

Federal Court



Cour fédérale

Date: 20130417

Docket: IMM-2910-12

Citation: 2013 FC 383

Ottawa, Ontario, April 17, 2013

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**QING QUAN LUO
HUI XIN LIANG**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] In 2010, Mr Qing Quan Luo and his spouse, Ms Hui Xin Liang, left China and claimed refugee protection in Canada. They based their claim on a fear of religious persecution as members of an underground Christian church in Guangzhou. They maintain that the Public Security Bureau (PSB) in China raided their church, arrested some of their fellow congregants, and are now seeking

their arrest. They also contend that they face repercussions for having violated China's one-child policy.

[2] A panel of the Immigration and Refugee Board considered the applicants' evidence and concluded that their fear of religious persecution was not supported by credible evidence. It also found that the applicants' fear of family planning officials in China was unsupported by documentary evidence. Therefore, the Board rejected their claims.

[3] The applicants argue that the Board's assessment of their credibility was unreasonable and that the Board ignored important evidence relating to the enforcement of China's one-child policy. They ask me to quash the Board's decision and order another panel of the Board to reconsider their claims.

[4] I agree that the Board's credibility assessment in respect of the applicants' claims of religious persecution was unreasonable. I will, therefore, allow the applicants' application for judicial review on that basis. It is unnecessary to consider whether the Board erred in respect of the applicants' fear of family planning officials.

[5] The sole issue, therefore, is whether the Board's credibility assessment was unreasonable.

II. The Board's treatment of the evidence

[6] The Board began its analysis with a general finding that the applicants' version of events contradicted the available documentary evidence. It undertook to elaborate on that conclusion later in its reasons.

[7] In addition, the Board expressed a number of specific concerns with respect to the applicants' claim that they were being sought by the PSB:

- The applicants maintained that the PSB showed Mr Luo's parents an arrest warrant, but documentary evidence suggests that the PSB relies on arrest warrants only when there are grounds for believing that the suspects will not respond to a summons. The PSB had no such grounds here.
- Normally, a summons is left with family members, so it is likely that the PSB would have left a summons with Mr Luo's parents before resorting to an arrest warrant.
- It is possible to obtain copies of warrants or summonses issued by the PSB but the applicants failed to do so.
- The applicants stated that the PSB searched their home but they could not produce a copy of the search warrant. Since the PSB had provided an arrest warrant, it would probably have produced a search warrant as well.

[8] Based on these findings, as well as its overall conclusion that the applicants' version of events in China was inconsistent with the documentary evidence, the Board found that the applicants' claims were neither plausible nor credible. In particular, it found that the "alleged raid on the claimants' house church did not occur".

III. Was the Board's treatment of the evidence unreasonable?

[9] In its reasons, the Board undertook (twice) to explain how the applicants' claim of religious persecution in Guangdong Province was inconsistent with the documentary evidence. It never did so. As a result, the Board never analyzed the documentary evidence, some of which clearly supported the applicants' claims. In particular, a 2009 report by the China Aid Association referred to a raid by Chinese authorities on a house church in Guangzhou.

[10] Even if the Board's negative inferences described above were well-founded, it still had an obligation to consider the documentary evidence on which the applicants relied, especially those portions of it that contradicted the Board's ultimate conclusion. Clearly, the Board itself was aware of this duty as it twice referred to the required analysis in its reasons. However, that analysis was never carried out.

[11] Accordingly, the Board's conclusion that the applicants' version of events could not be believed was unreasonable.

IV. Conclusion and Disposition

[12] In the absence of a proper analysis of the documentary evidence, the Board's conclusion that the applicants' evidence was implausible and unbelievable did not represent a defensible outcome. It was unreasonable. I must, therefore, allow this application for judicial review and order a new hearing before a different panel of the Board. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is allowed and a new hearing is ordered before a different panel of the Board.
2. No question of general importance is stated.

“James w. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2910-12

STYLE OF CAUSE: QING QUAN LUO, ET AL
v
MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 24, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: April 17, 2013

APPEARANCES:

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Rachel Hepburn Craig FOR THE RESPONDENT

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