Date: 20070626

Docket: IMM-3420-06

Citation: 2007 FC 680

Ottawa, Ontario, June 26, 2007

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

ZHI HANG SU
HUI XIANG ZHOU

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for Judicial Review by Zhi Hang Su and Hui Xiang Zhou from a decision of the Refugee Protection Division of the Immigration and Refugee Board by which their claims to Refugee Protection were denied.

Background

[2] The Applicants arrived in Canada in early 2005. They claimed refugee protection on the basis of their alleged membership in the Chinese Falun Gong movement. They also asserted that they were Chinese nationals from mainland China and that they had fled that country on false

passports with the assistance of a so-called “snakehead”. Upon arrival in Canada they claimed to have lost their tickets and boarding passes and to have returned their Resident Identity Cards and false passports to the snakehead. Beyond their reliance on a hukou (a Chinese household registration document) no efforts were made to obtain other identity documents such as birth or marriage certificates.

The Board Decision

[3] The Board rejected the Applicants’ claims on the ground that they had failed to prove their identities as required by Rule 7 of the *Refugee Protection Division Rules*, S.O.R./2002-228.

[4] The Board had many credibility concerns which led it to conclude that the Applicants were likely not who they professed to be.

[5] Among other things, the Board disbelieved the Applicants’ evidence that they had not been coached on their false identities and had no information about their travelling aliases or their travel documents. This evidence was found to be implausible, having regard to the fact that they had frequent possession of their travel documents and would have expected to be asked questions about their identities en-route to Canada.

[6] The Board also identified numerous problems with the Applicants’ hukou and with their related testimony. Those problems included an unlikely common registration date for all of the family members listed, the existence of separate hukous for the different branches of the family

albeit that they all resided at the same civic address, inaccuracies concerning the Applicants' listed occupations despite the supposed 1999 update of the document, and the absence of information to verify the female Applicant's change of residency after marriage. The Board went on to express strong reservations about the Applicants' testimony related to the authenticity of the hukou and about the failure to obtain other available identity documents from China. The Board then offered the following conclusion on the issue of identity:

> In view of the cumulative effect of lack of acceptability or unreliability findings with respect to the *Hukou*, and lack of other identity documents, absent a reasonable explanation, the panel finds the claimants failed to produce relevant, sufficient identity documents to establish their identities as nationals of China or that they were residing in the China at the material time.

[7] Having found that the Applicants had not satisfied the burden of establishing their identity, the Board held that it did not need to assess the substance of their claims to protection.

<u>Issues</u>

[8] (a) What is the appropriate standard of review for the issues raised by the Applicants?

(b) Did the Board err in its assessment of the evidence concerning the identity of the Applicants?

<u>Analysis</u>

[9] All of the Applicants' arguments in this case are related to the Board's interpretation and weighing of the evidence and to the credibility conclusions that the Board drew from that evidence. The Applicants concede that these are factual issues which must be reviewed on a standard of patent

unreasonableness: see *Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315 (F.C.A.). The same standard applies to the Board's assessment of identity documents: see *Ipala v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 583, 2005 FC 472.

[10] It was argued on behalf of the Applicants that the Board's finding of implausibility around their inability to relate their travel identities and passport particulars was patently unreasonable and they cite, in support, *Ameir v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 1094, 2005 FC 876. Their explanation for this testimonial failing was that they were only following the instructions of the accompanying snakehead. While *Ameir*, above, does recognize the need for the Board to be sensitive to the vulnerabilities of claimants travelling under false documents, it does not excuse a claimant for all testimonial failings concerning such documents. The fact that the Applicants claimed to be following instructions does not explain why they could not relate anything of significance about the documents and identities they were travelling under. Indeed, it does strain credulity to suggest that they would not be aware of this basic information in the face of the obvious likelihood that they would be questioned about it in transit. The Board's credibility finding on this issue was entirely warranted and consistent with the authorities: see *Ipala*, above, at para. 25.

[11] The Applicants also argued that the Board erred by connecting the inconsistent evidence about where and when their passports were finally passed over to the snakehead to the identity issue. There is no merit to this argument. Part of the Board's identity analysis turned on its assessment of the credibility of the Applicants and the means and route by which they came to

Canada. Any unreliable testimony on details such as this was obviously relevant to the question of identity.

[12] The further criticism of the Board's concern about the Applicants' failure to obtain other available identity documentation is also unwarranted. The Board's views on this were reasonable and justified in law: see *Immigration and Refugee Protection Act*, S.C. 2002, c. 27, s. 106; *Mbongo v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 1811, 2005 FC 1474 at para. 24.

[13] The Applicants also challenged the Board's findings with respect to the authenticity of the hukou. Their counsel correctly observed that some of the inconsistencies noted by the Board were actually open to interpretation. This was said to support an argument that the Applicants ought to have been given the benefit of any doubt. While I agree that, for some of the Board's findings, another interpretation was open to be made, it does not follow that the Board's contrary views were patently unreasonable. All of the Board's findings concerning the validity of the hukou had some evidentiary support and, therefore, were reasonable. It is not for this Court to substitute its own views of the evidence even where it might have drawn an inference different from that drawn by the Board. It is also of significance that the Board's negative appraisal of the Applicants' alleged hukou was based on several specific problems, both inherent and extrinsic. Such a cumulative conclusion will not be set aside simply because one or two of the findings supporting it were open to interpretation or debate.

[14] Having found that the Applicants had failed to establish their identities to the satisfaction of the Board, it was unnecessary and, indeed, impossible to assess the validity of their allegations of persecution. If the Board could not ascertain who these Applicants were and where they had come from, it stands to reason that the rest of the history they related could not be properly assessed. The Board's approach to this issue is consistent with authority including the decision in *Jin v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No.181, 2006 FC 126 at para. 26 where it was held:

> Having concluded that the Applicant had failed to establish her identity, the Board determined that it need not go further to consider the Applicant's evidence of religious persecution. It has been held that it is a pre-requisite for a person claiming refugee status to establish his or her identity. Without that foundation, there could be no sound basis for testing or verifying the claims of persecution or, indeed, for determining the Applicant's true nationality: see *Husein v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 726 and *Ibnmogdad*, *supra*.

[15] In the result, this application for judicial review is dismissed.

[16] Neither party proposed a certified question and no issue of general importance arises on this record.

JUDGMENT

THIS COURT ADJUDGES that this application for judicial review is dismissed.

" R. L. Barnes "

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

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