

Federal Court



Cour fédérale

**Date: 20131106**

**Docket: IMM-7091-12**

**Citation: 2013 FC 1123**

**Ottawa, Ontario, November 6, 2013**

**PRESENT: The Honourable Mr. Justice Annis**

**BETWEEN:**

**LUOFENG LIU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**1. Introduction**

[1] The applicant in this matter seeks judicial review, pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of the 29 June 2012 decision by the Immigration and Refugee Board's Refugee Protection Division [RPD] that he was neither a Convention refugee nor a person in need of protection.

[2] For the reasons which follow, the application is dismissed.

## **2. Background facts**

[3] Mr Liu, the applicant, is a citizen of China, born in 1989, who alleges that his family was persecuted for being Christians and suffered sanctions under China's One-Child Policy. He claimed that his family attended an underground church in China that was raided by the Public Security Bureau. As a child he attended church with his mother, but did not attend regularly due to restrictions for children and meeting education requirements.

[4] He arrived in Canada in autumn 2008 on a student visa valid until August 2010, subsequently renewed until 2012. He claims he attended school, but there is no corroborating evidence to support this. He claims that he did not know that he could apply for refugee status and stated in his personal information form [PIF] that he avoided immigration consultants for fear of being defrauded. At the hearing, he amplified that he had in fact spoken to two immigration consultants in Chinatown in Vancouver in 2009 about asylum but other people had said that these firms (of which he did not remember the names) had cheated them, and they were asking for a lot of money. He said he was advised to arrange a marriage of convenience. It did not occur to him to do some research on his own on the internet.

[5] In July 2009, the applicant travelled back to China for one month to attend his grandfather's funeral, then returned to Canada. There was no corroborating evidence offered to show that he returned to China for a funeral

[6] In June 2011, the applicant relocated from Vancouver to Toronto. He went to the first two firms he saw in the Chinatown, and discovered that he could apply for refugee status. He felt that these firms, unlike the Vancouver ones, were trustworthy. Within a week he claimed asylum, seeking freedom of procreation and freedom of religion. Two days previous to his application he joined a church in Canada.

### **3. Impugned decision**

[7] The Board reviewed Mr Liu's story. It noted that the determinative issue was the credibility of the claimant's written and oral testimony. It determined he was not credible in many instances, supported by the numerous inconsistent, illogical or uncorroborated points in his story and a lack of evidence in instances where it was expected to be produced.

[8] Among the Board's numerous findings of fact was firstly that the applicant had not provided a reasonable explanation for the two-year delay in claiming refugee protection nor proof that he ever attended school in this country despite initially entering on a student visa.

[9] Secondly, the applicant was not able to produce any documentation of his grandfather's death in 2009. His explanations were that his grandfather had died at home, he had felt great sorrow and had not paid attention to matters like death certificates, and he did not know whether he had subsequently tried to obtain documentation to support his refugee claim two years later.

Considering the importance of this documentation to corroborate Mr Liu's reason for returning to a country where he had suffered persecution, considering that he was represented by experienced counsel, and considering that the instructions for completing the PIF note that supporting

documentation should be provided, the Board drew a negative inference as to the claimant's subjective fear and his credibility.

[10] Thirdly, the Board inquired into Mr Liu's practice of his religion. He said he had only found a church, the Church of Jesus Christ of the Latter Day Saints, because a street preacher approached him. He began attending it in summer 2009. He could not remember how long he attended this church and had no letter or statement from it, although he produced three information cards about church activities which gave no dates or personal information. His explanation for the lack of documentation was that he had not been baptized at that point. The Board found on a balance of probabilities that his extremely vague testimony concerning this church did not demonstrate that he had actually attended it, especially considering that one of his two aims in claiming refugee status was to stay in Canada to practice his religion freely. The Board also noted that Mr Liu spoke of attending three different churches in Vancouver in his PIF, but did not name this one. Questioned at the hearing, he said he had forgotten to mention it, which the Board did not find credible.

[11] Fourth, the Board asked Mr. Liu at the hearing about his practice of Christianity in China. He explained that all the members of his family attended an underground Pentecostal church with 10 to 20 members, and that the last time he went to a service was when he was 10 years old. He first stated that he did not pursue his religion in any other way because children under 19 were not permitted to attend church, then later qualified that, saying that he did read the Bible occasionally. He was asked whether his parents had ever experienced difficulties relating to their religion and said that his mother had told him when he was very young that some congregants had been arrested, and

then in July 2011 the Public Security Bureau [PSB] had come to the church and made threats. It had not occurred to him to ask whether anyone was arrested in connection with the latter incident and he did not display any concern or interest in the raid. His parents had not been arrested; he said this was because the PSB did not know his mother's name and address. He remained in regular phone contact with her. The Board found it implausible that a person who wanted to stay in Canada to pursue freedom of religion would take so little interest in harassment of the church attended by his whole family in China.

[12] On one point however the Board was incorrect in concluding that the raid of July 29, 2011 was not mentioned in the claimant's PIF signed on August 22, 2011. The Board found on a balance of probabilities that the raid had not occurred and drew a negative inference from the claimant's invention of it.

[13] The Board considered the above findings and negative inferences and concluded that the claimant had not been a Christian while in China nor in Canada prior to submitting his refugee claim. It noted that he had provided his baptismal certificate dated August 20, 2011 from the Living Stone Assembly church in Scarborough, Ontario, and a letter from the Reverend Ko attesting to his participation in church activities. However, recent case law indicates that a pastor's assessment of the genuineness of a person's faith can not be substituted for a panel's own assessment (*Cao v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1174). The panel used its specialized knowledge in that it had seen many letters from Reverend Ko and these letters always included some reference to the claimant's religious background in China, which was missing in this letter. It was not surprising that the claimant had some knowledge of Christianity after attending regular

services and Bible study classes since July 2011, and the Board gave this little weight as an indication of religious faith. It found that his allegation that he had been a practising Christian in China was not credible and was made only for the purpose of supporting a fraudulent claim, and that this credibility finding raised a significant doubt about his general credibility.

[14] The court considered all of the evidence and negative inferences and found that the claimant did not attend church in Canada until he made his refugee claim in July 2011. It further found that the claimant was not a Christian in China or in Canada for the first two years that he was in the country, noting that his evidence regarding attendance in both countries prior to July 2000 was sparse. The panel found that he joined a Christian church in Canada only for the purpose of supporting a fraudulent refugee claim and that he was not a genuine practicing Christian, nor would he be perceived to be one in China.

[15] The Board concluded that Mr Liu was neither a Convention refugee nor a person in need of protection and rejected his claim.

#### **4. Issues**

[16] The applicant raised only two issues before the court: firstly that the Board mischaracterized the evidence that the applicant was “a member of an underground church in China”, which when rejected by the Board reflected significantly on the genuineness of the applicant’s faith. The applicant further submitted that the Board applied the wrong legal test by failing to consider the consequences of the applicant’s conversion to Christianity and his joining the Living Stone

Assembly as a *sur place* claim, instead wrongly imposing a “good faith” requirement on the applicant based upon the genuineness of his faith.

## **5. Standard of Review**

[17] A deferential reasonableness standard applies to the Board’s credibility findings and to its assessment of facts concerning the applicant’s conduct and genuineness of his faith. However, applying the wrong legal test with respect to a *sur place* claim is reviewable on the standard of correctness. See generally *Hou v Canada (MCI)*, 2012 FC 993, paras 6-13 and *Ejtehadian v Canada (MCI)*, 2007 FC 158 [*Ejtehadian*] at para 12.

## **6. Analysis**

### *a. Member of an Underground Church in China*

[18] I reject the applicant’s submission that the Board drew a serious negative credibility inference against him on the basis that he had described himself as a member of an underground church in China, which was not accurate.

[19] The essence of the Board’s conclusion was that the applicant was not a genuine Christian in either China or Canada and that accordingly his refugee claim was fraudulent. These conclusions were largely supported by the applicant’s own evidence which demonstrated little interest or involvement in the Christian religion in both countries up to the point of applying for refugee status.

[20] Ironically, had the applicant been a practicing member of an underground church in China, his case would have been strengthened. For that reason, I also agree with the respondent that the

assertion about the applicant being a member of or being associated with an underground church is less than clear-cut, given his family's participation. The applicant raised evidence connected to his faith in China by reference to his family's membership in the underground church and suggestions that he was motivated to attend but was prevented for the most part due to other reasons such as age and education limitations.

[21] I similarly find no logical link between this alleged negative credibility finding and the Board member's determination that the applicant's Christian faith was not genuine. The Board's credibility findings and conclusions on the applicant's faith were multifaceted and based upon a wide array of factual determinations and negative credibility conclusions. Despite the Board's error in respect of not mentioning the July 2011 incident in his PIF, the overwhelming degree of evidence supporting the Board's conclusions is not undermined by this misstatement of the evidence.

[22] Finally, the characterization of the applicant's relationship to the underground church is not determinative in any sense of the Board's final decision when weighed against all of the other evidence supporting its conclusion on the lack of genuineness of the applicant's Christian faith.

*b. Imposing a Good Faith Requirement on Applicant's Sur Place Claim*

[23] I also reject the contention that the Board applied the wrong legal test relating to its finding of lack of good faith and thereby failing to consider the consequential imputation of his religiosity since coming to Canada as raising a risk of persecution or severe harm were he to return to China as part of a *sur place* claim.



[24] The Board concluded as a fact that there was insufficient evidence of his attending church in Canada for him to be perceived as a genuine practicing Christian in China. This included the applicant's delay without any credible explanation for joining the church during his first two years in Canada, the fact that he only joined a church in July 2011, two days before he filed his refugee claim, the lack of usual corroborating evidence of his religiosity from his Minister and his ability to return to China for 28 days without any adverse consequences, amongst the extensive evidence and related lack of credibility findings supporting the Board's decision.

[25] I also agree with the respondent's submissions that the applicant's situation differs from that in decisions like *Ejtehadian* involving countries such as Iran where conversion as evidence of apostasy raises serious possibilities of persecution and severe harm. China has no rule of apostasy. Any persecution in China relates to attending church, on which issue the genuineness of the applicant's Christian faith is relevant.

[26] As was noted in *Li v Canada (MCI)*, 2012 FC 998 [*Li*] at para 32, "where persecution is practiced against Christians not for apostasy but for the practice of their religion, the claimant must satisfy the RPD that he or she will continue to practice his or her faith in China". Furthermore, I adopt the conclusions in the same paragraph of *Li* that where serious credibility shortfalls are demonstrated, it is reasonable for the RPD to require a much higher degree of proof of the sincerity of the applicant's beliefs and practice in support of a *sur place* claim, without which it would be far too easy to succeed in a fraudulent claim.

[27] I agree with the respondent's position. The Board's task was to assess the applicant's activities while in Canada and make findings as to any possible risk to him upon return to China. It found that there was no credible and convincing evidence that the Chinese authorities would perceive him as a practising Christian due to his church attendance in Toronto during 2011-2012. He had not previously been sought out by the authorities for religious persecution and testified that his mother had not either, and the Board reasonably found that it was not likely that he would continue to attend church if returned to China and thereby mark himself out for religious persecution. The applicant is merely asking this Court to reweigh the evidence and come to a different conclusion.

## **7. Conclusion**

[28] For the above reasons, the application is denied.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application is dismissed.

“Peter Annis”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-7091-12

**STYLE OF CAUSE:** LUOFENG LIU v.  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

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AND JUDGMENT:** ANNIS J.

**DATED:** NOVEMBER 6, 2013

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