

**Date: 20060419**

**Docket: IMM-3428-05**

**Citation: 2006 FC 499**

**Ottawa, Ontario, April 19, 2006**

**PRESENT: The Honourable Mr. Justice Harrington**

**BETWEEN:**

**XIN YI JIANG  
(XINYI JIANG)**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] In September 2003, Ms. Jiang was divorced, in poor health and unhappy. Following discussion with one of her friends she attended a Christian church, and after practicing that faith for several months she realized her life had become enriched spiritually. No more emptiness, life again had meaning.

[2] In April 2004, she was part of a congregation celebrating Easter at a private home. A lookout reported that the police were on their way. She immediately ran out of the house and went

into hiding. She came to learn that the police searched her own house and were accusing her of being involved in an illegal religious gathering. With the aid of a smuggler, she left China's Guangdong province and came to Canada via Hong Kong. She claimed to be a refugee within the meaning of the United Nations Convention or a person otherwise in need of international protection.

[3] The Refugee Protection Division of the Immigration and Refugee Board determined that she was neither a Convention refugee nor a person in need of protection. This is a judicial review of that decision.

[4] The Board considered that the central and primary issues were her credibility, and her country of nationality. It is not in dispute that she entered Canada with a photo substituted Canadian passport. The Board was of the view that "...the claimant failed to provide sufficient credible or trustworthy evidence to establish and discharge her onus that she is from mainland China and has good grounds for fearing persecution and that there is a serious possibility that she would be persecuted should she return..."

[5] The Board began with an analysis of her identity. She submitted her resident identity card, going back to 1985, an original Hukou (permanent resident household registration form) issued in 2001 and an original divorce certificate also issued in 2001.

[6] At the hearing, the Board brought to Ms. Jiang's attention that there were some features of the Hukou which seemed to be irregular. Ms. Jiang said that all she knew is that this is how it was sent to her by mail, and that all new Hukous were issued that way. Following the hearing, the Board

sent her resident identity card and Hukou, but not the divorce certificate, to the R.C.M.P. for analysis.

[7] The R.C.M.P. Forensic Laboratory Report contains a summary section which has two parts to it, Authenticity and Alterations. With regard to authenticity, a document may be considered genuine, counterfeit or inconclusive. Both documents were considered inconclusive. As to alterations, the resident identity card was considered unaltered. However, the Hukou was considered to have been altered in that some pages may have been substituted.

[8] Basing itself on this report, the Board found on the balance of probabilities that the resident identity card was genuine and that the Hukou was counterfeit. Ms. Jiang was given the opportunity to respond to the R.C.M.P.'s report, but did not do so.

[9] The Board drew a negative inference from that fact and also noted that counterfeit documentary evidence is easily obtainable in China. It then embarked on an analysis which defies logic. On the one hand, Ms. Jiang was found to be whom she claimed to be i.e. a Chinese National. This was based on the 1985 resident identity card. But then it said: "The gravity of lack of credibility of the Hukou, a significant document which is required in the PRC is such that leads to find that this lack of credibility extends to all the evidence emanating from the claimant and renders her entire evidence regarding her country of nationality and the basis of her claim not credible." The Board considered that she failed to "establish her identity with respect to nationality", and so did not embark on a further analysis as to whether or not she was indeed a Christian, and, if so, if she had a well-reasoned fear of persecution. What the Board appears to be saying is that Ms. Jiang did not

establish that she was resident in China in 2003 and 2004 when the events leading up to her refugee claim allegedly occurred. However, it must be borne in mind that even a genuine Hukou would not have established that fact either.

[10] The experts were unable to offer an opinion that the Hukou was counterfeit. The R.C.M.P.'s report was inconclusive. It was patently unreasonable to take this conclusion, convert it in a finding of fact that the Hukou was counterfeit and then dismiss the claim without further analysis.

[11] Because counterfeit documents were readily available, one may speculate that the documents in question were counterfeit, but that is not enough to serve as an evidentiary basis for a proper inference. As Mr. Justice von Finckenstein said in *Chima v. Canada (Minister of Citizenship and Immigration)* 2004 FC 224:

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. As the Respondent noted evidence of widespread forgery merely demonstrates that false documentation could be available to the Applicant.

[12] There has to be a basis for an inference. As Lord Wright said in *Grant v. Australian Knitting Mills, Ltd.*, [1935] ALL E.R. Rep. 209 (JCPC) at pages 213 - 214:

“...This, however, does not do justice either to the process of reasoning by way of probable inference which has to do so much in human affairs or to the nature of circumstantial evidence in law courts. Mathematical, or strict logical, demonstration is generally impossible: juries are in practice told that they must act on such reasonable balance of probabilities as would suffice to determine a reasonable man to take a decision in the grave affairs of life. Pieces of evidence, each by itself insufficient, may together constitute a

significant whole, and justify by their combined effect a conclusion....”

[13] The one piece of evidence, the authenticity of which was found by the experts to be inconclusive, cannot support the Board’s determination. As noted by Mr. Justice O’Halloran of the British Columbia Court of Appeal in *Faryna v. Chorny* (1952) 2 D.L.R. 354 at 356:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

[14] The finding of fact was patently unreasonable or, to use the words of Section 18.1(4) of the *Federal Courts Act*, was made: “in a perverse or capricious manner or without regard to the material before it...” Ms. Jiang’s story had to be subjected to further examination.

[15] The application shall be allowed. There is no question of general importance to certify.

### **ORDER**

**THIS COURT ORDERS that** the application for judicial review is allowed and the matter is referred back to the Refugee Protection Division of the Immigration and Refugee Board for a redetermination by a differently constituted panel.

“Sean Harrington”

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Judge

**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** IMM-3428-05

**STYLE OF CAUSE:** XIN YI JIANG (XINYI JIANG) v.  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** April 11, 2006

**REASONS FOR ORDER:** HARRINGTON J.

**DATED:** April 19, 2006

**APPEARANCES:**

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