

Federal Court



Cour fédérale

Date: 20151218

Docket: IMM-1558-15

Citation: 2015 FC 1402

Ottawa, Ontario, December 18, 2015

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

FeiHu REN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is a 22 year old Chinese citizen who has a grade 6 education. He was brought up by and lived with his grandparents as a child. The Applicant was at his grandfather's bedside when he passed away in January 2011 and, in his dying moments, his grandfather told him he was going to a peaceful place. After his grandfather's death, the Applicant became

frustrated and depressed, and also afraid of suffering “spiritual pains” caused by losing family members in the future.

[2] A month or so after his grandfather’s death, the Applicant told his grandmother of his concerns after the loss of his grandfather. His grandmother told the Applicant not to worry because his grandfather went to Heaven, a place full of happiness and peace. She also told the Applicant that she and his grandfather were Christians. The Applicant was intrigued by what his grandmother told him and believed that, if he became a Christian, he would meet his grandfather again in Heaven. Thus, the Applicant decided he would attend his grandmother’s house church which, for many years, had been operating without being detected.

[3] The Applicant first attended the house church with 13 other people on February 6, 2011. After this first attendance, he then attended every Sunday. On May 6, 2012, while the Applicant was attending a service, the leader’s cell phone rang and the congregants were told Public Security Bureau [PSB] agents were approaching the house. The Applicant and his grandmother fled and went to the home of the Applicant’s aunt, where they went into hiding. Two days later, the Applicant learned that PSB agents had gone to his home and that of his grandmother to arrest them because of accusations of illegal religious activities and being “key members” of an illegal cult. The PSB agents questioned the Applicant’s parents about his and his grandmother’s possible whereabouts; they returned the next day with a summons notice for each of the Applicant and his grandmother.

[4] Subsequently, the Applicant's parents determined that the Applicant had to leave China, and he did so on July 31, 2012. With the assistance of a smuggler, the Applicant arrived in Canada on August 1, 2012. After his arrival in Canada, the Applicant claimed refugee protection on the basis of his Christianity, fearing that if returned to China he would be arrested and jailed due to his illegal religious activities and unable to practice his religion freely. His claim was rejected though by the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada in a decision dated March 9, 2015. The RPD found the Applicant not to be credible and that he is not a genuine Christian and, therefore, denied his claim for refugee protection. The Applicant now seeks judicial review of the RPD's decision pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, asking the Court to set aside the RPD's decision and order that his claim be re-determined by a new panel of the RPD.

II. The RPD's Decision

[5] Although the RPD acknowledged that sworn testimony is presumed to be truthful unless there is reason to doubt its truthfulness, the RPD nonetheless found multiple credibility concerns. The panel member noted that, while none of these concerns individually were sufficient to negate the Applicant's claim, the cumulative effect of all of them was such that there was insufficient credible and trustworthy evidence to determine that the Applicant was a Convention refugee or a person in need of protection.

[6] The RPD determined that if the Applicant was wanted for arrest, as he claimed, he would have been discovered when he left Beijing using his own passport since Chinese authorities track

all exits thorough airports. The Applicant said his passport was not scanned by an exit control officer, but the RPD found this was neither plausible nor credible in view of the Golden Shield Project and drew a negative inference. The RPD concluded, on a balance of probabilities, that no bribe had been paid to any exit control officers in China and the Applicant's testimony in this regard impugned his credibility because it suggested there was no registration in the computer banks of the Chinese authorities that the Applicant was wanted by them.

[7] In assessing the Applicant's religious knowledge, the RPD first focused upon a Guan Yin tattoo on his back, noting that it was a Buddhist religious figure. The Applicant said he had the tattoo done when he was 19 because he liked the design. Nevertheless, the RPD found this must have happened after the Applicant had been allegedly attending Christian services. The RPD stated that, "in the context of other glaring problems" about the Applicant's religious knowledge, his Buddhist tattoo led to a negative inference since it was "an obvious violation of the Second Commandment in the Bible."

[8] The RPD next asked the Applicant numerous questions concerning his knowledge of Christianity "in order to assess the genuineness of his alleged Christianity." Amongst other things, the RPD found:

- the Applicant was evasive about how much of the Bible he had read;
- he was able to recite the Lord's Prayer and Apostles Creed;
- after arriving in Canada, the Applicant did not immediately attend a church in August or September 2012, which prompted the RPD to make a negative inference since a genuine Christian would attempt to find a church as soon as possible after arrival;
- a negative inference should be drawn from the Applicant's lack of diligence in obtaining a letter from the pastor of the church in Toronto, and that this letter,

contrary to the Applicant's testimony, indicated he started attending the church in August 2012;

- he was baptized on October 20, 2012, based on his previous baptism in China in September 2011;
- when asked about where to find the Ten Commandments in the Bible, the Applicant incorrectly answered and failed to refer to the Old Testament, Moses, or the tablets with the Ten Commandments "as one might expect of a person in the claimant's situation";
- the Applicant incorrectly stated that the Living Water church where he is a member is Evangelical, rather than Pentecostal;
- he was unable to pinpoint where in the Bible there is a reference to the Pentecostal, prompting the RPD to note that a person who had been attending a Pentecostal church since 2012 "should be able to identify correctly the Biblical basis for their branch of Christianity";
- the Applicant was unable to define a Pentecostal Christian, and because he identified only one core belief of Pentecostal Christians (one the RPD said was "hardly unique" to Pentecostalism) the RPD said this "speaks very poorly of his alleged Christian knowledge, belief and identity";
- that because he failed to refer to the Holy Spirit or the Holy Day of Pentecost which marks the events in Book of Acts, chapter 2, the RPD drew a negative inference about the Applicant's Christian identity;
- when asked about his core or central beliefs as a Christian, the Applicant said: "as my grandmother said, in the future we will all be together", an answer which the RPD said "made no mention of the fundamental tenets of Christianity" and the Applicant's belief in an afterlife "is a common thread in many religions". According to the RPD, the fundamental tenets of Christianity are:
 - 1) "that genuine Christians believe that they are saved by the death and resurrection of Jesus Christ," and
 - 2) "that through baptism, repentance, and belief, they can be born again and receive eternal life;"
- after four years as a Christian, the Applicant had not finished reading the entire Bible and could not name the books of the Bible;
- although he could name the Old and New Testaments, he confused which Testament was about Jesus and which was about Jehovah, stating that: "Maybe I got it reversed.";

- although the Applicant could name three of the four Gospels in the New Testament, the RPD drew a negative inference when he then looked at the index of the Bible he had brought with him, finding this to be inappropriate conduct;
- the Applicant mixed up some Buddhist concepts with Christianity, which prompted the RPD panel member to state: “It is incomprehensible to me that any genuine Christian would spout Buddhist concepts when asked about the Christian Holy Trinity”; and
- although the Applicant was “broadly correct” about the significance of baptism, he was vague when asked what the first sin in the Bible was and did not identify Adam and Eve, and did not know about the Baptism of Jesus in the first verses of the Gospel according to Mark.

[9] After questioning the Applicant as to his religious beliefs, the RPD then assessed the Applicant’s church attendance in Canada. The RPD noted the discrepancy between the pastor’s letter and the Applicant’s testimony, in terms of when he started attending, and determined that the Applicant had “proffered a document containing false or fraudulent assertions,” leading to a negative inference. The RPD next asked which of the Ten Commandments the Applicant violated by not attending church each Sunday (which he correctly answered as being the Fourth, to keep the Sabbath holy), but found that if the Applicant is a genuine Christian, he would find a job which would allow him to attend services. The RPD drew a negative inference from the Applicant’s explanation he had to work every day, including Sunday, to pay back the smuggler.

[10] The RPD found the Applicant lacked knowledge about Christianity and did not display a reasonable level of commitment to Christian activities in Canada, and thus drew an adverse inference “from his lack of enthusiasm or application to learning about Christianity.” The RPD also found there was insufficient credible evidence to show he was a genuine practicing Christian. The RPD therefore concluded that the Applicant was never a genuine practicing Christian, and that on a balance of probabilities he was not sought by the PSB. Consequently, the

RPD gave little or no weight to the summons documents, considering the easy availability of fraudulent documents in China. As the RPD found the Applicant was manufacturing his claim to be a Christian, it placed little weight on other documents he had submitted (i.e., a baptismal certificate, baptismal photographs, and a letter from the church in Canada).

[11] The RPD also found that if the Applicant had practiced Christianity in a house church in China, the documentary evidence did not show that the police raided such churches in the area of the Applicant's home province, Hebei, and arrested members. Consequently, after an extensive review of the case law and documentary evidence in this regard, the RPD determined that the Applicant would be free to practice in a small church in Hebei. The RPD further determined on a balance of probabilities that, even if the Applicant had attended a house church in Hebei, it was not raided and the PSB was not seeking to imprison him. Furthermore, since the Applicant was not wanted by the PSB, and considering the country documentation that home or small group churches such as that of the Applicant are generally tolerated in Hebei, the RPD concluded that the Applicant would not face a serious possibility of persecution in attending a small or house church in Hebei. Thus, the RPD determined that the Applicant was not a Convention refugee nor a person in need of protection.

III. Standard of Review and Issues

[12] The applicable standard of review is reasonableness for the RPD's assessment of the evidence before it, including the Applicant's credibility and the genuineness of his religious beliefs (*Hou v Canada (Citizenship and Immigration)*, 2012 FC 993 at paras 8 and 15, [2014] 1 FCR 405).

[13] Although the Applicant raises various issues with respect to the RPD's decision, the only substantive issue to address is the reasonableness of the decision. For the reasons stated below, I have determined that the RPD's decision is not reasonable and that the matter must be returned for re-determination by a different panel member of the RPD in accordance with these reasons.

IV. Analysis

[14] There are three reasons why the RPD's decision cannot be justified and is not "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 47, [2008] 1 SCR 190). First, the RPD made an unreasonable implausibility determination about the Applicant's exit from China. Second, it unreasonably assessed the Applicant's Christian beliefs. Third, it unreasonably assessed the summons for the Applicant's arrest.

A. *The Applicant's Exit from China*

[15] The Applicant testified that he used the services of a smuggler to help him leave China without being found by the Chinese authorities, and that the passport in his name was not scanned at the Beijing airport. The RPD, however, determined this was implausible, stating as follows:

[39] The claimant testified that his passport was not scanned at Beijing airport. However, if the passport was not scanned, then given the complexity of the Golden Shield system, it is reasonable to expect that the airline could not issue a boarding pass to the person concerned, bearing in mind the reference above to "completely computerized inspection procedures and integrated operations." Passports are scanned, and the passport scan produces computer records on a screen in front of the officer monitoring

departures from the country to verify that the person concerned is not a wanted criminal.

[40] In this regard, I find the claimant's testimony that his passport was not scanned neither plausible nor credible, which leads me to draw a negative inference regarding his credibility.

[16] This determination by the RPD cannot be justified in view of this Court's decisions in *Zhang v Canada (Citizenship and Immigration)*, 2008 FC 533, 169 ACWS (3d) 848 [*Zhang*], and *Sun v. Canada (Citizenship and Immigration)*, 2015 FC 387 [*Sun*]. It is not implausible that a person could leave China on their own passport with the assistance of a smuggler who bribed the appropriate person; "one official with access to the computer system would be sufficient" (*Zhang* at para 11). The Applicant's explanation that he engaged a smuggler who told him to go to a particular exit is not implausible and can account for why he was able to leave on his own passport. As the Court stated in *Sun*:

[26] The Board's finding that it was implausible the Applicant would be able to leave China undetected on his own genuine passport while an arrest warrant was issued against him...is equally questionable. The Board based its finding mainly on a Response to Information Request reporting the existence and expansion of a national Chinese policing database used by the PSB and at ports of entry and exit of the country. ...It is well established that implausibility findings may only be made in the "clearest of cases" (*Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776, at para 7), where "the facts as presented are either so far outside the realm of what could reasonably be expected that the trier of fact can reasonably find that it could not possibly have happened" (Lorne Waldman, *Immigration Law and Practice* (Markham, ON: Butterworths, 1992), s 8.22, cited in *Divsalar v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 653, at para 24). ...

B. *The Test of the Applicant's Christian Knowledge*

[17] In *Gao v Canada (Citizenship and Immigration)*, 2015 FC 1139 [*Gao*], Justice Southcott recently reviewed this Court's jurisprudence about the concerns that can arise when the RPD assesses the genuineness of a claimant's religious belief, and concluded as follows:

[26] My reading of the jurisprudence is that it is not improper for the Board to engage in religious questioning in an effort to gauge the genuineness of a claimant's beliefs, but that such questioning and resulting analysis must indeed focus on the genuineness of those beliefs and not whether they are theologically correct. This can be a difficult task for the Board, as it is entitled to consider whether the claimant holds a level of religious knowledge that would be expected of someone in the claimant's position but should not reach an adverse conclusion based on minutiae or holding the claimant to an unreasonably high standard of religious knowledge.

[18] In other words, it is not the objectivity of a claimant's religious beliefs that matters or their validity or correctness but, rather, the sincerity or genuineness of the claimant's religious beliefs. In assessing a claimant's religious beliefs, the RPD should not adopt an unrealistically high standard of knowledge or focus on a few points of error or misunderstandings to a level which reaches a microscopic analysis (see: *Zhang v Canada (Citizenship and Immigration)*, 2012 FC 503, at para 12, 409 FTR 264, and the cases cited therein). Moreover, case law has established that the RPD's assessment of a claimant's religious beliefs will be unreasonable where it expects answers to questions about a claimant's religion to be equivalent to the RPD's own knowledge of that religion (see: *Ullah v. Canada (Minister of Citizenship and Immigration)*, 2000 FCJ No 1918, at para 11).

[19] The RPD is tasked with assessing a claimant's credibility "and not the soundness of his theology. A claimant may have a poor understanding of the minutiae of the religious doctrine but that does not, necessarily, mean his faith is not genuine" (*Wang v Canada (Citizenship and Immigration)*, 2012 FC 346, at para 9, 214 ACWS (3d) 558). In short, the RPD's questioning of a claimant about their religious beliefs will be defensible only if it goes to questions which focus on the sincerity of belief, and any finding of a lack of genuinely or sincerely held religious belief is founded not on the correctness of the answers but, rather, on a claimant's inconsistent, vague, non-responsive or contradictory answers to such questions.

[20] In this case, the RPD's finding that the Applicant is not a genuine Christian is not reasonable. Although some of the RPD's questions as to the Applicant's religious beliefs were reasonable and some of the Applicant's answers were vague, the RPD nevertheless conducted a demanding, indeed a microscopic, investigation and inquisition of the Applicant's knowledge of Christianity. This is demonstrated not only in the transcript of the hearing but also in the RPD's reasons for its decision, both of which clearly show that the Applicant was subjected to an extended quiz on religious trivia and the depth of his knowledge of parts of the Bible.

[21] The RPD reached its conclusion that the Applicant is not a Christian based on an assessment of the theological correctness of his responses and not on the sincerity of his religious beliefs. The RPD expressed its conclusion in this regard as follows:

[114] The panel does not believe, on a balance of probabilities, that the claimant is a genuine Christian and, therefore, accordingly, the claimant would not necessarily practice Christianity should he return to China today.

[115] On a balance of probabilities, the panel finds that the claimant participated in any Christian activities in Toronto in order

to substantiate a manufactured claim to be a Convention refugee. As a result, and since the panel is not persuaded that the claimant was a genuine Christian in China prior to coming to Canada, the panel attaches little weight to the baptismal certificate, photographs, and document from the church in Canada. The panel is of the view the claimant has obtained these documents to further his claim to be a Convention refugee and a person in need of protection, and that they alone or any basic Christian knowledge which he may have demonstrated in the hearing, do not corroborate that the claimant actually is or ever was a genuine Christian.

[116] For all the aforementioned reasons, the panel makes a determination, on a balance of probabilities, that the claimant is not Christian, was not a Christian in China and is not being sought by the PSB in China.

[footnote omitted]

[22] In this case, while some of the RPD's questions about the Applicant's faith appear basic or fair, most of the questions in this regard assess the correctness of the Applicant's theological knowledge, so much so that the RPD lost sight of the central question of the genuineness or sincerity of the Applicant's beliefs. The sheer number and scope of questions about the Applicant's religious beliefs and knowledge undermine the RPD's decision because its focus was on specific and detailed aspects of religious doctrine rather than the genuineness of the Applicant's beliefs. The RPD's questioning of the Applicant's religious beliefs and knowledge in this case was such that many individuals in Canada who regard themselves as being a Christian would most likely fail the inquisition and test to which the Applicant was subjected.

[23] Moreover, the RPD's finding that the Applicant "manufactured" his claim requires a high standard of proof since it raises a question of intent to deceive. The RPD's suggestion of some fraudulent intent on the Applicant's part shows it held the Applicant to "a high standard of

religious knowledge well beyond the relatively low standard of religious knowledge necessary to ground sincerity of belief” (see: *Huang v Canada (Citizenship and Immigration)*, 2012 FC 1002 at para 15).

C. *The Arrest Summons*

[24] The RPD determined that, based on the Applicant’s credibility, he was never a member of an underground church in China and was never sought or wanted by the PSB. In this regard, the RPD stated as follows:

[111] As a result of the various concerns noted above, I conclude, on a balance of probabilities, that he was never a member of any underground house church in China, and that he was never wanted or sought by the PSB.

[112] I therefore conclude that the Summons document supplied by the claimant should be given little or no weight, in this context, and also by reference to the documentary evidence regarding the prevalence of forged or fraudulent documents in China.

[25] This conclusion by the RPD is problematic and, consequently, unreasonable. The general prevalence of and easy access to fake or fraudulent documents in a country does not necessarily mean that a document from such a country is therefore to be given little or no weight. On the contrary, the RPD has to deal separately and squarely with the documentary evidence before coming to an overall credibility finding. As noted by the Court in *Iqbal v Canada (Citizenship and Immigration)*, 2006 FC 1219, 152 ACWS (3d) 308:

[8] ... it was incumbent on the RPD to make its global credibility finding after considering all the evidence. To properly do so, it was necessary for the RPD to first deal with the authenticity of the documentary evidence in its own right. The RPD did not do this. In fact, quite apart from the issue of the Applicant’s credibility, the RPD had no evidence, other than a

generalized suspicion, upon which to base its conclusion that the documents submitted are fraudulent. The fact that there is “easy accessibility of fraudulent documents in Pakistan” does not mean that the particular documents before the RPD are in fact fabricated. On this basis alone, I find that the rejection of the documentary evidence is a capricious finding.

[26] More to the point is this Court’s decision in *Lin v Canada (Citizenship and Immigration)*, 2012 FC 157, 405 FTR 21 [*Lin*], where the applicant was a man who, with the assistance of a smuggler, fled from China due to his alleged Christianity. The Court in *Lin* found that the ready availability of fraudulent documents in China does not mean that a claimant’s document is fraudulent, and that the RPD still must determine whether any document presented is genuine:

[53] ... Just because fraudulent documents are readily available in the PRC [China] does not, for that reason alone, mean that the Applicant’s documents were fraudulent. As Justice Konrad von Finckenstein said in *Cheema v Canada (Minister of Citizenship and Immigration)* 2004 FC 224 at paragraph 7

The documents may well be forgeries, however evidence of widespread forgery in a country is not, by itself, sufficient to reject foreign documents as forgeries. ...evidence of widespread forgery merely demonstrates that false documentation could be available to the Applicant.

[54] The RPD’s reasoning would mean that even genuine documents would not be acceptable. The fact that inauthentic documents are available does not relieve the RPD of the duty to determine whether particular documents presented by a claimant are genuine or not. ...

[55] ...It may be that fraudulent documents are widely available in the PRC. However, this does not mean that every document that comes out of the PRC is necessarily fraudulent. The RPD was obliged to examine and weigh the actual documents in front of it, rather than simply rejecting them out of hand.

[27] There is no doubt it is open to the RPD to question the authenticity of a document such as the arrest summons presented by the Applicant in this case. However, it cannot do so without subjecting the document to some independent analysis. In this case, the RPD expressly found that the Applicant, on a balance of probabilities, was not a member of an underground house church and was not being sought by the PSB. But these findings alone are not sufficient for the RPD to “therefore conclude that the Summons document supplied by the claimant should be given little or no weight, in this context...”. The RPD was obliged to consider the genuineness of the summons and was not entitled to reject or diminish its significance solely on the basis of its other, earlier credibility findings. It was unreasonable for the RPD here to impugn the validity or genuineness of the summons on the basis of its prior negative inferences about the Applicant’s credibility and the availability of fraudulent documents in China.

V. Conclusion

[28] For the reasons stated above, this application for judicial review is allowed and the matter is returned for re-determination by a different panel member of the RPD in accordance with these reasons. Neither party suggested a question for certification; so, no such question is certified.

JUDGMENT

THIS COURT'S JUDGMENT is that: the application for judicial review is allowed; the matter is returned for re-determination by a different panel member of the Refugee Protection Division of the Immigration and Refugee Board in accordance with the reasons for this Judgment; and no serious question of general importance is certified.

"Keith M. Boswell"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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