

Federal Court



Cour fédérale

Date: 20140822

Docket: IMM-3708-13

Citation: 2014 FC 820

Ottawa, Ontario, August 22, 2014

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

LIJIE DING

Applicant

And

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Lijie Ding claims to be at risk in China because she practices Falun Gong. The Refugee Protection Division of the Immigration and Refugee Board rejected her refugee claim, primarily on credibility grounds.

[2] Ms. Ding asserts that she was treated unfairly in the refugee determination process by reason of the Board's failure to consider post-hearing evidence, and by its reliance on a document that was no longer found in its National Documentation Package for China. She

further asserts that the Board erred in requiring that she provide documentary corroboration of the facts giving rise to her claim, and in finding that there was a requirement of “good faith” in relation to her *sur place* refugee claim.

[3] As will be explained below, any breach of procedural fairness that may have occurred was not material to the outcome of the case. The Board did not err in finding that Ms. Ding’s credibility was undermined by the lack of documentation corroborating important aspects of her claim. While the Board did misstate the law with respect to *sur place* claims, it went on to conduct a proper analysis of this aspect of Ms. Ding’s claim. Consequently, the application will be dismissed.

I. The Post-Hearing Documents

[4] Ms. Ding was unable to produce the originals of certain identity documents at her refugee hearing, although photocopies of the documents were made available to the Board. Ms. Ding explained that she had lost her original documents at the Toronto Public Library the day before her refugee hearing. She claimed that she had reported the loss to library staff and to the police, but provided no evidence to corroborate this claim. There was no discussion at the hearing with respect to the filing of post-hearing documents by Ms. Ding in relation to this or any other issue.

[5] On the afternoon before the Board rendered its decision, Ms. Ding’s counsel sent a two-line letter to the Registrar of the Board, asking that an attached letter from the Toronto Public Library be forwarded to the Board member. The Library letter confirmed that Ms. Ding had reported the loss of a bag at the Library on the day before her refugee hearing.

[6] Although the letter appears in the Certified Tribunal Record, it is not clear that the Board saw the letter prior to rendering its decision as no reference to the letter appears in the Board's reasons.

[7] Ms. Ding acknowledges that she did not follow the application procedure prescribed in the Board's Rules for the leading of post-hearing evidence, and no explanation was provided to the Board for the late filing of the document. It is not even clear from counsel's letter that he was seeking to adduce the document as post-hearing evidence. In the circumstances, I am not persuaded that there was a breach of procedural fairness even if the Board did not consider the evidence in question.

[8] Even if I had found that the Board's failure to address the correspondence constituted a breach of procedural fairness, the fact is that at the end of the day, it accepted that Ms. Ding was a Chinese citizen and that she was married – the very facts that the marriage certificate and Hukou were intended to establish. While the Board did make a negative credibility finding against Ms. Ding with respect to the loss of her documents, it was only one of numerous negative credibility findings made by the Board. As a consequence, any breach of procedural fairness was not material to the outcome of the case.

II. The Board's Reliance on a Non- National Documentation Package Document

[9] Ms. Ding claimed that the Public Security Bureau (PSB) had come looking for her at her home on at least eight occasions. When asked if the PSB had left a summons for her at her home, Ms. Ding was unable to respond to the question, and no such summons was produced by Ms. Ding at her refugee hearing.

[10] The Board noted that the PSB often leaves a summons with family members when it is seeking an individual. While recognizing that this does not always occur, the Board held that if the PSB visited Ms. Ding's home on eight occasions, this would suggest that it had more than a casual interest in her. In these circumstances, the Board concluded that a summons could reasonably have been expected to have been left at her home.

[11] In support of this finding, the Board referred to a 2004 Response to Information Request relating to the PSB's use of summonses, noting in a footnote to the decision that this document was no longer contained in the Board's National Documentation Package for China. Ms. Ding asserts that she was denied procedural fairness because the Board relied on what was effectively extrinsic evidence, without giving her an opportunity to address it.

[12] I agree with Ms. Ding that it was unfair for the Board to have relied on the document in question. The whole purpose of a National Documentation Package is to ensure that everyone involved has access to the relevant country condition information, and that refugee claimants are aware of the documents that will be relied upon by the Board. While it was open to the Board member to have had regard to the document in question, fairness required that the Board first put Ms. Ding on notice of its intention to do so and afford her an opportunity to address the document, if she deemed it necessary.

[13] That said, Ms. Ding has not identified any material differences between the 2004 document cited by the Board and the document that replaced it in the current National Documentation Package for China. Accordingly, once again, any breach of procedural fairness that occurred was not material to the result in this case.

III. The Lack of Corroborative Evidence

[14] Ms. Ding argues that the Board erred in making negative credibility findings based upon the lack of corroborating documents supporting her claim.

[15] This Court has frequently held that although there is a presumption that sworn evidence is true and will not be undermined by a lack of corroborative evidence, there is an exception to this rule. That is, a negative inference may be drawn against a refugee claimant where the Board does not accept the claimant's explanation for failing to produce evidence when it would reasonably be expected to be available: see, for example, *Rojas v. Canada (Minister of Citizenship and Immigration)*, 2011 FC 849 at para. 6, [2011] F.C.J. No. 1048. That is what happened here, and no error has been demonstrated in this regard.

IV. The "Good Faith" Issue

[16] Ms. Ding claimed that she practiced Falun Gong, both in China and in Canada, and that her practice in this country gave rise to a *sur place* claim. Having found that she was not a Falun Gong practitioner in China, the Board went on to consider whether Ms. Ding was a genuine Falun Gong practitioner in Canada.

[17] In addressing this question, the Board first noted that "it is reasonable to expect 'good faith' in making a refugee claim". The Board then observed absent a good faith requirement, refugee claimants could unilaterally create conditions requiring the granting of refugee protection: Board decision at paragraph 33.

[18] The parties agree that this is not a correct statement of Canadian refugee law and that there is no good faith requirement for *sur place* refugee claims: *Ghasemian v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1266, [2003] F.C.J. No. 1591.

[19] A refugee claimant may take steps – for example speaking out in public against the government in question after arriving in Canada – purely for the purpose of bolstering his or her refugee claim. Even if that were the case, the Board would still be required to consider whether the activities in question could give rise to a well-founded forward-looking fear of persecution in the claimant’s country of origin: *Yang v. Canada (Minister of Citizenship and Immigration)*, 2012 FC 849, [2012] F.C.J. No. 961.

[20] That said, the fact that a claimant has endeavoured to manipulate his or her situation in order to make a refugee claim can still be relevant to the issue of credibility: *Ghasemian*, above at para. 32.

[21] Although the Board misstated the law in relation to the question of good faith at the outset of its analysis, when its analysis is read in its entirety it is apparent that the Board did not impose a requirement of good faith on Ms. Ding in relation to her *sur place* claim. Rather, the Board examined the totality of the evidence before it in assessing whether Ms. Ding was in fact a genuine Falun Gong practitioner in Canada.

[22] The Board had numerous and serious credibility concerns with respect to Ms. Ding’s story. These related to, amongst other things, her delay in claiming refugee protection, her lack of documentary corroboration for any of her claims, and the fact that her husband had been able

to live safely and carry on business in China notwithstanding her alleged involvement with Falun Gong.

[23] The Board was entitled to take its negative credibility findings into account when assessing Ms. Ding's *sur place* claim: *Jiang v. Canada (Minister of Citizenship and Immigration)*, 2012 FC 1067 at para. 27, [2012] F.C.J. No. 1149. Having found that Ms. Ding's general integrity was in doubt, the Board concluded that she had not established that she was a genuine Falun Gong practitioner in Canada, or that she would be at risk in China. This conclusion was reasonably open to the Board on the record before it.

V. Conclusion

[24] For these reasons, the application for judicial review is dismissed. I agree with the parties that the case does not raise a question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed.

"Anne L. Mactavish"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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