

Federal Court



Cour fédérale

**Date: 20131108**

**Docket: IMM-5470-12**

**Citation: 2013 FC 1129**

**Toronto, Ontario, November 8, 2013**

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

**BETWEEN:**

**BING LIN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The Applicant, a citizen of China, claims refugee protection in Canada as a Christian because of subjective and objective fear that should he be required to return to his home in Fujian Province he will suffer more than a mere possibility of persecution under s. 96 of the *IRPA*, or probable risk under s. 97. The present Application is a challenge of the Refugee Protection Division's (RPD) decision of May 16, 2012 in which his claim was rejected.

[2] In the decision the RPD provided the following summary of the events the Applicant relied upon in making his claim:

The claimant joined an underground church on December 25, 2008 and was baptized on June 28, 2009. Because the claimant felt that he was slower than others in academics, he was left out for years and had no confidence in himself. Since his neighbour introduced him to Christianity, the claimant was able to resist the urge to fight his classmates because of the abuse. The claimant attended the church regularly, read the Bible often, and spread the gospel to trusted friends. The claimant joined the underground church and was well aware of the risks. On September 20, 2009, the church was raided by the Public Security Bureau (PSB), and the claimant escaped through the backdoor. On September 21, 2009, the claimant's father told him that one organizer and a church member had been caught when the church was raided. On September 22, 2009, the PSB went to the claimant's home and ordered his immediate surrender to cooperate with the interrogation. The PSB continued to visit the claimant's home, and as a result the claimant left China with the help of a smuggler. The PSB continues to visit the claimant's home and want to arrest him.

(Decision, para. 3)

[3] In summary the RPD made the following key findings regarding the Applicant being a Christian in China and a Christian in Canada:

The claimant gave a description of some of the occurrence was [sic] in his underground church in China. The panel finds, on a balance of probabilities, that the claimant did attend an underground church in Fijian.

The claimant responded positively to most questions regarding the Bible, the pastor's homily the previous Sunday, giving a testimonial, and other issues regarding Christianity. The panel believes, on a balance of probabilities, that the claimant is a practicing Christian in Canada.

(Decision, paras. 11 and 12)

[4] Nevertheless, RPD did not accept the Applicant's evidence of the raid on his underground church having taken place, the subsequent PSB's activities, and the manner in which he left China for Canada. In addition, in any event, the RPD found that the Applicant would not be at risk should he return to his home in Fujian since "with specific reference to Fujian, there is no evidence to persuade the panel that officials are interested in persecuting underground Protestant Christians" (Decision, para. 27).

[5] Two features of the RPD's decision require careful evaluation. First, the RPD's negative credibility findings are of critical importance in the present Application because, if the Applicant's evidence of the church raid was believed by the RPD, there would be evidence capable of supporting an argument that, since he suffered persecution as a Christian in Fujian, there is more than a mere possibility that he would suffer persecution as a Christian should he return. And second, the RPD's statement that there is no evidence upon which to find prospective risk of return is important because it is based on an absence of evidence of PSB activities against Christians in Fujian, not the existence of evidence that the PSB is not engaging in activities against Christians in Fujian.

#### **I. The Negative Credibility Findings**

[6] With respect to the decision presently under review, it is necessary to repeat the established law with respect to the making of a negative credibility finding as I have stated in *Istvan Vodics v Minister of Citizenship and Immigration*, 2005 FC 783:

[10] With respect to making negative credibility findings in general, and implausibility findings in particular, Justice Muldoon in *Valtchev v. Canada (Minister of Citizenship & Immigration)* (Fed. T.D.), states the standard to be followed:

6. The tribunal adverts to the principle from *Maldonado v. M.E.I.*, [1980] 2 F.C. 302 (C.A.) at 305, that when a refugee claimant swears to the truth of certain allegations, a presumption is created that those allegations are true unless there are reasons to doubt their truthfulness. But the tribunal does not apply the *Maldonado* principle to this applicant, and repeatedly disregards his testimony, holding that much of it appears to it to be implausible. Additionally, the tribunal often substitutes its own version of events without evidence to support its conclusions.

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, plausibility 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. [see L. Waldman, *Immigration Law and Practice* (Markham, ON: Butterworths, 1992) at 8.22]

[Emphasis added]

[11] It is not difficult to understand that, to be fair to a person who swears to tell the truth, concrete reasons supported by cogent evidence must exist before the person is disbelieved. Let us be clear. To say that someone is not credible is to say that they are lying. Therefore, to be fair, a decision-maker must be able to articulate why he or she is suspicious of the sworn testimony, and, unless this can be done, suspicion cannot be applied in reaching a conclusion. The benefit of any unsupported doubt must go to the person giving the evidence.

[12] [With respect to the provision of clear reasons] [t]he Federal Court of Appeal impresses a decision-making duty on the CRDD in *Hilo v. Canada (Minister of Employment & Immigration)* (1991), 15 Imm. L.R. (2d) 199 (Fed. C.A.) at paragraph 6 as follows:

In my view, the board was under a duty to give its reasons for casting doubt upon the appellant's credibility in clear and unmistakable terms. The board's credibility assessment, quoted supra, is defective because it is couched in vague and general terms.

In addition, as expressed in *Leung v. Canada (Minister of Employment & Immigration)* (1994), 81 F.T.R. 303 (Fed. T.D.) at paragraph 14, the duty to be clear is linked to a requirement to state the evidence:

The Board is under a very clear duty to justify its credibility finding with specific and clear reference to the evidence.

[Emphasis added]

[7] Two passages from the RPD's decision are particularly important to consider on the issue of the Applicant's credibility.

[8] With respect to the Applicant's evidence with respect to the events which followed the raid, the RPD made these findings:

The claimant testified that when the PSB first went his house on September 27, 2009 [sic], they demanded to know the whereabouts of the claimant and told his parents that they wanted to arrest him. The panel questioned the claimant on the use of the word arrest, and asked if they really wanted him to appear. The claimant insisted that the PSB wanted to arrest him. The panel draws a negative inference. This testimony is contrary to the documentation available to the panel. The documentary evidence" states that there are two types of summonses in China including: Zuanhuan summons which is considered a non-coercive measure and is used when no arrest or detention of suspects is contemplated or necessary or when cooperation is expected or flight is not likely; and, Juzhuan summons which is translated as an Arrest-Summon (for interrogation) summons. This summons is considered a coercive measure and is used when voluntary compliance is not appropriate or when the Zuanhuan summons has failed. The same documentation states that approval for an arrest summons (Juzhuan) can only be obtained with the approval of the county level and above public security organs

upon the presentation all of an "Application for arrest- summons." This application will state clearly and support with credible evidence that a crime has been committed, the person to be arrested-summoned for interrogation is connected to the crime, and the suspect is not likely to appear voluntarily, or that of a summons for interrogation has been executed with no success. It is not plausible or credible that the PSB would consider arresting the claimant or issuing an arrest warrant two days after the alleged raid, on September 20, 2009. Counsel, in her submissions, quoted the same documentation stating that "PSB [Public Security Bureau] has yet to arrive as a rule of law institution." The panel, taking this submission into consideration, still finds that the PSB wanting to arrest the person two days after the alleged raid not probable, or possible, given the supporting documentation quoted. The investigation of a criminal offence in the application for such a document would reasonably have taken considerably longer. The panel draws a negative inference from the claimant's testimony.

[Emphasis added]

(Decision, para. 7)

[9] The Applicant swears to the fact that his parents told him that the PSB went to his family home to arrest him two days after the raid. The RPD found that the Applicant was not telling the truth on the basis of a two-part implausibility finding: it is implausible that an arrest would be conducted without a Juzhuan summons having been issued, and since a Juzhuan summons requires "county level" approval, it is implausible that approval would be given in "two days". I find that the negative credibility finding is erroneous for two reasons. There is no evidence on the record to support the conclusion that the PSB would only use a "summons" process in its investigation of the Applicant's conduct. The RPD failed to consider that, consistent with the Applicant's evidence, it might very well be that the PSB were acting in "hot pursuit" to arrest the Applicant. And, in any event, I find that it was sheer speculation on the part of the RPD to conclude on how long it would take for a summons to issue in the Applicant's home location in 2009.

[10] With respect to the Applicant's evidence with respect to his recollection of the events of the raid, the RPD made these findings:

The claimant testified that there were 21 members of the underground church during the day of the raid. A phone call came to the organizer from a lookout, according to testimony, and all 21 people left by the backdoor. The claimant's description of escaping from the PSB was scripted and limited. He testified that two people left in front of him. He stated that he was nervous, closed his Bible, ran out the backdoor with two members in front of him, went through an orchard and two small fields, went to a road, hired a rental car, and went to his uncle's place. The claimant testified, when prompted by the panel, that that was all he remembered. The panel prompted by asking if there was any confusion with 21 people attempting to leave by the same door. The claimant testified that a chair fell over. The panel prompted again, asking if there is any yelling or screaming. The claimant stated that to avoid the attention of the PSB there was no screaming or yelling. The claimant could not remember anything else from the occurrence of the raid. The panel draws a negative inference. It is not possible in such an egregious situation, as being raided and chased by the PSB, that the claimant would not have had more remembrances. The only indication of any emotional impact was that the claimant testified he was nervous. This testimony is not reasonable. One would expect a large gamut of emotions in such a circumstance, and some remembrance of issues when 21 people were attempting to exit by the same door, and escaping. The panel finds, on a balance of probabilities, that there was no raid by the PSB in the claimant's underground church as stated in his documentation in [sic] testimony.

(Decision, para. 9)

[11] In sworn evidence the Applicant provided his recollection of the events of the raid. The RPD's statements about what might be expected of the Applicant's memory is just a statement of the RPD Member's personal subjective opinion. Without substantiation to establish its verifiability, I find that the opinion is speculative and, as such, it should not have been applied in reaching a conclusion on the Applicant's claim.

[12] For these reasons I find that the RPD conclusion that “there was no raid by the PSB in the claimant’s underground church” is unsupported by the evidence and constitutes a reviewable error.

## II. Risk to Christians in Fujian

[13] Key elements of the RPD decision on this issue are as follows:

The panel considered the treatment of underground church members in Fujian province, including the documentary evidence provided by counsel as well as her submissions. There is extremely limited information suggesting that religious persecution of underground Protestant Christians is occurring in the claimant's home province of Fujian, since 2006. With respect to the situation of religious persecution within the claimant's province of Fujian, there is no persuasive information suggesting that religious persecution is occurring for groups that are as small as the claimants.

[...]

The panel considered comments from Mr. Bob Fu, the President of the China Aid Association (CAA), regarding the situation in Guangdong and Fujian provinces. He states that east coast provinces are generally more open with fewer incidents involving Christians reported to CAA. Mr. Fu notes that this does not mean there were fewer incidents, but rather they were not reported. This position is repeated in a letter from Mr. Fu which he states that: "With specific reference to the provinces of Fujian and Guangdong, it is absolutely incorrect to find that there is religious freedom in these provinces. The persecution may come and go and not be totally predictable, but it is always present.

The panel acknowledges that the number of persecution incidents is likely to be much higher because of censorship in communications and the panel considered the possibility that not all information is available to commentators. The panel concludes that, since there is a significant amount of information detailing very specific examples from areas of China much more remote and difficult to access than Fujian, it is reasonable for the panel to expect to see persuasive evidence that groups such as the claimant's, which are small and not required to register, are being raided and individuals being jailed in Fujian province. For example, the National Documentation Package for China quotes many specific incidents of persecution against human rights activists, journalists, unregistered religious figures, bloggers, political prisoners and their families, etc. from throughout China are well documented in the National Documentation Package" (US Department of State Report,



UK Home Office Report, and China Aid Association Annual Report, etc.).

[...]

Given the documentary evidence of citing one instance of persecution of an underground Christian in Fujian in 2006, and the incident mentioned above; given that authorities have the legal framework and resources to persecute underground Protestants if they wish; and given that information on the persecution of Chinese people who are considered in opposition to the government is widely cited in the Documentary Package, the panel finds that, on a balance of probabilities, if there were recent arrests or incidents of persecution of underground Protestant Christians in Fujian province there would be some documentation of these incidents of persecution by reliable sources. In the absence of the documentation when it would be reasonable to expect some form documentation to exist, the panel finds that it is not persuaded that local authorities in Fujian are interested in persecuting underground Protestant Christians.

[Emphasis added] [Footnotes omitted]

(Decision, paras. 22, 25-26, 28)

[14] In my opinion, what the RPD Member found to be reasonable from the absence of evidence is highly speculative. The opinion evidence of Dr. Fu is not speculative; it is opinion evidence that required careful consideration. While the Member cites the opinion it is clear that it was not placed on the scales and weighed against the speculation to reach a prospective finding on whether there is more than a mere possibility that the Applicant would be persecuted if he is required to return to Fujian. In this respect I find that the RPD's decision is made in reviewable error.

**ORDER**

**THIS COURT ORDERS that** for the reasons provided, the decision under review is set aside and the matter is referred back for redetermination by a differently constituted panel.

There is no question to certify.

“Douglas R. Campbell”

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Judge

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

**DOCKET:** IMM-5470-12

**STYLE OF CAUSE:** BING LIN V THE MINISTER OF CITIZENSHIP AND  
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