

Federal Court



Cour fédérale

**Date: 20220426**

**Docket: IMM-4865-20**

**Citation: 2022 FC 615**

**Ottawa, Ontario, April 26, 2022**

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

**BETWEEN:**

**ZI XIN SU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The Applicant seeks judicial review of decision by an immigration officer [the Officer], dated September 29, 2020 [the Decision], refusing her application for permanent residence on humanitarian and compassionate [H&C] grounds under s 25 of the *Immigration and Refugee*

*Protection Act*, SC 2001, c 27 [IRPA]. The Applicant argues that she will face hardship if forced to return to China because she has been living in Canada for over 17 years, she is a Christian who will face discrimination in China, and she lacks the necessary documentation and social connections to gain employment and reintegrate into Chinese society.

[2] As explained in greater detail below, this application is allowed, because the Officer failed to consider the Applicant's submissions surrounding hardship she would experience in China as a result of suppression of her religious identity.

## II. **Background**

[3] The Applicant is a Chinese national who has been living in Canada since 2003. She claims that prior to coming to Canada, she began practicing Christianity in China at an unregistered church, which she says the police raided. The Applicant was criminally charged with participating in unlawful meetings and possessing illegal religious material, and she was ordered to report to the police station. Instead, she sought the assistance of a smuggler and fled China for Canada in February 2003.

[4] Upon arriving in Canada, the Applicant made a refugee claim, which was refused in 2004. She obtained a work permit in 2005 and subsequently submitted applications for permanent residence on H&C grounds and pre-removal risk assessment, but all were unsuccessful. In February 2019, the Applicant submitted another H&C application, which was refused in September 2020 in the Decision that is the subject of this judicial review.

[5] Throughout the years the Applicant has remained in Canada, her work permit has been extended and she has been employed at a company that produces rice pasta, where she has worked her way up from a manual labourer to a team leader. Since arriving in Canada, the Applicant has also been consistently involved in her church, Living Stone Assembly.

[6] The Applicant's H&C application raised several bases on which she says that she will face hardship if she returns to China. First, she is a Christian, and she submitted country condition evidence [CCE] about Christians in China being subject to police surveillance and unofficial churches being raided and their adherents arrested. Second, she lacks a Hukou—a sort of internal passport intended to track rural-urban migration—and submitted CCE surrounding discrimination faced by rural migrants without proper Hukou, including challenges accessing social services, health care and employment. Finally, as she has spent almost two decades away from China, she asserted that her only remaining contacts there are her aging parents, who are no longer working and thus will be unable to help her find employment.

### III. **Decision under Review**

[7] The Applicant's principal arguments challenging the reasonableness of the Decision relate to the Officer's analysis of her submissions surrounding her Christianity, and my decision to allow this application for judicial review turns on those arguments. As such, the below summary of the Decision focuses upon that aspect of the Officer's analysis.

[8] The Officer accepts that conditions in China are far from ideal for Christians, with state actors targeting some Christians, but concludes that the Applicant provided little evidence

regarding her affiliation with any churches in China or evidence to link such an affiliation with state actors actively seeking her. The Officer also notes that no corroborating evidence was provided regarding the raid on the Applicant's church in 2002 and that there was no evidence from friends or fellow congregants who were targeted by the police. The Officer thus concludes that, in the absence of evidence, it cannot be said that the Applicant faces hardship due to a risk in China. The Decision further notes the previous decision of the Refugee Protection Division denying her refugee claim, as well as the PRRA refusal, and gives weight to those decisions. The Officer affords no weight to the consideration that the Applicant is being sought by authorities in China.

[9] The Officer considers the general hardship the Applicant would face as a Christian in China, referencing CCE submitted by the Applicant and the UK Home Office information package [UK Home Office Report] regarding China's approach to Christianity. The Officer cites the UK Home Office Report for the conclusion that millions of Christians worshipping within unregistered churches are able to meet and express their faith as they wish to, and that the risk of persecution, serious harm or ill-treatment is generally targeted at those who worship in unregistered churches and who conduct themselves in such a way as to attract the local authorities' attention to them or their political, social or cultural views.

[10] The Officer also notes that house churches are being pressured to join a state-sanctioned church, and that members of both registered and unregistered churches face increased likelihood of harassment and arrest, with thousands detained in 2018, although most detentions were short and did not lead to criminal charges. The Officer observes that the Applicant's church is not one

of the groups that the Chinese state has warned its citizens to avoid. After a review of the CCE, the Officer concludes that:

...many Christians in China are being discriminated against, harassed, and arrested by state actors. However, I note that these incidents primarily result in short-term detentions and that arrests principally occur when these individuals have gained the authorities' attention due to their political or social activities. Further, I find that the examples of such anti-Christian sentiment, as provided by the applicant in various articles, are isolated incidents and that they do not relate to the applicant, nor do these examples demonstrate that the Chinese government is actively seeking the applicant. Therefore, I give this consideration little weight.

[11] Finally, the Officer finds that, as the Applicant is a member of a Pentecostal church in Canada, she can, as a member of a Protestant denomination, join a state-approved and registered church.

[12] After considering the other factors raised by the Applicant and the weight assigned to each, the Officer was not satisfied that such factors justified an exemption on H&C grounds and therefore refused the application.

#### IV. **Issues and Standard of Review**

[13] The Applicant submits that this application raises the following three issues for consideration by the Court:

- A. Did the Officer assess the Applicant's submissions regarding the treatment she would receive in China in an unintelligible manner?

B. Did the Officer conflate hardship under s 25 with risk as per s 97 of the *IRPA*?

C. Did the Officer employ the wrong test in assessing this application?

[14] These issues are all reviewable on a standard of reasonableness.

V. **Analysis**

[15] I am persuaded by the Applicant's argument that the Officer failed to engage with the crux of her H&C submission surrounding her Christianity—that, given the importance to the Applicant of her religious faith and ability to practice it freely, the hardship inherent in living in an environment of religious repression represents a sufficiently compelling H&C consideration to warrant granting relief.

[16] The Officer's analysis focuses significantly on the Applicant's religious practice before leaving China and resulting interaction with Chinese authorities, concluding that she had not demonstrated that the Chinese government is actively seeking her. I do not fault the Officer for conducting this component of the analysis, as the Applicant's religious history before leaving China forms part of the background to her H&C submissions. However, this analysis is not sufficient to represent a reasonable engagement with the Applicant's submission surrounding religious freedom.

[17] Similarly, while the Decision includes analysis of the CCE and resulting findings on the level of discrimination and harassment faced by Christians in China, the Officer fails to engage with the Applicant's principal position that the effect of such an environment upon her ability to

practice her religion freely and openly warrants H&C relief. In the statutory declaration she submitted, the Applicant underscored the importance of having pride in her religion and feeling as though she would have to hide this part of her identity if returned to China. Comparable to the point this Court made in *Chen v Canada (Citizenship and Immigration)*, 2016 FC 702 at para 33 (there, in the context of a pre-removal risk assessment), I am expressing no opinion on whether a particular degree of suppression of religious identity warrants H&C relief. I find only that the argument required consideration by the Officer.

[18] The Officer's failure to consider this argument is particularly evident in the final component of the analysis, in which the Officer noted that, as the Applicant's church is a Pentecostal church, she can join and practice at a state-approved and registered Protestant church in China. The CCE clearly establishes that it is possible to practice Christianity in state-approved Protestant churches in China. However, given the state-imposed limitations on doctrine in such churches, as identified in the CCE cited in the Decision, the Officer's suggestion that the Applicant pursue her practice in that manner demonstrates that the Officer missed the point that she was advancing related to suppression of her religious identity.

[19] Having concluded that this component of the Decision is unreasonable, this application for judicial review will be allowed, and it is not necessary for the Court to consider the other arguments the Applicant advances.

[20] Neither party proposed any question for certification for appeal, and none is stated.

**JUDGMENT IN IMM-4865-20**

**THIS COURT'S JUDGMENT is that** this application for judicial review is allowed, the Decision is set aside, and the matter is returned to another decision-maker for redetermination.

"Richard F. Southcott"

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4865-20

**STYLE OF CAUSE:** ZI XIN SU V THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** HEARD VIA VIDEOCONFERENCE

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