

Date: 20080220

Docket: IMM-1729-07

Citation: 2008 FC 229

Ottawa, Ontario, February 20, 2008

PRESENT: The Honourable Orville Frenette

BETWEEN:

SHU HUA ZHOU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada (the “Board”), which found that the applicant was not a Convention refugee or a person in need of protection in accordance with sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, ch. 27 (the “Act”). Leave to apply for judicial review was granted by Justice Snider on November 2, 2007.

[2] The applicant is a citizen of China who bases his claim on his fear of the Public Security Bureau (the “PSB”) in that country. In his Personal Information Form (PIF), the applicant alleges that he had rented a residential property to a friend, Jun Zhang, and four other people, who were

later arrested because they were Falun Gong practitioners. After the arrest of his tenants, the applicant's wife contacted the applicant to inform him that the PSB had come looking for him and had searched his home, alleging that he was a Falun Gong practitioner and had harboured Falun Gong practitioners. The applicant, on the advice of his wife, went into hiding and, after a few days, decided that he had to leave China. The applicant alleges that the PSB is still looking for him.

I. The Board's decision

[3] The Board did not believe the applicant's story:

I do not find it plausible that if the claimant was wanted for harbouring a Falun Gong practitioner, why his wife was not also arrested. The claimant maintains that the property rented to Mr. Zhang was a private sale, with nothing registered publicly to determine ownership. The Public Security Bureau, when they allegedly attended his own home, did not seize the lease agreement, proof of ownership or any utility invoices with respect to the rental property. The claimant maintained that all the utility invoices were in his name, which does not, in and of itself, provide proof of ownership. Thus, there is nothing for the Public Security Bureau to know who actually owned the rental property where Mr. Zhang resided. The claimant stated that, when asked as to why his wife was not arrested, his wife was not suspected because she told the Public Security Bureau that he, the claimant, rented the premises to Mr. Zhang. I reject this explanation. From country documentation, the Public Security Bureau is a brutal police force. I do not find it plausible, without proof of ownership of the rental property, that the claimant's wife was not arrested for also harbouring a Falun Gong practitioner. When it was put to the claimant that the Public Security Bureau would not know who owned the property and, therefore, his wife should also have been arrested, the claimant stated that in the area of the People's Republic of China he comes from, women do not have such privileges (sic owning property). I reject this explanation, as the claimant had no documentary evidence to support this allegation and it was noted to the claimant that the panel member, using her specialized knowledge of having heard hundreds and hundreds of Chinese claims, that women do own property in the People's Republic of China [footnote omitted].

The Board concluded that, “as no other reason was put forward as to the claimant’s fear of persecution,” the applicant was not a Convention refugee or a person in need of protection.

II. Issues

[4] The applicant raises two issues:

- A. Did the Board commit a reviewable error in its assessment of the applicant’s credibility?
- B. Did the Board commit a reviewable error by failing to conduct a separate analysis of the applicant’s claim under section 97 of the Act?

III. Analysis

- A. *Did the Board commit a reviewable error in its assessment of the applicant’s credibility?*

[5] The applicant submits that the Board ignored relevant evidence when it determined that his claim was not credible, by failing to address the existence of a Land Use Certificate in his name, and that it misconstrued the available evidence when it stated that the rental agreement constituted a “private sale” (the Land Use Certificate can be found at page 477 of the Tribunal Record). For its part, the respondent submits that the applicant, during the hearing before the Board, conceded that he did not know how the PSB could know that the property was in his name, and that the Board did not commit a reviewable error when it determined that it was implausible that only the applicant, and not his wife, would be sought by the PSB.

[6] The standard of review with regard to the Board's assessment of the credibility of a claimant is patent unreasonableness. Put another way, this Court can only intervene in situations where the Board based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it (*Federal Courts Act*, R.S.C. 1985, c. F-7, s. 18.1(4)(d); *Traore v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1256, [2003] F.C.J. No. 1585 (T.D.) (QL); *Chen v. Canada (Minister of Citizenship and Immigration)* (1999), 174 D.L.R. (4th) 165, [1999] F.C.J. No. 551 (C.A.) (QL)). Although the Board has complete jurisdiction to make findings of credibility, and can base these findings on its assessment of the plausibility of an applicant's story, these findings must be based on the evidence (*Ilyas v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1270, [2004] F.C.J. No. 1522 (T.D.) (QL); *Divsalar v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 653, [2002] F.C.J. No. 875 (T.D.) (QL); *Zhou v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 70, [2006] F.C.J. No. 173 (T.D.) (QL)).

[7] Furthermore, the Board is presumed to have considered the totality of the evidence, and the failure to mention a particular piece of evidence is not, in itself, fatal to the Board's decision (*Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315, [1993] F.C.J. No. 732 (C.A.) (QL); *Hassan v. Minister of Employment and Immigration* (1992), 147 N.R. 317, [1997] F.C.J. No. 946 (C.A.) (QL)). However, if the Board fails to mention evidence which squarely contradicts the Board's conclusions, it will be easier for a Court to determine that the Board reached those conclusions without considering the totality of the evidence (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35, [1998] F.C.J. No. 1425

(T.D.) (QL); *Qasem v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1182, [2002] F.C.J. No. 1618 (T.D.) (QL)).

[8] In this case, during the course of the hearing before the Board, the applicant was confronted with the question of why the PSB would not have been interested in his wife:

Presiding Member: Okay. Well sir, you indicated the PSB made the assumption that you were a Falun Gong practitioner or harbouring a Falun Gong practitioner. Why would they not also make the assumption that your wife knew about this arrangement and that she was either a Falun Gong practitioner or harbouring a Falun Gong practitioner?

Claimant: Because the title deed is in my name.

Presiding Member: Okay. But how did the PSB know that? They never seized your deed, they never seized the lease. How would they know that the title was in your name?

Claimant: Because in our area usually females do not have such privileges.

Presiding Member: Sir, I have done – I am going to use my specialized knowledge of having done thousands now, of Chinese claims where women in Guangdong Province have owned property.

Claimant: Because the title deed is my name, registered in my name.

Presiding Member: I understand that, sir, but how does the PSB know that? They didn't seize the lease, they didn't seize the title to your property, how would they know that property was in your name and not your wife's or that you and your wife owned the property jointly?

Claimant: I have no idea.

Presiding Member: Okay. Do you have any documentation to support this allegation that women don't usually own property in your area?

Claimant: [No response]. (Tribunal Record at pages 500-501)

[9] Later on during the hearing, the applicant's counsel made the following comments:

Now with respect to the evidence itself one other question that came up is how would the authorities know that the rental property was his or why did they go after him and not his wife, that's one of the issues that came up. Although it was a private sale and there seemed to be no actual registration required the electrical bills, hydro bills are all in his name.

It would be plausible that the authorities would have checked the records on the location and would have found out that this name was on – his name appeared when checking that. With respect to ownership maybe not but with respect to who is paying all the bills over there, the bills were in his name and from that it would be logical to presume that they would tie him into the picture. (Tribunal Record at page 513)

[10] The applicant submits that the Board should have considered the Land Use Certificate which indicated that the land being rented was owned by the applicant, not his wife, and that "it is inconceivable that in a police investigation, the registration of the property would not have been checked by the PSB with the government authorities." However, the applicant has presented no evidence as to the purpose of a Land Use Certificate, nor to demonstrate that the PSB would have verified the registration of such a certificate.

[11] In my opinion, based on the evidence before the Board, it was entitled to come to the conclusions that it did. Although it did not specifically mention the Land Use Certificate in its reasons, this certificate does not contradict the Board's conclusion, which was that there was no indication as to why the PSB would not have targeted the applicant's wife in addition to the applicant. Furthermore, the Board did not misconstrue the evidence when it referred to a "private

sale.” Rather, it used the very same language that had been employed by counsel for the applicant in the hearing before the Board when describing the initial transfer of ownership to the applicant. I would not find the Board’s conclusion to be patently unreasonable.

[12] The applicant also seems to suggest that the Board ignores documentary evidence, but does not point to any documentary evidence in particular. As the respondent points out, the burden is on the applicant to demonstrate, on the balance of probabilities, that he has a well-founded fear of persecution (*Adjei v. Canada (Minister of Employment and Immigration)*, [1989] 2 F.C. 680, [1989] F.C.J. No. 67 (C.A.) (QL); *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589, [1993] F.C.J. No. 1172 (C.A.) (QL)). Although the documentary evidence may indicate that risks of the type described by the applicant exist, it does not demonstrate that the applicant himself faces such risks. This must be assessed based on the evidence specific to the applicant, which the Board in this case determined was not sufficient to establish that the applicant was at risk.

[13] The applicant also argues that the Board applied North American logic and reasoning without considering the cultural and social background of the applicant in China (*Lubana v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116, [2003] F.C.J. No. 162 (T.D.) (QL); *Attakora v. Canada (Minister of Employment and Immigration)* (1989), 99 N.R. 168, [1989] F.C.J. No. 444 (F.C.A.) (QL); *Rahnema v. Canada (Solicitor General)*, 22 Imm. L.R. (3d) 127 at para. 20, 1993 F.C.J. No. 1431 (T.D.) (QL)).

[14] The respondent contests this assertion stating that the member simply decided or referred its conclusion based upon the evidence, particularly upon the applicant's own testimony.

[15] Analysing this submission, I must agree with the respondent's opinion.

[16] There are no indicia in the member's decision justifying the conclusion that the applicant's culture, customs and interpretation of events was decided solely upon an inappropriate assessment based upon North American logic and reasoning.

B. Did the Board commit a reviewable error by failing to conduct a separate analysis of the applicant's claim under section 97 of the Act?

[17] The applicant submits that the Board's failure to conduct a separate analysis of his claim to determine if he is a person in need of protection, according to section 97 of the Act, is inconsistent with the law and with the Board's own Guidelines. The respondent, on the other hand, submits that the Board was not required to conduct such an analysis because it had determined that the applicant lacked credibility and had therefore failed to demonstrate any risk.

[18] The question of whether a separate section 97 analysis is required has been considered many times by this Court. In *Bouaouni v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1211, [2003] F.C.J. No. 1540 (QL), Justice Blanchard made the following comments:

There may well be instances where a refugee claimant, whose identity is not disputed, is found not to be credible with respect to his subjective fear of persecution, but the country conditions are such that the claimant's particular circumstances, [sic] make him or her a

person in need of protection. It follows that a negative credibility determination, which may be determinative of a refugee claim under section 96 of the Act, is not necessarily determinative of a claim under subsection 97(1) of the Act. (para. 41)

This reasoning was followed in *Kilic v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 84, [2004] F.C.J. No. 84 (T.D.) (QL), where the Court found that the Board had erred by failing to consider whether section 97 was applicable, although it had accepted that the claimant had evaded military service, and there was documentary evidence suggesting that this put him at risk.

[19] However, this Court has also determined that a separate analysis of section 97 is not necessary when the claim is based entirely on Convention grounds, and the Board has determined that the claimant is not credible. “If the evidentiary basis for both claims is the same and the applicant’s story is not believed, there will be no need to proceed to a separate 97 analysis, as there will be no evidence to ground the applicant’s claim that he or she is in need of protection” (*Ayaichia v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 239 at para. 19, [2007] F.C.J. No. 300 (T.D.) (QL). See also *Plancher v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1283 at para. 16, [2007] F.C.J. No. 1654 (T.D.) (QL); *Soleiman v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1660 at para. 22, [2004] F.C.J. No. 2013 (T.D.) (QL); *Nyathi v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1119, [2003] F.C.J. No. 1409 (T.D.) (QL); *Kulendrarajah v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 79, [2004] F.C.J. No. 94 (T.D.) (QL)).

[20] In my view, this case is more closely analogous to the latter than the former cases. The applicant in this case has based his claim entirely on his fear of the PSB which, he alleged, sought

him for having harboured Falun Gong practitioners. Having determined that this claim is not credible, the Board was not required to conduct a separate analysis concerning section 97 of the Act.

IV. Conclusion

[21] This application for judicial review will be dismissed. The Board's conclusion that the applicant lacked credibility was not patently unreasonable. Having come to this conclusion, the Board was not required to conduct a separate analysis to determine if the applicant was a person in need of protection.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed. No question need be certified.

"Orville Frenette"

Deputy Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1729-07

STYLE OF CAUSE: Shu Hua Zhou
v.
MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 31, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** D.J. Frenette

DATED: February 20, 2008

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