

Federal Court



Cour fédérale

Date: 20130813

Docket: IMM-4350-12

Citation: 2013 FC 866

Ottawa, Ontario, August 13, 2013

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

XIAO DAN ZOU

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 a decision by a member of the Immigration and Refugee Protection Board of Canada (the Board) dated April 17, 2012, wherein the applicant was determined to be neither a Convention refugee within the meaning of section 96 of the Act nor a person in need of protection as defined in subsection 97(1) of the Act.

[2] The applicant seeks an order of *certiorari* to quash the decision of the Board and an order of *mandamus* compelling the Board to grant a new hearing.

Background

[3] The applicant is a citizen of China. She came to Canada after the Public Security Bureau (PSB) searched her boyfriend's home and found bibles and a cross. The PSB went to her home on February 1, 2010. While there, the PSB searched her home and questioned her parents.

[4] On May 7, 2010, the PSB appeared at her house for the fourth time and showed an arrest warrant to her parents. Since being in Canada, the applicant has been informed that on September 22, 2010, her boyfriend was sentenced to two years and three months at a labour camp for reeducation.

[5] The applicant traveled through Bangkok, Paris and possibly Mexico on her way to Canada. She traveled on a passport that was red in colour when making this journey. She was unaware of any other details relating to this travel document.

[6] The applicant alleges that on May 7, 2010, her parents were threatened with arrest by the PSB if they did not report her whereabouts. No evidence was presented that they had been arrested.

The Decision

[7] The Board noted numerous issues with the applicant's story. These include:

- The applicant was unaware why the PSB came to her home;
- The applicant could not prescribe a motive for why the PSB came to her home;
- The applicant did not raise the raid on her boyfriend's home when asked about the January 30th visit by the PSB to her and her parents' home.

[8] Based on these inconsistencies, the Board concluded that the authorities never visited the applicant's home to seek her.

[9] The Board then examined the documentary evidence as it relates to Christianity in Fujian Province. The evidence indicates that there are 16 million people affiliated with the official church and between 50 and 70 million in the non-state sanctioned churches. The State Administration for Religious Affairs (SARA) states that friends and family holding meetings at home need not register with the government.

[10] The Board stated that the documentary evidence points to a large discrepancy in the treatment of house churches. Rurally, hundreds of members may attend without interference while in urban areas, only a few dozen may attend without interference. House churches faced more risk if their membership grew and they arranged for regular use of facilities or forged links with other groups or co-religionists overseas.

[11] Documentation also pointed to the government harassing, detaining, fining, mistreating and imprisoning members and leaders of unregistered Protestant groups.

[12] The Board indicated that the China Aid Association (CAA) is a good source for reports on persecution of Chinese Christians.

[13] The CAA report made reference to an event in 2010 where one individual was detained and three meeting sites were sealed. The Board member indicated he was unable to assess the context of the 2010 incident due to the lack of details in the report.

[14] The Board did note that while religious persecution does occur, it is not general in nature. There are factors that point to an increased likelihood of state scrutiny and detention. These factors include close ties to the west, evangelization, membership growth, arrangements for regular use of facilities, whether there is an individual leader and rural or urban locations.

[15] The Board drew an inference from the 50 to 70 million person membership of the Protestant church that the persecution is minimal.

[16] The Board stated that no persuasive evidence was presented that individuals who have evangelized in Fujian Province have faced persecution. The Board concluded that the applicant has not satisfied her burden of establishing a serious possibility that she would be persecuted or that she would be personally subjected to a risk to her life or a risk of cruel and unusual punishment or treatment or a risk of torture.

Issues

[17] The applicant submits the following issue:

Did the Board err in relying on documentary evidence regarding the consequences of practicing Christianity in Fujian Province in preference to the applicant's written and oral evidence?

[18] I would rephrase the issues as follows:

1. What is the appropriate standard of review?
2. Did the Board err in rejecting the applicant's claim?

Applicant's Written Submissions

[19] With respect to the applicant's omission of the January 30th incident, the applicant's answer was consistent. She stated she was unaware that the January 30th incident was what the Board was asking for. The Board found that the explanation given was not satisfactory but failed to explain why.

[20] Alternatively, the applicant submits that the Board contradicted itself in its reasons. The Board concluded that there is "... no persuasive evidence that individuals who have evangelized in Fujian have faced any sort of persecution" despite stating that "What is clear to the panel is that in China, religious persecution of Protestant "house churches" does occur, ...".

[21] The applicant submits the Board has a duty to provide adequate justification for rejecting documentary evidence in support of the claims of an applicant. As well, the applicant submits that an absence of recent persecution does not prove a lack of persecution.

[22] The applicant states that the Board should not have presumed to understand the correlation between the availability of evidence and the factual prevalence of religious persecution.

[23] Finally, the applicant submits that for the Board to fail to mention and analyze important evidence is an unreasonable error.

Respondent's Written Submissions

[24] The respondent submits that the standard of review for this decision is reasonableness. The respondent also states that the Court should not intervene provided that the decision falls within a range of possible acceptable outcomes defensible in respect of the facts and law.

[25] The respondent further submits that the Board may make reasonable findings based on common sense and rationality. The applicant's failure to recollect the events that allegedly caused her to come to Canada enabled the Board to draw a reasonable inference of impropriety.

[26] Alternately, the respondent submits that the documentary evidence makes no mention of difficulty in Fujian Province despite making specific mention in other provinces. As well, it was

open to the Board to draw a negative inference from the omission from her testimony of the reason for the police visit.

Analysis and Decision

[27] **Issue 1**

What is the appropriate standard of review?

Where previous jurisprudence has determined the standard of review applicable to a particular issue before the court, the reviewing court may adopt that standard (see *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 57, [2008] 1 SCR 190).

[28] The standard of review of a Board's decision has been determined to be a question of mixed fact and law reviewable on a reasonableness standard (see *Sugiarto v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1326 at paragraph 10, [2010] FCJ No 1676).

[29] Reasonableness is concerned with "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (see *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 47).

[30] **Issue 2**

Did the Board err in rejecting the applicant's claim?

The facts of the present case are similar to those repeated by Mr. Justice Russel Zinn in *Yu v Canada (Minister Citizenship and Immigration)*, 2010 FC 310, [2010] FCJ No 363. Both cases

involve Christian house church members in Fujian Province who fled and alleged that they feared persecution by the PSB. The applicant's story is remarkably similar to the story in *Yu* above. The house church was raided, the applicant went into hiding and his family was harassed by the PSB the next day.

[31] The Board in *Yu* above, based the decision on alternative and additional factors that were not raised in this application. The result however was the same. Two issues from *Yu* above, are the same as in this application:

1. Whether the Board erred in preferring a lack of documentary evidence over the applicant's otherwise credible evidence; and
2. Whether the Board erred by misconstruing evidence and by ignoring relevant evidence in finding that there are no incidents of arrest in Fujian Province.

[32] Mr. Justice Zinn refined these issues and dealt with them as one issue; whether the Board erred in relying on documentary evidence regarding the consequences of practicing Christianity in Fujian Province in preference to the applicant's evidence without making specific findings about the truthfulness of the applicant's account of events.

[33] It bears repeating what Mr. Justice Zinn said as it is equally applicable in the present case (at paragraphs 31 to 33):

31 In this case, the only evidence that was provided to the Board that the applicant's house church was raided was his own testimony. There was no corroborative evidence of any sort provided. Although he had otherwise been found credible, in that the Board accepted his evidence that he was a Christian and attended a house church in

Fujian, there was other evidence before the Board that brought his evidence of the raid into question.

32 The other evidence was documentary evidence. It was not directly contradictory of the applicant's testimony in that it did not say that no house churches had ever been raided in Fujian Province. That is hardly surprising as one is unlikely to find a report that something has not happened because it is events, not non-events, that are reported. Nonetheless, the documentary evidence does lead to an inference that no such raid occurred. It leads to this inference, as the Board noted, for many reasons, including the following:

1. There is a large discrepancy in the treatment of house churches in China. In some parts of the country house churches with large memberships meet openly with no objection, while in other areas, house churches with small memberships are targeted by the authorities.
2. Protestant Christians who attempt to meet in large groups, or who travel within China and outside China for religious meetings are more likely to be targeted by authorities.
3. There is documentary information of religious persecution of house churches and their adherents from many areas of China, including many remote areas, but there is little such evidence of such persecution in Fujian Province.
4. The evidence of religious persecution in Fujian Province that exists relates to the Catholic Church.

33 In this case, the Board chose to accept the independent documentary evidence over the applicant's testimony. It is evident from a reading of the decision as a whole that it did so because it preferred the evidence from "a large number of different commentators ... none of whom have a personal interest in the pursuit of an individual claim for protection" to the applicant's evidence in support of his own claim for protection. 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, it did not need to make any explicit finding that the applicant's evidence on this point was not credible; it did so indirectly.

[34] In the present case, the Board accepted that the applicant is Christian and that she had established her identity. When asked why the PSB came to her home, the applicant responded that she did not know. When the Board proposed to the applicant that the PSB showed up at her parents' house on February 1st for no reason, the applicant responded "yes". It was reasonable for the Board to draw a negative inference from this series of responses.

[35] As was the case in *Yu* above, there were substantial differences between the PIF and the applicant's oral testimony (at paragraph 35):

The applicant also challenged the Board's characterization of his house church. The Court was specifically directed to the transcript of the applicant's oral testimony. However, it is noted that the applicant also affirmed, under oath, the truth of his Personal Information Form wherein he provides much greater detail concerning the house church and its ten adherents. Having reviewed the evidence that was before the Board, I find that its assessment of the character of the applicant and his house church was reasonable.

[36] Mr. Justice Zinn concludes in *Yu* above, at paragraphs 37 and 38:

37 It flowed from the Board's finding that, on the balance of probabilities, the applicant's house church was not raided by the authorities, that "the evidence does not support that there is a serious possibility for fearing persecution if the claimant were to practise his religion in an unregistered 'house church' with which the claimant was associated prior to coming to Canada."

38 Therefore, the result that there was not a serious possibility that the applicant would be persecuted or that he would be subjected personally to a danger of torture or to a risk to his life, or a risk of cruel and unusual treatment or punishment should he return to his country of origin was a reasonable conclusion. As such, the denial of the applicant's refugee claim was reasonable and cannot be set aside.

[37] Reading the evidentiary record as a whole, the same conclusion is reasonable here. The applicant was unable to explain why the PSB came to her parents' house on February 1st. This is a major discrepancy since it forms the basis of her PIF narrative and her claim. Based upon this factor alone, it is reasonable for the Board to question the veracity of the applicant's claim.

[38] As noted by the Board, there is a large discrepancy in the treatment of house churches. House churches that do not have large memberships, that do not partner with churches outside of China and that are not actively preaching in public do not attract attention from the PSB.

[39] The Board member bases his decision on the fact that persecution of Protestant "house churches" is not general in nature. This is a reasonable conclusion to reach given the facts of the case. No information was provided with respect to the size, makeup or external connections of the applicant's house church. With regard to the facts and law, it was reasonable to conclude that the applicant did not face a possibility of persecution. The applicant was inconsistent with respect to why the PSB was seeking her out and admitted that she did not know the reason for the visit.

[40] The Board's decision was reasonable as the applicant was inconsistent in her oral testimony and failed to demonstrate that she faced a reasonable fear of persecution as a Christian in Fujian Province in China. Reading the decision as a whole, it is clear that the Board made a decision that falls within a range of possible acceptable outcomes defensible in respect of the facts and law.

[41] Because of my finding, the application for judicial review must be dismissed.

[42] Neither party wished to submit a proposed serious question of general importance for my consideration for certification.

JUDGMENT

THIS COURT’S JUDGMENT is that the application for judicial review is dismissed.

“John A. O’Keefe”

Judge

ANNEX

Relevant Statutory Provisions***Immigration and Refugee Protection Act, SC 2001, c 27***

72. (1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is commenced by making an application for leave to the Court.

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; or

(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.

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

72. (1) Le contrôle judiciaire par la Cour fédérale de toute mesure — décision, ordonnance, question ou affaire — prise dans le cadre de la présente loi est subordonné au dépôt d'une demande d'autorisation.

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;

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.

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) 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.

(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.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4350-12

STYLE OF CAUSE: XIAO DAN ZOU
- and -
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 14, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT OF:** O'KEEFE J.

DATED: August 13, 2013

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