

Federal Court



Cour fédérale

Date: 20130307

Docket: IMM-5418-12

Citation: 2013 FC 241

Ottawa, Ontario, March 07, 2013

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

YI DONG FANG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] of a decision of the Refugee Protection Division of the Immigration and Refugee Board [the Board], dated May 8, 2012, where the Board determined that the applicant is not a Convention refugee or person in need of protection.

I. Background

[2] The applicant is a citizen of the People's Republic of China [China]. He is from the city of Shenzhen in the Guangdong province. He alleges the following facts in support of his claim for refugee protection.

[3] In February 2009, he turned to his friend for help to deal with his gambling, drinking, and quarrels with his family. His friend introduced him to Christianity and in March 2009 the applicant began attending services regularly at his friend's house church.

[4] Sometimes the applicant also distributed religious flyers at night. On January 13, 2010, while distributing flyers with other members, the applicant's group was discovered by the Public Security Bureau [PSB]. The applicant fled and went into hiding at a relative's home.

[5] The applicant learned the following day that the PSB went to his home to arrest him, and told his parents that the applicant's friend and another member of the house church were arrested. The applicant stayed in hiding, and later learned that the PSB continued to visit his home in search of him.

[6] The applicant came to Canada on March 3, 2010 and claimed refugee protection on March 8, 2010. Since he arrived in Canada, the PSB has continued to search for him at his home in China.

[7] For the following reasons, the Board found that the applicant's allegation of being a genuine Christian in China was not credible:

- There was not sufficiently credible or trustworthy evidence to support the allegation that the applicant attended church in China and the Board drew a negative inference from the applicant's inconsistent evidence regarding when he first joined an underground church in China. He had stated in his Personal Information Form [PIF] that he first attended an underground church in mid-March 2009, but stated in his IMM 5611 form [or "the port of entry notes"] that he became a member of the church in January or February 2009 and he testified that he became a member at the beginning of March 2009;
- The Board found the omission of any reference to the applicant being sought out by the PSB for distributing flyers in his IMM 5611 form, and the lack of details about his distributing flyers in his PIF narrative, undermined this allegation. The Board assigned little weight to the applicant's explanation for these omissions, given that the applicant was represented by an immigration consultant in preparing both forms, as well as experienced counsel for preparing his PIF. The Board also noted that the applicant having his name and story in the flyer was "not a minor detail in his story" as it was a way the PSB could identify him, and the omission of this fact in his PIF undermined the credibility of his allegation;
- The Board found that given the fact the applicant was mailed documents under his name and address in Canada, the allegation that he was wanted by the PSB was not supported by the documentary evidence showing that Chinese authorities regularly monitor mail and communication from China; and

- The Board found the absence of a summons or a warrant from the PSB undermined the credibility of his allegation that he was wanted by the PSB.

[8] The Board also found the applicant was not a Christian upon his arrival in Canada. The Board found that the applicant's motivation to attend church in Canada on April 18, 2010, shortly after making his claim for refugee protection, was to support a fraudulent refugee claim given that he provided no evidence of any conversion-type experience between his arrival in Canada and his first attendance at church in Canada. Furthermore, the Board found the applicant's Christian knowledge was obtained for the purposes of bolstering a non-genuine claim, given the lack of documentation attesting to the applicant's motivation for participating in church activities.

[9] In the alternative, the Board also examined the country documentation regarding the Guangdong province and found that the applicant would not face a serious possibility of persecution if he were to return to Guangdong and worship as he sees fit. The Board noted that the documentary evidence indicated that the treatment of underground church members depended on local authorities, and there was little evidence to indicate that officials in Guangdong have sought to restrict or punish proselytism. The Board also found there was mixed information regarding the treatment of underground protestant churches in Guangdong province, but that there was extremely limited information suggesting the occurrence of religious persecution of underground protestant Christians in Guangdong.

II. Issues

[10] The applicant raises the following issues:

- A. Did the Board err in finding the applicant was not a genuine Christian in China and was not wanted by the PSB for distributing Christian flyers?
- B. Did the Board err in finding the applicant was not a genuine Christian in Canada?
- C. Did the Board err in finding that the applicant could practice his faith in Guangdong without facing more than a serious possibility of persecution?

III. Standard of review

[11] The issues at hand pertain to the Board's assessment of the applicant's credibility and the risk of persecution he would face upon return to China. The reasonableness standard applies to these questions of fact (*Chen v Canada (Citizenship and Immigration)*, 2009 FC 677 at para 17 [*Chen*]; *Wu v Canada (Citizenship and Immigration)*, 2012 FC 578 at para 17). Accordingly, the Court will consider "the existence of justification, transparency and intelligibility within the decision-making process" and "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

IV. Analysis

- A. *Did the Board Err in Finding the Applicant was Not a Genuine Christian in China and was Not Wanted by the PSB for Distributing Christian Flyers?*

[12] The applicant submits that given the minor discrepancy between January or February 2009 and mid-March 2009, he did not deviate significantly in providing inconsistent dates for when he joined the underground church, and that the Board wrongly examined the evidence in this regard microscopically.

[13] Further, the applicant submits that the Board should not have drawn an adverse inference from the applicant's IMM 5611 form not mentioning he distributed Christian flyers in China, or from the fact that his PIF narrative lacked details about the flyer distribution. Such an omission should not automatically lead to an adverse credibility finding (*Canada (Minister of Citizenship and Immigration) v Richards*, 2004 FC 1218 at paras 18-19).

[14] The applicant maintains that although the documentary evidence indicates that Chinese authorities open and censor international mail, this alone does not support the finding that it would be implausible for the applicant to attempt to send his documents to his address in Canada if he genuinely believed the PSB was pursuing him. Moreover, the applicant submits an implausibility finding should only be made in the clearest of cases where the evidence demonstrates the events could not have taken place in the manner asserted by the claimant (*Valtchev v Canada (Minister of Citizenship and Immigration)*, [2001] FCJ 1131, 2001 FCT 776).

[15] Finally, the applicant submits that the Board erred by failing to explain why it dismissed the documentary evidence that shows the Chinese police forces do not follow common practices and by drawing an adverse inference from the fact the PSB did not present a warrant or summons for his arrest.

[16] In the case at hand, I am not convinced the Board microscopically analyzed the applicant's evidence regarding the date he joined the underground church. It was therefore reasonable for the

Board to draw a negative inference from the discrepancies in the applicant's evidence regarding the date he joined the church.

[17] Although the applicant is correct that this Court has held that lack of details in a PIF and port of entry notes do not automatically lead to an adverse credibility finding, the Board is entitled to draw a negative inference from an applicant's failure to mention significant facts in his or her PIF and IMM 5611 form (*Akhigbe v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 249, [2002] FCJ 332 at para 15; *Canada (Minister of Citizenship and Immigration) v Richards*, 2004 FC 1218 at para 19). In *KIN v Canada (Minister of Citizenship and Immigration)*, 2005 FC 282 at para 23, Justice Anne Mactavish stated that "[t]he nature of the omission, and the context in which the new information is brought forward, have to be examined in order to determine the materiality of the omission."

[18] In my view, the omission that concerned the Board was sufficient to allow it to reasonably draw a negative inference.

[19] I also agree with the respondent that it was reasonable for the Board to draw a negative inference from the fact that the applicant was mailed documents from China, given that the Board found Chinese authorities regularly monitor mail and communication from China and that the applicant had documents mailed from China to his name and address in Canada, thereby putting himself at risk.

[20] In *Jing v Canada (Citizenship and Immigration)*, 2012 FC 609 at paras 5 and 15 [*Jing*], Justice David Near found that it was reasonable for the Board conclude that it was unreasonable for a man wanted by the PSB to put himself and his family at risk by having his father mail him relevant documents on two occasions, given that Chinese government authorities monitor communications.

[21] Justice André Scott also found in *Chen v Canada (Minister of Citizenship and Immigration)*, 2012 FC 95 at para 38, that it was reasonable for a panel of the Board to conclude “that receiving mail from China under her own name undermined the Applicant’s allegations that she was wanted by the Chinese authority” (specifically, the PSB) for practicing Falun Gong.

[22] The Board’s analysis regarding the absence of a warrant or summons for the applicant was also not unreasonable in balancing the common practices of the PSB and the facts of this case.

B. *Did the Board Err in Finding the Applicant Was Not a Genuine Christian in Canada?*

[23] The applicant submits the Board erred by imposing the requirement that his refugee claim be made in “good faith” and by not expressly considering the credible evidence of his activities in Canada that are likely to substantiate potential harm upon return (*Ghasemian v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1266 at paras 29-31; *Ejtehadian v Canada (Citizenship and Immigration)*, 2007 FC 158 at para 11).

[24] The applicant further claims that given his demonstrated knowledge of Christianity and documents attesting to his participation in church, the Board's finding falls short of explaining why the applicant was not a genuine Christian in Canada (*Chen*, above, at paras 25-26).

[38] This Court held recently in *Jing*, above, at paras 21-23, that it was open to the Board to have credibility concerns regarding the applicant's claim of Christian faith in Canada given its other negative credibility findings regarding his Christian practice in China.

[25] Justice Near was faced with the issue in *Jing*, and analyzed it as follows at paras 22-23:

[22] The Board specifically addressed the Applicant's evidence of his attendance at church shortly after his arrival in Canada, including the letter provided from his pastor. It nonetheless concluded that this evidence referred neither to a conversion-type experience in Canada nor his motivation for participating in church activities. The Board simply did not assign the Applicant's preferred degree of weight to this evidence. It does not follow that the conclusions reached lack justification, transparency or intelligibility.

[23] Indeed, as the Respondent contends, it was reasonable for the Board to doubt the veracity of the Applicant's position in light of its previous credibility findings. Justice Donald Rennie upheld similar reasoning by the Board in *Ma v Canada (Minister of Citizenship and Immigration)*, 2011 FC 417 (CanLII), 2011 FC 417, [2011] FCJ no 530 at paras 37-38). By contrast, the finding in *Huang v Canada (Minister of Citizenship and Immigration)*, 2008 FC 132 (CanLII), 2008 FC 132, [2008] FCJ no 164 at para 8, as raised by the Applicant, does not apply in this instance as the Board proceeded to consider whether he would face persecution if returned to China.

[Emphasis added]

[26] Like in *Jing*, the Board in the present case specifically mentioned the applicant's evidence of his attendance at church in Canada (a "Church letter, photo, and baptismal certificate"), but found that the applicant "did not provide evidence of any conversion-type experience between his arrival

in Canada and his first attendance at church” nor did they “attest to his motivation” for participating in church activities. Accordingly, like in *Jing*, in my view the Board’s analysis on this point was reasonable.

[27] As for the applicant’s argument that the Board erred by imposing the requirement that his refugee claim be made in “good faith” and by offering no other reasons to support its finding that the applicant was not a genuine Christian in Canada, while I agree motive or “good faith” should not be determinative to a Board’s decision, I am convinced that the fact the Board considered, in the alternative, whether the applicant faced a risk of persecution if he returned to Guangdong and practiced Christianity, demonstrated that the Board looked beyond the applicant’s motivation for religious conversion and conducted an assessment of the merits of his *sur place* claim.

[28] In my view, therefore, the Board did not err in finding that the applicant was not a genuine Christian in Canada.

C. *Did the Board Err in Finding that the Applicant Could Practice his Faith in Guangdong Without Facing More than a Serious Possibility of Persecution?*

[29] I am not persuaded the Board committed a reviewable error by failing to refer to the information cited above in Information Request CHN103500.E, as argued by the applicant. I am not convinced this evidence was so important that the Board had a duty to mention and analyze it, given the fact that, as noted by the respondent, the Research Directorate could not corroborate the information, as well as the fact that the Board acknowledged various other evidence in the record that pointed to the fact that there is a serious possibility the applicant would face persecution in China.

[30] Nor am I persuaded that the Board erred by inferring that by virtue of the lack of evidence indicating that officials in Guangdong have sought to restrict or punish proselytism, there are no incidents of persecution based on proselytism. The Board considered contradictory evidence concerning instances of persecution in the Guangdong province. Its conclusion regarding the lack of persecution of underground Christians in Guangdong was therefore reasonable (see *Zheng v Canada (Minister of Citizenship and Immigration)*, 2012 FC 594 at para 10).

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The applicant's application for judicial review is dismissed.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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**REASONS FOR JUDGMENT
AND JUDGMENT BY:** MANSON J.

DATED: March 7, 2013

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