

**Date: 20080513**

**Docket: IMM-1780-08**

**Citation: 2008 FC 607**

**Vancouver, British Columbia, May 13, 2008**

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

**BETWEEN:**

**YIN BIN YANG**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION and  
THE MINISTER OF PUBLIC SAFETY  
AND EMERGENCY PREPAREDNESS**

**Respondents**

**REASONS FOR ORDER AND ORDER**

[1] Yin Bin Yang is seeking an order of this Court staying the execution of his removal from Canada pending the hearing of his application for leave and judicial review of a Pre-removal Risk Assessment decision. For the reasons that follow his motion is dismissed.

## I. Background

[2] Mr. Yang is a citizen of the People's Republic of China. He arrived at Vancouver International Airport on November 9, 1998. He was interviewed by an immigration officer and was reported pursuant to section 20 of the former *Immigration Act* because the officer was of the opinion that Mr. Yang had not complied with the Act and Regulations in that he did not have a valid passport, travel documents, or visa. An exclusion order was issued.

[3] On November 12, 1998, Mr. Yang filed an application for leave and for judicial review challenging the exclusion order. He also filed a motion to stay the execution of the removal order. Both applications were dismissed. However, the exclusion order and removal arrangements against Mr. Yang were subsequently cancelled because Mr. Yang was then a minor, being under the age of 18.

[4] Having expressed a desire to pursue a claim for Convention refugee status, he was interviewed and filed a Personal Information Form with the Convention Refugee Determination Division in support of his application for refugee status.

[5] His claim for refugee status was based on his alleged fear of persecution because of his involvement in September 1998 in a demonstration in China protesting the land expropriation in his town. On July 26, 1999, the Convention Refugee Determination Division determined that Mr. Yang was not a Convention refugee. Importantly, it found Mr. Yang's testimony was not credible. An

application for leave and for judicial review challenging the Convention Refugee Determination Division decision was dismissed on January 28, 2000.

[6] On September 26, 1999, Mr. Yang filed an application under the Post-determination Refugee Claimants in Canada class. In January 2008, he was advised that this had been transferred and was to be assessed as a Pre-removal Risk Assessment (PRRA) pursuant to the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27. He provided written submissions in support of the PRRA application. In his submissions, he claimed in addition to his previous experience of being wanted by the Chinese authorities for his land expropriation protest that he was also at risk as he was now a practitioner of Falun Gong. He asserted a feared persecution for both these reasons.

[7] He attended an interview with a PRRA officer on March 18, 2008. Prior to attending the interview he was advised that the purpose of the hearing was to address questions with respect to his participation in demonstrations opposing land expropriation in China, his practice of Falun Gong in Canada and his knowledge of Falun Gong theory and practice. He was encouraged to bring “any physical evidence relating to the areas mentioned”.

[8] The PRRA officer rejected Mr. Yang’s application. He found that Mr. Yang was not credible. He held:

I find that the applicant lacks credibility: I do not believe the applicant when he tells me that he is wanted by the Chinese authorities for protesting a land expropriation decision nor do I believe the applicant when he tells me he is a practitioner of Falun Gong.

[9] Mr. Yang has filed an application for leave and for judicial review of that decision.

Mr. Yang is currently scheduled to be removed from Canada on May 15, 2008.

## II. The Stay Application

[10] The Applicant acknowledges that in order to be granted a stay of the deportation order he must meet the tripartite test described in *Toth v. Canada (Minister of Citizenship and Immigration)*, (1988), 86 N.R. 302 (F.C.A.). He must establish that there is a serious issue to be tried, that he will suffer irreparable harm if the stay is not granted, and that the balance of convenience favours the granting of the stay.

## III. Serious Issue

[11] Mr. Yang offered two positions with respect to the question of a serious issue: first that the officer erred in his findings of credibility and second that there was a denial of procedural fairness as the credibility concerns were not disclosed during the interview.

[12] Counsel for Mr. Yang dissected the officer's reasons for holding that the Applicant's evidence was not credible. He argued that each standing on its own could not support the officer's conclusion. However, a review of the record clearly shows that there was not one aspect of his evidence that led the officer to his conclusion; rather it was a number of the aspects of his evidence that troubled the officer.

[13] With respect to the alleged risk arising from the actions of the Applicant in demonstrating against expropriation the aspects that troubled the officer included:

- a. That despite the passage of ten years, the Applicant had no evidence, other than his own testimony which had previously been found wanting, to establish that the Chinese authorities had been pursuing and were still pursuing him because of his participation in a demonstration protesting land expropriation;
- b. That there was no evidence that his family had ever suffered as a result of the Applicant's alleged demonstrations; and
- c. That there was no evidence as to what, if anything, had happened to others who had participated in the demonstration.

[14] With respect to the alleged risk arising from the Applicant being a practitioner of Falun Gong, the aspects that troubled the officer included:

- a. That the Applicant was able to demonstrate a familiarity with only a few of the basic Falun Gong beliefs and practices;
- b. That his evidence as to when he became an adherent of Falun Gong was contradictory – he stated at the interview that it was quite recent but stated in the PRRA narrative that he had first taken lessons many years ago;
- c. That he claimed to have read “Zhaun Falun” by Li Hong Zhi, yet could not answer any of the questions posed regarding the claims made in therein about the supernatural powers yielded by practitioners and the ability of practitioners to live extraordinary long lives while retaining their youthful appearances; and, perhaps most critically

- d. That the Applicant's written PRRA submissions were found to bear a striking resemblance to those of another PRRA applicant who was known to the Applicant and the documents attached, which the Applicant claimed he had downloaded from the internet, did not bear the usual internet address markings, were not originals but photocopies, and were identical (even to handwritten marks on them) to those submitted by the other PRRA applicant.

[15] A PRRA officer's findings following a hearing are to be given considerable deference. In this instance the officer closely examined the evidence presented and responses given and analyzed those responses using the usual and customary indicia of credibility. In my view, the findings made by the officer were consistent with the evidence before him and fall clearly within the range of reasonableness as set out by the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9.

[16] Mr. Yang submits that that the adverse finding respecting his credibility was contrary to natural justice in that he was never given notice of the requirement that he provide corroborating evidence. However, in the notice of hearing dated March 4, 2008, Mr. Yang is clearly advised to provide any "physical evidence" he has and it sets out the specific purpose of the oral hearing. There is no support to Mr. Yang's submission that he was denied procedural fairness in the process adopted by the officer.

[17] I am not convinced that Mr. Yang has established that he has a serious issue to be tried in relation to his challenge to the officer's decision.

#### IV. Irreparable Harm

[18] Mr. Yang argues he will suffer irreparable harm because he will suffer mistreatment in China on the two bases outlined previously and because his underlying judicial review application will be rendered nugatory as a result of his deportation.

[19] Both the Convention Refugee Determination Division and the PRRA officer considered Mr. Yang's allegations of risk on his return to China and both found he was not at risk and that his alleged fears were not credible. I can see no reason to find otherwise on the basis of the record before me.

[20] The possibility that the judicial review proceeding will become moot if the stay is not granted cannot form the basis for a finding of irreparable harm: *Selliah v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 261 at para. 20 and *El Ouardi v. Canada (Solicitor General)*, 2005 FCA 42 at para. 8.

#### V. Balance of Convenience

[21] In my view, the balance of convenience in this case favours the Minister.

[22] It is admirable that the Applicant has stayed in contact with immigration officials during his long sojourn in Canada. He is also to be commended for having made voluntary arrangements to return to China on May 15, 2008. Nonetheless, he has failed to establish any basis to remain in

Canada despite his many applications and proceedings over the last ten years. It is time that the Minister's obligations under the Act are fulfilled.

#### VI. Ancillary Matter

[23] The Applicant sought an amendment to the application to add as a party The Minister of Public Safety and Emergency Preparedness. Counsel for the Crown consented and the amendment will be permitted.

#### VII. Conclusion

[24] The Applicant has not established that he meets any of the three elements of the tripartite test for a stay.

[25] Therefore, it is ordered that this application for a stay is dismissed.

**ORDER**

**THIS COURT ORDERS that:**

1. The Minister of Public Safety and Emergency Preparedness is added as a party to the Application for Leave and Judicial Review and to this application; and
2. This application for stay of the removal order is dismissed.

“Russel W. Zinn”

---

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-1780-08

**STYLE OF CAUSE:** YIN BIN YANG v. THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION et al.

**PLACE OF HEARING:** Vancouver, BC

**DATE OF HEARING:** May 12, 2008

**REASONS FOR ORDER  
AND ORDER:** ZINN J.

**DATED:** May 13, 2008

**APPEARANCES:**

Marvin Klassen FOR THE APPLICANT

Helen Park FOR THE RESPONDENTS

**SOLICITORS OF RECORD:**

Marvin Klassen FOR THE APPLICANT  
Barrister & Solicitor  
Vancouver, BC

John H. Sims, Q.C. FOR THE RESPONDENTS  
Deputy Attorney General of Canada  
Vancouver, BC