulties performing social work" amount to persecution. The Respondent submits there is insufficient detail in the country condition documents to know whether these actions would amount to persecution in terms of Convention and Canadian refugee law, but at any rate the Applicant failed to provide any testimony that she has been prevented from practising her faith in the manner that she chooses in the past and how these hindrances might affect her in the future. The country condition evidence indicated there were no reports of arrests or persecution of lay Christians in Guangdong province.

[49] The Respondent submits it was reasonable for the RPD to find there is no more than a mere possibility of persecution for a Christian claimant returning to a specific province in China where the evidence indicates, as it did here, that there are minimum restraints on Christians practising their

religion in that province (see *Yang*, above, at para 37; *Jiang*, above, at paras 29, 35; *Wang*, above, at para 20; and *Qin v Canada (Minister of Citizenship and Immigration)*, 2012 FC 9 at paras 68-75).

Considering the findings discussed above, the Respondent submits that the Decision fell within the range of possible acceptable outcomes, and requests that this application for judicial review be dismissed.

ANALYSIS

[50] The Applicant has not taken issue with the RPD's findings on the family planning and sterilization aspect of her claim, so the Court will not review the RPD's findings on this point. The Applicant takes issue with the RPD's handling of the religious aspects of her claim.

[51] On this issue, the Court is faced with a scenario that has come before the RPD and the Court on many occasions. In essence, the Applicant became a Christian and attended an underground church. The PSB raided the church and the Applicant fled and went into hiding. The PSB went to her home and wanted to arrest her and so she decided to hire a smuggler to help her to come to Canada. The PSB continue to look for her.

[52] The Applicant provided no documentary or other corroborative support for this narrative and she now says that the RPD committed a reviewable error by relying upon documentary evidence that suggests a lack of persecution in Guangdong province to disbelieve her narrative and to find that, if she returns home, she will be able to practise her religion freely in the way that she wishes.

[53] In deciding that her house church was not raided and that she is not wanted by the PSB, the Applicant says that the RPD did not address her specific allegations. In para 14 of the Decision, however, the RPD makes a clear finding “on a balance of probabilities, that the house church the claimant attended was never raided by the authorities and consequently, the claimant is not wanted by the PSB.” In order to reach this finding, the RPD considers the Applicant’s evidence, or lack thereof, and weighs it against the documentary evidence to find that “the situation in Guangdong province does not reflect what is happening in many other provinces where there have been arrests and persecution of ordinary Christians” and “on a balance of probabilities, that if there were recent arrests or incidents of persecution of lay Protestant Christians in Guangdong province, there would be some documentation of these arrests or incidents of persecution by reliable sources.” The Court has accepted this line of reasoning before, so that such a weighing of the evidence is not unreasonable *per se*. See *Yang*, above; and *Jiang*, above.

[54] The Applicant relies upon the decisions in *Lin*, above, and *Jin*, above, which, in my view, are distinguishable from the present case.

[55] In *Lin*, the RPD relied upon general evidence of a diminished risk of religious persecution in China without looking at what was happening in the claimant’s community. In the present case, the RPD made it very clear that it was well aware of the regional differences in China when it came to religious persecution and that it was firmly focused upon the Applicant’s home province and community.

[56] In *Jin*, the Court found that the RPD’s implausibility finding did not meet the standard set in *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776. In the present case, given the evidence about Guangdong, and the lack of reports of persecution there for people in the

Applicant's position, the Applicant's allegations were "outside the realm of what could reasonably be expected" and the documentary evidence "demonstrates that the events could not have happened in the manner asserted by the claimant." The objective documentation consulted by the RPD provided a reasonable grounding for its findings that people such as the Applicant are free to practise their religion in Guangdong. Hence, the Applicant's unsubstantiated narrative about persecution was implausible. As the RPD points out in the Decision, this reasoning has been endorsed by the Court in *Yang*, above, and *Nen Mei Lin*, above. I cannot say that the Decision was unreasonable in this regard.

[57] The Applicant also says that the Decision was unreasonable because, in reaching its conclusions about the situation in Guangdong province, the RPD overlooked material evidence that contradicts those conclusions. This evidence involves Pastor Wao and the Liangren church, the closing of house churches during the Asian Games in Guangzhou, the June 2007 Response to Information Request about the forcible closure of house churches in Guangdong in 2006, and the June 2010 Response to Information Request about cases of "persecution" in Guangdong in 2008 and 2009. In my view, this evidence does not contradict the RPD's findings about the situation in Guangdong in a way that requires specific mention. Pastor Wao and the Liangren church are referred to in the Decision and distinguished from the "lay" situation of the Applicant. It is not clear how temporary closures during the Asian Games impact the Applicant's past or future situation. And no details are provided in the June 2010 Response to Information Request that suggest a contradiction with the RPD's general conclusions on the preponderance of the evidence.

[58] The Applicant has also made an attempt to question the reasonableness of the RPD's approach by saying that it relied upon outdated documentation, and it failed to take into account

what has happened to Pastor Wang Dao. As just discussed, the Pastor Dao situation is addressed in the Decision. As for the inaccuracy of the information upon which the RPD relied, the Applicant has submitted nothing to suggest that the situation in Guangdong is not as the RPD found it on the preponderance of the evidence.

[59] As regards the future situation and the RPD's finding "after considering the documentary evidence noted above, on a balance of probabilities, that the claimant would be able to practise her religion in any church of her choice if she were to return to her home in Guangdong province in China and that there is not a serious possibility that she would be persecuted for doing so," the Applicant raises similar arguments and evidentiary issues to those referred to above. Once again, the Court does not feel that this conclusion by the RPD can be considered to fall outside of the *Dunsmuir* range, given the preponderance of the evidence.

[60] The Applicant also raises a general argument about freedom of religion in Guangdong and says that the RPD should have addressed the possibility that her religious commitment and practices may evolve in the future, so that she could be persecuted by the authorities. This argument lacks specifics and invites the Court to speculate. In any event, it was not an issue which she placed before the RPD. There was no evidence that she will change the way she practices her religion in a way that might result in persecution by the authorities. Hence, it cannot be said that the RPD was unreasonable in not considering this aspect of the Applicant's present argument before the Court.

[61] As the Respondent points out, the RPD is entitled to prefer documentary evidence over testimony. In this case, the documentary evidence indicated that there had been no arrests or incidents of persecution of lay Christians in Guangdong in recent years. This evidence led to the reasonable inference that no raid or arrests at the Applicant's church occurred. The RPD chose to

accept this independent documentary evidence over the Applicant's testimony. Its weighing of the evidence on this basis cannot be said to be unreasonable. Having formed the view that the documentary evidence was stronger and was to be preferred, the RPD did not need to make an explicit finding that the Applicant's evidence on this point was not credible, as it did so indirectly. See *Yu*, above; *Zhang*, above; *Barua v Canada (Minister of Citizenship and Immigration)*, 2012 FC 607; and *He*, above.

[62] Furthermore, this Court has held on many occasions that it is reasonable for the RPD to find that there is no more than a mere possibility of persecution for a Christian refugee claimant returning to a specific province in China where the documentation attests to a lack of evidence of arrests or persecution of Christians in that particular province. See *Yang*, above and *Yu*, above.

[63] I can find no reviewable error in the Decision.

[64] Counsel agree that there is no question for certification and the Court concurs.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The Application is dismissed.
2. There is no question for certification.

“James Russell”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-8601-11

STYLE OF CAUSE: YANNI YANG

- and -

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 6, 2012

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

DATED: November 21, 2012

APPEARANCES:

Hart A. Kaminker **APPLICANT**

Kevin Doyle **RESPONDENT**

SOLICITORS OF RECORD:

Hart A. Kaminker **APPLICANT**
Barrister and Solicitor
Toronto, Ontario

William F. Pentney **RESPONDENT**
Deputy Attorney General of Canada