

Federal Court



Cour fédérale

Date: 20160630

Docket: IMM-4961-15

Citation: 2016 FC 742

Ottawa, Ontario, June 30, 2016

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

JIN ZHENG NI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision by a member of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board of Canada. The RAD decision upheld a decision of the Refugee Protection Division (RPD) which held that the applicant is neither a Convention refugee under section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], nor a person in need of protection within the meaning of section 97 of the IRPA.

[2] In order to decide this matter, it is not necessary for me to address the principal assertion by the applicant, which is that the RAD erred in considering the circumstances of the applicant's departure from China. Specifically, the applicant's principal assertion is that the RAD erred by stating that the RPD's negative credibility findings were open to it, rather than by independently assessing the relevant evidence and reaching its own conclusion.

[3] I am satisfied that, even if the RAD's analysis in this regard was flawed, there is no argument of any flaw in the RAD's conclusions that:

- 1) The applicant now chooses to attend a Chinese Baptist (Protestant) Church rather than the Church of Almighty God (which is his previous Church, allegedly targeted by Chinese authorities); and
- 2) A Protestant in Fujian Province in China may practise his religion without serious risk.

[4] It follows from these two conclusions that, regardless of the circumstances of his departure from China, the applicant does not now face the risks contemplated in sections 96 and 97 of the IRPA.

[5] The applicant argues that the RPD's flawed credibility findings (which it says the RAD did not independently assess) were treated as determinative of its decision and polluted its subsequent analysis of issues such as the applicant's religious identity and the risks associated with certain religious practices in China. I am not persuaded that this is the case. I note also that the RAD's findings that I find to be determinative for the purposes of my decision are unchallenged.

[6] The applicant also argues that I should set aside the RAD's decision because it misapplies the standard of review to be applied by the RAD to the RPD's decision, as set out in *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93, aff'g 2014 FC 299. I am not inclined to follow the applicant's suggestion in this regard. Firstly, I am of the view that any such misapplication was not decisive, and therefore it is not necessary to deal with the standard of review issue. Secondly, the RAD's decision was issued before the Federal Court of Appeal released its decision modifying the standard of review as described at first instance. Accordingly, there is little practical value to future deciders in carefully parsing the RAD's standard of review analysis.

[7] The parties agree that this matter does not give rise to any serious question of general importance.

JUDGMENT

THIS COURT'S JUDGMENT is that the present application is dismissed. There is no serious question of general importance.

“George R. Locke”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4961-15

STYLE OF CAUSE: JIN ZHENG NI v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 21, 2016

JUDGMENT AND REASONS: LOCKE J.

DATED: JUNE 30, 2016

APPEARANCES:

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