

Federal Court



Cour fédérale

Date: 20140108

Docket: IMM-12670-12

Citation: 2014 FC 20

Ottawa, Ontario, this 8th day of January 2014

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

JIE GUAN

Applicant

And

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] With this application, the applicant, Mr. Jie Guan, seeks the judicial review of a decision rendered on November 8, 2012 by the Refugee Protection Division of the Immigration and Refugee Board of Canada (the “Board”). The Board denied refugee status pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] The facts of this case are simple. The applicant is from the province of Fujian of the People's Republic of China. He claims to be at risk because he is now a Roman Catholic.

[3] After a period of study in Ireland, the applicant obtained a study visa to come to Canada. He arrived in October 2011. He claims to have started his interest in the Catholic faith while in Ireland and, after his arrival in Canada, he claims to have joined a Roman Catholic church soon thereafter. His claim for refugee protection is based on religious persecution if he is to be returned to his country of origin.

[4] Originally, the applicant had also raised his opposition to the one-child policy of China, but the claim has since been abandoned and is therefore not before this Court.

[5] In a nutshell, the Board found the applicant's claim to be not credible. The applicant arrived in Canada on October 23, 2011 and did not make a refugee claim at the time. Also, it is acknowledged by the applicant that he did not have any religious beliefs when he arrived in Canada. Yet, two months later, he claims to have joined a Roman Catholic church. When asked about the foundation of his new religious belief, the answers were less than convincing. That made the Board conclude:

. . . I find, on a balance of probabilities, that the claimant is not a genuine practicing Roman Catholic and that he joined a catholic church in Toronto only for the purpose of supporting a fraudulent claim for protection.

[6] The applicant also claimed that if he were to be returned to the Fujian province, he would not be able to practice his religion freely. After examining the documentary evidence, the Board

concluded that the Fujian province is considered to be more open in regard to underground church activity.

[7] The issue of persecution on account of religion becomes a live one only if it can be found that the applicant is deserving of the protection of the law. The argument on behalf of the applicant can be summarized in the following fashion. The panel, he claims, speculated on the personally-held values and beliefs of the applicant, which would be impermissible.

[8] In order to be successful, the applicant will have to show that the Board's decision is unreasonable, as the notion has been described in the case of *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paragraph 47. Having reviewed the reasons of the Board, it seems to me to be clear that the Board simply made a finding that the applicant is not a genuine Roman Catholic. There was ample evidence to support that finding. Indeed, the claim to have become a Roman Catholic does not have, in my view, an air of reality.

[9] It is clear, on this record, that the applicant did not wish to return to China and wanted to establish himself in Canada. He certainly cannot be faulted for that. However, his *sur place* claim could have been made much earlier than the two months he chose to wait to initiate it. Actually, that two-month period was used for the purpose of joining a Catholic community. It was open to the Board to conclude that his adhesion to a Catholic church community in Toronto was motivated by his wish to create circumstances that could allow a refugee protection determination. I cannot see anything untoward in seeking to establish how genuine the adhesion can be. Given how quickly the applicant joined that community, it was quite normal that suspicions would arise. The Board's

questioning of the applicant was evidently for the purpose of ascertaining the genuineness of the adhesion. Read as a whole, the reasons of the Board establish clearly that its finding that the applicant was not a genuine practicing Catholic was perfectly reasonable. That disposes of the issue.

[10] Had I found that the applicant was a refugee on the basis of his religious faith, I would nevertheless have found that he can be returned to the Fujian province of China because the documentary evidence does not establish that an objective risk of persecution exists if returned to his country of nationality. Be that as it may, there is no need to reach that conclusion in view of the reasonableness of the Board's finding that the applicant is not a genuine practicing Roman Catholic. In view of the evidence, that finding is reasonable.

[11] This case was made unusual because the applicant has not been in touch with counsel for many months. Counsel for the applicant appeared before me on December 16, 2013 and sought to withdraw from the file. His client had not communicated with him in a long period of time and he had received no instructions concerning the pursuit of this matter. However there was no indication that the applicant would not have wished to carry on once his leave application had been granted. In other words, can we proceed on the basis of the record as it is? I was persuaded through my exchange with counsel that such is the case.

[12] Nevertheless, the Court adjourned the case on December 16 and asked counsel, and counsel agreed, to communicate with the church community the applicant claims to have joined in order to enquire about his whereabouts. Counsel reported on December 18 that the applicant has not been seen in some time.

[13] In the best tradition of the Bar, counsel agreed to present the case for the applicant on the basis of the leave application which had already been granted by this Court. There was an arguable case and it was indeed argued on December 18.

[14] As a result, the judicial review application is dismissed. There is no question for certification.

ORDER

THIS COURT ORDERS that the application for judicial review of the decision rendered on November 8, 2012 by the Refugee Protection Division of the Immigration and Refugee Board of Canada is dismissed. There is no question for certification.

“Yvan Roy”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-12670-12

STYLE OF CAUSE: JIE GUAN v. THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATES OF HEARING: DECEMBER 16 AND 18, 2013

**REASONS FOR ORDER
AND ORDER:** ROY J.

DATED: JANUARY 8, 2014

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