

Date: 20080617

Docket: IMM-4036-07

Citation: 2008 FC 751

Toronto, Ontario, June 17, 2008

PRESENT: The Honourable Maurice E. Lagacé

BETWEEN:

WEN LI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application, pursuant to s. 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated September 10, 2007, wherein the Board denies refugee protection to the applicant due to a finding of a lack of credibility in his account of persecution.

I. Facts

[2] A citizen of the People's Republic of China (China), the applicant seeks refugee protection in Canada on account of his religious beliefs. The applicant states that as a Christian, he will be arrested and jailed should he be forced to return to China.

[3] The applicant states that he began practicing Christianity in June 2003 after being introduced to the religion by a friend and former classmate. He states that he attended underground church services in China each week for a period of approximately six months.

[4] The applicant states that the church services were held in different members' homes, and that precautions were always taken due to the illegality of such activities in China. He states that services included Bible readings, discussion and silent prayer, and that on one occasion, in November 2003; a pastor attended and conducted the service.

[5] The applicant continued to attend weekly services until December 2003 when he came to Canada on a student visa. The applicant states that since arriving in Canada he has continued to practice Christianity, attending church services and Bible study.

[6] The applicant states that his problems began on April 2, 2006, when he received a telephone call from his mother that officers from the Public Security Bureau (PSB) had come to his parents' home and accused the applicant of being a member of the underground church. He was also accused

of spreading Christian thoughts back to China. The applicant states that the PSB officers interrogated his parents regarding his religious activities and told his mother that they had arrested two members of the applicant's underground church. She was also told to advise the applicant to return to China.

[7] The applicant states that the PSB continues to inquire as to his whereabouts. He states that after learning of this information, he knew he could not return to China. Accordingly, on April 10, 2006, the applicant filed a claim for refugee protection in Canada, which was heard by the Board on July 30, 2007.

II. The Impugned Decision

[8] On September 10, 2007, the Board concludes that the applicant is neither a Convention refugee nor a person in need of protection. Central to the Board's finding is the applicant's credibility, about which the Board notes a number of implausible and inconsistent statements made to justify its negative credibility findings with regard to portions of the applicant's testimony, before concluding that the applicant was not a "credible and trustworthy witness" and was not a "Christian practitioner in China and is not being sought by the PSB".

III. Issues

[9] The applicant raises three issues for consideration:

- a. Did the Board err in its analysis of the applicant's evidence concerning the form and order of events at the underground church services?
- b. Did the Board err in concluding that the applicant's evidence concerning his education in Canada further supported its finding that he was not a Christian practitioner in China and is not being sought by the PSB? and;
- c. Did the Board err in failing to determine whether the applicant was, in fact, a Christian?

IV. Standard of Review

[10] It is well established that the Board's credibility findings are entitled to the highest level of curial deference when being reviewed by this Court: see *Chen v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1194, [2002] F.C.J. No. 1611 (QL) and *Gonzalez v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 128, [2008] F.C.J. No. 161 (QL).

[11] The standard of review applicable to a finding of credibility or fact on the part of a Board is one of reasonableness. This is a deferential standard which recognizes that certain questions before administrative tribunals do not lend themselves to one specific, particular result but instead give rise to a number of possible and reasonable conclusions (*Dunsmuir v. New Brunswick*, 2008 SCC 9,

[2008] S.C.J. No. 9, at paragraph 47). Where the decision at issue falls within that spectrum, the Court should not interfere.

[12] On a question of law however, the review should conform to a correctness standard.

V. Analysis

A. *Did the Board err in its analysis of the applicant's evidence?*

[13] Board is entitled to decide adversely with respect a claimant's credibility on the basis of contradictions and inconsistencies in the claimant's story and between the claimant's story and other evidence before the Board. Also the Board is entitled to make an adverse finding regarding credibility on the basis of the implausibility of the claimant's testimony alone. (*Sheikh v. Canada (Minister of Employment and Immigration)* [1990] 3 F.C. 238, 112 N.R. 61; (*Leung v. Canada (Minister of Employment and Immigration)*). (1990), 74 D.L.R. (4th) 313, 120 N.R. 391 (F.C.A.); (*Alizadeh v. Canada (Minister of Employment and Immigration)* [1993] F.C.J. No 11 (F.C.A)).

[14] A review of the reasons reveals that the Board provides an explanation as to why it finds the applicant's testimony implausible in certain areas it judges fundamental. None of these findings is, "so unreasonable as to warrant...intervention", to quote *Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315 (F.C.A.).

[15] The applicant has failed to demonstrate to this Court that the inferences drawn by the Board were not reasonably open to it on the record and that it erred in its analysis of the applicant's evidence.

B. Did the Board err in concluding that the applicant's evidence concerning his education in Canada further supported its finding that he was not a Christian practitioner in China and is not being sought by the PSB?

[16] In its decision, the Board held that the applicant was not credible in his claim that he was furthering his education in Canada, and that such a finding supported its conclusion that he was not credible with respect to being a Christian practitioner in China who was being sought by the PSB.

As the Board stated at page 3 of its decision:

To further buttress the panel's finding that the claimant is not a credible and trustworthy witness and was not a Christian practitioner in China and is not being sought by the PSB, the panel finds that the claimant was not credible in his claim that he was furthering his education in Canada. His initial approval for a student visa stated that he attend Simon Fraser University in British Columbia. He said that it was his intent to study electronic commerce. He entered English as a Second Language course but he did not complete the course. He subsequently came to Toronto, Ontario and attended the Toronto Institute of Technology. It was pointed out to him that this was not a recognized university. There are only three recognized universities in the City of Toronto. He said that he got his information on schools in Toronto, Ontario from a friend. It is implausible that a person with his intelligence and his educational background would rely on information from a friend and he would not research the matter for himself. The panel finds that the claimant is not credible in this matter or in his Christian experience in China.

[17] While the applicant's education in Canada provides support for the Board's finding that the applicant lacks credibility *generally*, it has no relevance in regard to a finding that he was not

credible as a “Christian practitioner”. But still this finding was open to the Board, and constitutes another element supporting its overall credibility finding on the applicant’s story. This Court sees no valid reason for an intervention on this issue.

C. Did the Board err in failing to determine whether the applicant was, in fact, a Christian?

[18] Finally, the applicant argues the Board erred in failing to adequately assess his identity as a Christian. The applicant states that his identity as a Christian is central to his claim, and therefore requires a clear, unambiguous determination.

[19] At page 1 of its decision, the Board states:

The panel finds that, on a balance of probabilities, the claimant is not a credible and trustworthy witness and was not a Christian practitioner in China and is not being sought by the PSB.

[20] While the Board accepts the applicant’s identity as a Chinese national, the foregoing passage clearly demonstrates that it did not believe that he was a Christian. The Board had the advantage to hear the applicant, and therefore on top of all the inconsistencies noted in the applicant’s testimony, the Board remained in a better position than anybody else to appreciate and judge the applicant’s credibility. Accordingly, the Court finds that the Board properly determined whether it accepted the applicant’s identity as a Christian.

VI. Conclusion

[21] In brief and after considering all the circumstances in issue, this is a case where the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. The result may not be what the applicant expected, and this is obviously for that reasons that the applicant points out to evidence favouring a different result. But this Court, having already concluded that the decision is reasonable on all the issues, will resist this type of invitation, that is to analyse the evidence differently than the Board did in order to substitute its own conclusion to the Board's conclusion. This is not the role of this Court.

[22] Consequently the Court will dismiss the application.

[23] No question of general importance was put forward for certification, and none will be certified.

JUDGMENT

FOR THE FOREGOING REASONS THIS COURT dismisses the application.

“Maurice E. Lagacé”

Deputy Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4036-07

STYLE OF CAUSE: WEN LI

- and -

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 5, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT OF:** LAGACÉ D.J.

DATED: June 17, 2008

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