

Federal Court



Cour fédérale

Date: 20140728

Docket: IMM-5662-13

Citation: 2014 FC 746

Ottawa, Ontario, July 28, 2014

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

JIAN GONG LIN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of the decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated August 8, 2013, in which it concluded that the Applicant was not a Convention refugee or a person in need of protection under sections 96 or 97, respectively, of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA). This application is brought pursuant to section 72 of the IRPA.

Background

[2] These background facts are extracted from the information contained in the Applicant's Personal Information Form (PIF).

[3] The Applicant is a citizen of China where he was a land and seafood farmer in Doa Ao Village, Xial Ao Town, Lianjiang County, Fujian Province. The Applicant derived income from utilizing his family's land allocations and from his family's share of income generated by land that was improved by a dyke constructed by the villagers and which land they then leased.

[4] In February and March of 2008, parcels of the villagers' farm land were bulldozed with no prior explanation. In April 2008, the village was given notice of a government project, the Straight West Seafood Base project, a seafood processing factory. Development of this project involved three levels of government, county, town and village, and the expropriation of 170 acres of dry farm and 1200 acres of sea farming land. The villagers were neither consulted nor compensated.

[5] In September 2008, a petition of the villagers opposing the project, which was signed by the Applicant, was submitted to the provincial appeal/complaint office for Fujian but received no response. On February 25, 2009, the county began to fill in the seafood growing lands. The Applicant and other villagers protested. There were officials from the village, town and county on site and the villagers demanded that the work stop and that their concerns be discussed. The county director stated that they could select representatives to meet with officials the following

day. The work was stopped. The Applicant was one of nine villagers nominated and, at the meeting, he asked that the authorization for the project be provided, for an explanation as to why there was no compensation for the villagers' land and crops, and, why those villagers who had complained had been detained.

[6] The next morning, the Applicant's cousin, who worked in the village committee office, called and informed him that one of the other nine representatives at the meeting had been arrested as would the Applicant. The Applicant fled to his aunt's house and went into hiding. The following day, being February 27, 2009, the police left a summons dated February 26, 2009 at the Applicant's home stating that he was suspected of gathering a collective group of people to disturb social order according to article 290 of the Criminal Law of the People's Republic of China and was required to appear at the police station on February 26, 2009 for questioning (Summons).

[7] Later that night, his wife received a call threatening her and stating that, if the Applicant did not come forward but was caught, he would remain incarcerated forever or be beaten to death. A few nights later, windows were broken in their home.

[8] On March 5, 2009, a notice was issued by the county, town and village committee and delivered to the Applicant's home stating that he was suspected of gathering a collective group of people to disturb social order on February 25, 2009, and interfering with construction of the Straight West Seafood Base project (Notice). He was required to report to the village office on that day for questioning and would be responsible for the consequences if he did not appear.

[9] His wife, who was pregnant, was forced to undergo an abortion and was then required to submit to monthly pregnancy checks, rather than the usual every four months. She was told that this was because the Applicant was wanted and that he should surrender. After a week at his aunt's house, the Applicant fled to Lanzhou where he lived and worked in hiding. In February 2010, he secretly went to Fuzhou and obtained a divorce so that his wife would no longer be harassed.

[10] Of the nine village representatives that spoke out, four were arrested, one has been released, three remain in custody and the other five are in hiding. Because it remained unsafe for him in his village, the Applicant remained in hiding in Lanzhou until he hired a smuggler who arranged his passage to Canada. He entered Canada on February 18, 2012, and claimed refugee status on April 17, 2012.

[11] On August 8, 2013, the RPD issued its decision that the Applicant was not a Convention refugee or a person in need of protection under sections 96 or 97 of the IRPA.

Decision under Review

[12] The RPD commenced its decision by stating that for the purposes of its analysis, "I will assume without deciding that the claimant is credible" but that this did not mean that it accepted any of the inferences that he may have drawn from his experiences.

[13] The RPD acknowledged that the country documents confirm that China is an authoritarian state in which the Chinese Communist party (CCP) is constitutionally the

paramount authority. Repression and coercion, particularly against organizations and individuals involved in rights advocacy and public interest issues are routine. However, this did not mean that there was no rule of law in China which has a well-defined code for civil and criminal procedures.

[14] The RPD concluded that the Applicant's problems were with the county government and not any superior level of government which explained why he was able to attend at a government office in another county to obtain his divorce. His problems concerned a local issue, as opposed to one of national or interprovincial interest, or one that would generate widespread interest such as a human rights issue. Therefore, it would be of little or no importance to the majority population or to higher levels of government.

[15] While the country documents state that, if it is in the interest of the CCP, state protection mechanisms can and are manipulated, because the Applicant was simply a farmer, one of many who attended local demonstrations and one of nine villagers elected to speak with local government on behalf of those who lost their land, the issue was of local interest only. Accordingly, he would not be of any particular interest to the CPP and would be treated according to Chinese laws should he return to China.

[16] The RPD stated that it was then necessary to examine the law as it applies to the Applicant. Referencing the National Document Package (NDP) for China, May 3, 2013 Item 9.8, the RPD stated that the criminal summons served on the Applicant pertained to criminal suspects who need not be placed under pre-trial detention and have to appear before courts to undergo

interrogation by the procuracy, the police or state security organs. The summons cannot last more than twelve hours or be used more than once on the same individual. Based on this, the RPD concluded that the county officials did not intend to arrest the Applicant, otherwise they would have done so without warning and precluding his escape.

[17] The RPD went on to find that the evidence was that the Summons resulted from his involvement with farmers whose demonstration included the halting of construction workers, although he maintained that he did not take part in the blocking of access of the workers. The RPD found that the Applicant was only summoned to speak to the police, he may not be charged with any offence, he might also only be charged under the new administrative Law on Public Security, or, he may face criminal charges. Although his fear is that he will be arrested and jailed for an indeterminate amount of time, he in fact simply does not know what would happen to him if he returned to China.

[18] The RPD referred to a *China Daily* report that the new Law on Public Security Administrative Penalties introduced one hundred and sixty five new offences including “disturbing public order at sports or cultural events,” which are all subject to fines. The RPD stated that its interpretation of that document was that, if convicted under that law, the Applicant would only be subject to a fine. Further, although the circumstances under which he was charged were not specifically referred to in the Response to Information Request, that the “social order” breach of which the Applicant was accused would be included in one of the one hundred and sixty five public order offences.

[19] The RPD could not state what, if anything, the Applicant may have done to impede the construction work or, if convicted, which act and section he would be convicted under or what his sentence would be. However, based on the evidence, if charges were laid, they would be inherent to lawful sanction as a result of evidence rather than “trumped up” charges to allow the county government to incarcerate an innocent man. There was less than a reasonable chance that the Applicant would not receive the same standard of justice than would any other Chinese citizen.

[20] While the Applicant testified that part of his subjective fear was based on information that four of the nine village representatives have been arrested, the RPD found that he does not know what they were charged with or convicted of. He based his subjective fear on a set of circumstances of which he does not reasonably have specific knowledge. He has no first-hand knowledge to support his contention that he would not receive the benefit of the rule of law in China. If the information he has regarding the incarceration of others is accurate, they may very well have been charged with a more serious offence. The fact that people involved in protests have been incarcerated was an insufficient basis for his claim.

[21] Although the Applicant would likely be arrested upon his return for failing to comply with the Summons, the RPD concluded that once he had complied with his obligation under Chinese law, he would be released, which would be after no more than twelve hours. The worst case outcome was that he would be charged and convicted under Article 290 of the criminal code, but the evidence is silent on the potential penalties under that section. There was no reason to believe that, if charged, the sanction would be unduly harsh. China has implemented an

administrative process to deal with civil disorder which strongly suggests that the authorities are not interested in incarcerating individuals involved in this type of activity. If civil disorder crosses the line to criminal action, then China has the right to prosecute and sentence according to the severity of the offence and its sentencing principles.

[22] The RPD concluded that the Applicant failed to establish a credible objective basis for his subjective fear which was fatal to both his sections 96 and 97 claims.

Issues

[23] In my view, the issues in this matter can be addressed together and are:

- i. Did the RPD err in making findings without regard to the evidence?
- ii. Was the RPD's decision reasonable?

Standard of Review

[24] A standard of review analysis need not be conducted in every instance. Where the standard of review applicable to a particular question before the court is well settled by prior jurisprudence, the reviewing court may adopt that standard of review (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 57 [*Dunsmuir*]).

[25] In this case, the Applicant submits that the RPD has ignored objective evidence which substantiates his fears. This involves the weighing of evidence and application of the facts to the law for which the standard of review is reasonableness (*Dunsmuir*, above, at para 53; *Wei v*

Canada (Minister of Citizenship and Immigration), 2012 FC 854 at para 40; *Flores v Canada (Minister of Citizenship and Immigration)*, 2011 FC 359 at para 26).

[26] The Court's role is not to reweigh the evidence or to substitute its own opinion, but rather to ensure that the RPD's decision fits with the principles of justification, transparency and intelligibility, and falls within the range of "possible, acceptable outcomes" (*Dunsmuir*, above, at paras 47, 53; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 59).

The Parties' Positions

The Applicant's Position

[27] The Applicant submits that the RPD found that he was credible, but then applied an unrealistic evidentiary burden and also ignored or failed to consider the evidence before it which substantiated his fears. This included failing to apply the principles set out in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention (UNHCR Handbook) and the 1967 Protocol relating to the Status of Refugees which the Supreme Court of Canada has held must be treated as a highly relevant authority in considering refugee claims (*Chan v Canada (Minister of Employment and Immigration)*, [1995] 3 SCR 593 at para 46 [*Chan*]; *Kulasekaram v Canada (Minister of Citizenship and Immigration)*, 2013 FC 388 at paras 25, 27; *Adjei v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 67 at 3 (QL)(CA); *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at 724-745

[Ward]). The Applicant was credible, he provided documentation supporting his fears and testimony regarding similarly situated individuals.

[28] The Applicant summarized his evidence and the supporting documentation which included:

- i. Video evidence of several protests, one in which villagers are attacked by the Public Security Bureau and one in which, on June 13, 2012, a villager known to the Applicant is beaten with picks and hammers on board a bus as he was returning from seeking information about his mother who is incarcerated and facing trial for gathering a group of people to disturb the social order;
- ii. The February 26, 2009 Summons from the Lianjiang County Public Security Bureau stating that he is suspected of gathering a collective group of people to disturb social order contrary to section 290 of the Criminal Law of China;
- iii. The March 5, 2009 Notice from the Lianjiang County Xiao Ao Town Dao Village Committee, stating that he is suspected of gathering a collective group of people to disturb social order on February 25, 2009, of interfering with the Straight West Seafood Base Project construction, and, that he is to report to the village office at 2:30 on that day for questioning;
- iv. A detailed letter from the Applicant's wife describing her knowledge of events after the Applicant had fled;
- v. Statements from one of the nine village representatives, Lin Ming Kai, and his uncle Lin Pai Dun, confirming the former's incarceration and, after his release, threats and harassment of him and his family forcing them to move and not return to their home;
- vi. Statements from several other villagers affirming ongoing incarceration and trial of those who are protesting against land redevelopment;
- vii. A statement from the Applicant's relative who alerted him to the impending arrest. This speaks to the relative's subsequent dismissal from his job and confirms that the Applicant is wanted because he offended local leaders;
- viii. A statement from a relative of one of the nine village representatives who has been caught and affirms his ongoing detention;
- ix. A photograph of a plaque confirming that the villagers invested their own labour and funds to improve their farmlands by the building of a dyke; and

- x. Photos of injuries one villager incurred after she went to Beijing to protest, she was returned to the county mental hospital and beaten.

[29] The Applicant also testified about similarly situated persons:

- i. Villager Lin Bo Lan was arrested in February 2008 after protesting the destruction of farm land. In July 2012 he was incarcerated and put on trial, along with the mother of the individual beaten on the bus, for gathering a group of people to disturb social order;
- ii. Villager Lin Bo He was arrested in December 2008 for protesting the destruction of a local Buddhist Temple to make way for a road for the development project. Following his arrest his family was harassed;
- iii. One of the petition organizers, Lin Shiu Xian, was arrested in December 2008 allegedly for damaging public property. He was released in 2010 but, due to poor treatment in custody, could no longer walk;
- iv. Of the nine village representatives who spoke at the February 26, 2009 meeting Lin Ming Kai was arrested and released after about a year; Lin Bi Xiang was arrested in May 2009 and was first sent to pre-trial detention and then to jail where she remains; Lin Tang was arrested in July 2011 after living in hiding and remains in custody; Lin Ying Rong (Lin Ying Long) was arrested on February 24, 2010 for the same crime that the Applicant is suspected of and officials have said that he will remain in custody until the development project is resolved; and, the remaining representatives remain in hiding.

[30] The Applicant's credible evidence, the supporting documentation and the evidence of similarly situated persons directly contradicts the RPD's finding that the Applicant based his subjective fear on circumstances of which he has no direct knowledge. Further, the RPD applied a test that was too onerous and unrealistic as, in order to meet it, the Applicant would have to risk actual persecution and later be able testify about it. Contrary to the RPD's finding, the evidence was sufficient to found his claim and entitle him to protection from the political act of speaking his mind.

[31] The Applicant also submits that the RPD made its findings without regard to or unsupported by the evidence and engaged in speculation in order to support its findings. While a decision-maker is entitled to make reasonable inferences, it was not open to the RPD to base its decision on assumptions and speculation for which there is no evidentiary basis. Findings of fact based on speculation are inherently unreasonable (*Ukleina v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1292). Further, the more important the evidence that is not mentioned in the decision, the more willing a court may be to infer an erroneous finding of fact without regard to the evidence (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35 at para 17).

[32] Here, the RPD found that the Applicant can expect fair treatment from the Chinese justice system yet refers to no evidence in support of this other than the existence of legislation. The evidence before the RPD established both that the criminal procedure in China was unfair and that even the minimal rights afforded to citizens are routinely disregarded. And, while this was a local, as opposed to an interprovincial, national or international issue, this is not relevant nor is dismissing the Applicant's subjective fear on this basis reasonable. The persecution and fears of torture arising from a local dispute are no less serious because they are merely local.

[33] The RPD also made factual errors including at paragraph 46 where it found that the Summons resulted from the Applicant's involvement with a work stoppage while the evidence was that the crime in the Summons was in relation to his participation as an elected village representative at the February 26, 2009 meeting. This error permitted the RPD to speculate about why the Summons was issued, being in relation to the work stoppage, but avoids the more

serious implications of the Applicant being in a leadership role as one of the nine elected representatives. The RPD further speculates that this may only attract an administrative penalty.

The RPD also erred in failing to recognize that the Summons was on its face impossible to comply with as it demanded attendance on February 26, 2009, but was not served until the following day. As the Applicant had fled by the time of service, it cannot be known if he would then have been arrested. The RPD erred in concluding that the delivery of the summons, instead of immediate arrest to preclude flight, implies that officials did not intend to incarcerate the Applicant, but merely to question him.

[34] While the specific consequence of the crime referenced in the Summons was not in evidence, it was readily available. In keeping with the principles set out in the UNHCR Handbook, it would have been reasonable for the RPD to have referred to this information which was important to the Applicant's claim.

Respondent's Position

[35] The Respondent submits that the RPD expressly considered the cumulative nature of the discrimination and harassment that the Applicant claimed to fear but found that it did not amount to persecution.

[36] The Applicant's arguments do not recognize that he failed to comply with the Summons requiring him to appear for questioning. As he did not report as required, the RPD found that if he returns to China there may be a consequence, such as a fine imposed as an administrative penalty.

[37] The Respondent submits that the RPD fully canvassed the evidence and reasonably found that, as the Applicant did not know the background of his incarcerated colleagues, he could not establish that they were similarly situated (*Liu v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1362 at para 27 [*Liu*]).

[38] The RPD also reasonably considered that this was not an issue that would attract interprovincial, national or international attention which was not disputed by the Applicant. It further reasonably found that the sanctions levied against the Applicant if he returned would not be unduly harsh. These conclusions were reasonably drawn based on the information before the RPD. The Applicant simply seeks a reweighing of the evidence, which is not the role of the Court, and to microscopically examine the reasons, which is not a valid basis for judicial review (*Chen v Canada (Minister of Citizenship and Immigration)*, 2013 FC 928 at para 6).

Analysis

[39] The RPD begins its analysis with the rather peculiar comment that it “will assume without deciding that the claimant is credible.” In my view, in most cases the primary role of the RPD is to assess and determine the credibility of claimants in order to effectively analyze a section 96 claim. To establish a fear of persecution, the claimant must subjectively fear persecution and this fear must be well-founded on an objective basis. Where the claimant is found to be credible, this establishes the subjective branch (*Ward*, and *Chan*, both above). Here, the RPD’s comment must be taken as meaning that the Applicant is credible, particularly as the record contains no inconsistencies or contradictions that would suggest a contrary finding and, therefore, the subjective element was met.

[40] The Applicant's fear, as acknowledged by the RPD, is that he will be arrested and incarcerated as a result of his opposition to the expropriation of land used by the villagers. While China has a trial process, he fears he will not get a fair trial as the county government does not follow the law and that he will be incarcerated indefinitely.

[41] While the RPD accepts that China is an authoritarian state and that there is repression and coercion, particularly against organizations and individuals involved in rights advocacy and public interest issues, it dismissed the Applicant's fears on the basis that his issues are with the county government. As a local issue, and not one of interprovincial, national or international interest, the RPD found that this will not attract the attention of the CPP. Therefore, the Applicant was not at risk of state protection mechanisms being manipulated and would be treated according to the well defined code for civil and criminal procedures set out in Chinese law. In my view, the RPD selectively reviewed the documentary evidence, made factual errors and engaged in speculation when reaching that conclusion.

[42] In regard to criminal procedures, the RPD refers by footnote to the National Document Package (NDP), China, May 3, 2013, Item 9.5 Criminal Law Procedure of the Peoples' Republic of China (2012 amendment). This reference appears to be a Chinese legislation website (www.lawinfochina.com) containing an English and Chinese version of a statute entitled Criminal Procedure Law of the People's Republic of China (2012 Amendment). While this document may serve to demonstrate that a statement of procedural law concerning summons and arrests exists, the mere existence of such legislation does not establish that the procedure it defines is adhered to. Nor does it establish that a citizen of China who demonstrates, petitions or

speaks out against a local issue will not be at a risk of persecution and that the “rule of law” would be applied to him.

[43] For example, the May 3, 2013, Item 2.1 China, Country Reports on Human Rights Practices for 2012, United States Department of State Report, April 19, 2013 (US DOS Report) states:

... Authorities resorted to extralegal measures such as enforced disappearance, “soft detention”, and strict house arrest, including house arrest of family members, to prevent the public working up independent opinions.”

[...]

Other human rights problems during the year included: extrajudicial killings, including executions without due process; enforced disappearance and incommunicado detention, including prolonged illegal detentions at unofficial holding facilities known as “black jails”, torture and coerced confessions of prisoners; detention and harassment of lawyers, journalists, writers, dissidents, *petitioners, and others who sought to exercise peacefully their rights under the law; a lack of due process in judicial proceedings*; political control of courts and judges; closed trials; the use of administrative detention; restrictions on freedom to assemble;... a coercible birth control policy that in some cases resulted in forced abortion...

[emphasis added]

[44] The US DOS Report also states that there were widespread reports of activists and petitioners being committed to mental health facilities and involuntarily subjected to psychiatric treatment for political reasons. Further, that arbitrary arrest and detention remained serious problems. The law equips the police with broad administrative powers and the authority to detain individuals for extended periods without formal arrest or criminal charges. The report

does not indicate that these findings are limited only to incidents that garner interprovincial, national or international attention.

[45] While it is true that many of the examples of petitioners being arrested, detained or beaten involved petitioners who had travelled to Beijing (often forcibly returned by police dispatched from the petitioners' home town) or who had staged public demonstrations, the documentary evidence referred to by the RPD does not suggest that human rights abuses by authorities are limited to such circumstances. The US DOS Report states:

Local jurisdictions also frequently used civilian municipal security forces, known as "urban management" officials, to enforce administrative measures. The Ministry of Public Security coordinates the country's civilian police force, which is organized into specialized police agencies and local, county and provincial jurisdictions. Procuratorate oversight of the police was limited, and checks and balances were absent. Corruption at the local level was widespread. Police and urban management officials engaged in extrajudicial detention, extortion, and assault.

[46] The NDP also contains material that suggests that petitioners against land expropriation may be detained by local officials to prevent them from elevating their complaints. The Response to Information Request CHN 103768.E states:

Several sources report that some petitioners who seek redress in Beijing are held in unofficial "black jails" that provide a type of extrajudicial detention.... In a detailed report on China's black jails, Human Rights Watch explains that county, municipal, and provincial officials are subject to "financial and career advancement penalties" if many people from their locality petition for redress on Beijing... These officials then hire security personnel and "thugs" to abduct and detain petitioners in black jails to prevent them from filing their grievances...According to Human Rights Watch, detainees in the black jails are denied access to legal counsel, are subject to abuse, including "beatings, sexual violence, threats and intimidation", and are sometimes deprived of food, sleep or medical care...

[...]

According to the CHR, “activists who organize farmers and rural residents to stand up for their land rights are routinely harassed or imprisoned.... In an example of this, the CHR provides details of a case in which a village leader, who advocated for his village’s land rights, was sentenced to an 11-year prison term on charges of “obstructing official business”, “extortion”, and “undermining elections”...

[47] The documentary evidence also states that:

China is still far from complying with rule of law standards. Chinese local authorities sometimes detain people or otherwise subject them to punitive measures in a way that is not in accordance with Chinese laws. Similarly, some areas of China follow practices which do not conform with national laws and regulations.

[48] Thus, while the Applicant may not have been of interest to the CPP, the evidence on the record is that he was of interest to the village and county authorities. The documentary evidence does not support a reasonable inference that this would immunize him from potential detention and torture arising from his role in meeting with county officials and speaking out in opposition to the land expropriation. The fact that he was able to attend at a government office in another county to effect his divorce does not alter this conclusion.

[49] The RPD also relied on a Response to Information Request dated November 30, 2012, China: Circumstances and authorities responsible for issuing summonses/subpoenas; procedural law; whether summonses and subpoenas are given to individuals or households; format and appearance; whether legality can be challenged; penalties for failure to comply with a summons or subpoena, in which a visiting scholar from the Faculty of Chinese Law at the Chinese

University of Hong Kong stated that criminal summonses are served by the people's courts procuracies, public security or state security organs to criminal suspects or defendants who need not be placed under pre-trial detention and have to appear before the courts or undergo interrogation. According to the visiting scholar, the summons cannot last more than twelve hours and cannot be used more than once on the same person. Further, it is also possible to issue a coercive summons if it is found that there is a need to limit personal freedom or to those who do not comply with criminal summonses. However, the same source also states that the procedures for issuing summonses are not always followed in practice.

[50] Based on this Response to Information Request, the RPD found that, if returned to China, it was likely that the Applicant would be arrested for failing to comply with the Summons, but that he would be released within twelve hours. However, this reasoning considers only the breach of the Summons, which was inevitable as it was delivered on February 27, 2009 and required his attendance at the police station on February 26, 2009, and ignores the fact that the Summons refers to the crime of gathering or collecting a group of people to disturb the social order.

[51] Further, in finding that the Applicant would only be subject to a fine if he is convicted of an offence of disturbing public order, the RPD refers to a Response to Information Request dated April 24, 2006 which refers to a *China Daily* report. This document states:

...*China Daily* reported that the new Law on Public Security Administrative Penalties, which came into force in March 2006, introduced 165 new offences, including "disturbing public order at sports or cultural events," to an existing list of public behaviour deemed "illegal", and increased maximum fines associated with these offences to 5,000 yuan (US\$617) from 200 yuan

(US\$25)(1Mar.2006). Further information on the new law could not be found among the sources consulted by the Research Directorate.

[52] In my view, there was no evidence to support, and therefore it was not reasonable for the RPD to interpret this document as including the offence that the Applicant was accused of and to conclude that he would only be subject to a fine. The RPD speculates when it concludes that one of the one hundred and sixty five new offences would include the offence that the Applicant would be charged with. The Notice states that the Applicant was suspected of “gathering collective group of people to disturb social order” as well as interfering with the Straight West Seafood Base project and makes no reference to the new Law on Public Security Administrative Penalties. The RPD’s conclusion also again ignores the fact that the Summons refers to “gathering collective group of people to disturb social order, according to the stipulation of article 290 Section 1 of Criminal Law of the People’s Republic of China.” This suggests that the Applicant would be charged with a criminal and not an administrative offence.

[53] The RPD’s interpretation of the new Law on Public Security Administrative Penalties based on the description of that statute as contained in the *China Daily* report, and its interpretation of the procedural law safeguards based the statute entitled Criminal Law Procedure of the Peoples’ Republic of China (2012 amendment), is also not supported by information reported in the US DOS Report 2012 which states that:

On September 30, petitioner Mao Hengfeng was arrested in Beijing and forcibly returned to Shanghai. She was not permitted to meet with relatives or her lawyer. In early November her husband was informed that Mao had been ordered to serve 18 months in an RTL camp for “gathering a crowd to disturb the public order.” At year’s end she remained in detention.

[54] As noted above, the RPD did not find that the Applicant was not credible and, therefore, is taken to have accepted his evidence. The Applicant's unchallenged PIF statement was that:

Of the nine representatives that spoke that day four have been arrested, one has been released, three remain in custody and the other five including me are in hiding.

LIN Ming Kai was released after about one year. He was harassed by local cadres and hooligans after his release and he moved out of our village. One of the others arrested in May 2009, LIN Bi Xiang, was initially sent to a pretrial detention area but was then sent directly to jail without a trial where she remains as far as the villagers know. LIN Tang was arrested in July 2011 after being in hiding for some time. He remains in custody based on what his family has told the villagers. LIN Ying Rong [he was also one of the 2008 petition organizers] was a retired cadre of the village – he was arrested in early 2010 after successfully hiding until then. He remains in custody as far as the villagers know.

[55] This evidence is also corroborated by the letter from the Applicant's wife which describes the arrests, detentions, mistreatment and retaliatory actions taken by county officials against villagers. That description is also consistent with similar situations and responses described in the documentary evidence. Further, the statement of Lin Pei Bing, Lin Ying Rong's (Lin Ying Long) son, was that on February 24, 2010, Lin Ying Rong was arrested in Fuzhou and is still in custody. His son asked a Lianjiang County official when his father would be released and was told that as long as the Straight West Seafood Base project issue was not resolved his father's case would not be resolved. It is significant that in that case, the Lianjiang County Security Bureau issued an arrest notice stating that Lin Ying Rong was arrested on February 20, 2010 "as he is suspected of gathering a collective group of people to disturb social order." This is the same allegation contained in the Notice and Summons issued to the Applicant.

[56] This evidence was not addressed by the RPD and does not support its conclusions that the rule of law in China would be upheld by local officials or, if convicted, that the Applicant would quickly be released and subject only to a fine or that his subjective fear was not well-founded.

[57] Further, the RPD dismissed the Applicant's subjective fear of imprisonment because, in part, it found that he did not know what the other eight village representatives were charged with or convicted of. It speculates that they may have been charged with more serious offences (*Nicayenzi v Canada (Minister of Citizenship and Immigration)*, 2014 FC 595 at para 34). The Respondent refers to *Liu*, above, in support of the RPD's position. I would note that the paragraph the Respondent referenced describes the RPD's decision which was under review and not the Court's finding on the issue. While the Court ultimately did dismiss the judicial review, in that case, the RPD had found that the claimant was not credible and that he could not rely on a neighbour as a similarly situated person because he really did not know why the neighbour was arrested and his family had not obtained any information directly from the neighbour's family concerning the arrest, but had just heard rumours.

[58] The present situation is clearly distinct. Here, there is uncontested evidence that the reason for the arrest of at least one of the nine village representatives was the allegation that he had gathered a collective group of people to disturb social order, the same charge facing the Applicant, and that the individual remains in detention. That is, there was direct evidence from the Applicant and from the son of the similarly situated person which contradicts the RPD's findings and which was not addressed by the RPD.

[59] In my view, the RPD undertook a selective review of the evidence, overlooked or ignored evidence that supported the Applicant's claim, made unsupported inferences of fact and, as a result, reached an unreasonable conclusion. The objective documentary evidence supports the Applicant's fear and confirms that petitioners and others who have sought to peacefully exercise their rights under the law have been unlawfully detained and tortured and that this is not limited to matters attracting national attention.

[60] Accordingly, the decision must be set aside as it does not accord with the principles of justification, transparency and intelligibility, nor does it fall within the range of possible, acceptable outcomes.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed and the matter is remitted back to different RPD member for redetermination;
2. No question for certification is proposed or arises.

"Cecily Y. Strickland"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5662-13

STYLE OF CAUSE: JIAN GONG LIN v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: MARCH 3, 2014

JUDGMENT AND REASONS: STRICKLAND J.

DATED: JULY 28, 2014

APPEARANCES:

Douglas Cannon

FOR THE APPLICANT

Edward Burnett

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Elgin, Cannon & Associates
Barristers and Solicitors
Vancouver, British Columbia

FOR THE APPLICANT

William F. Pentney
Deputy Attorney General of
Canada
Vancouver, British Columbia

FOR THE RESPONDENT