Date: 20080624

Docket: IMM-5020-07

Citation: 2008 FC 775

Ottawa, Ontario, June 24, 2008

PRESENT: The Honourable Max M. Teitelbaum

BETWEEN:

ZHONG JIANG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated November 7, 2007, wherein the Board determined that the applicant was not a Convention refugee according to Section 96 of the Act, nor a "person in need of protection" according to Section 97 of the Act.

[2] The applicant is a citizen of the People's Republic of China (China).

[3] The applicant's uncle is a Falun Gong practitioner. His uncle and his uncle's friend decided to make leaflets describing the benefits of Falun Gong. As they were unable to perform such a task, the applicant offered to write the leaflets for them. The applicant was asked to write a second batch of leaflets in January 2004.

[4] On January 20 or 21, 2004 the applicant's uncle and some fellow practitioners were arrested. A few days after this incident the Public Security Bureau (PSB) came to the applicant's home to arrest him, but he was not there. They searched the premises for the leaflets.

[5] His mother subsequently informed him that the PSB had been to his home, and he went into hiding. The police issued a wanted poster for his arrest.

[6] The applicant fled China on July 8, 2006, arrived in Canada on July 20, 2006 and claimed refugee protection on the same day.

[7] In a decision dated November 7, 2007, the Board found that the applicant was not a refugee nor a person in need of protection as he was not a credible witness.

STANDARD OF REVIEW

[8] In determining the appropriate standard of review for a given question, the Supreme Court of Canada has indicated that as a first step, a reviewing court must look to previous jurisprudence to determine if it has already established the level of deference to be afforded to a particular category

of question (*Dunsmuir v. New Brunswick*, 2008 SCC 9, at para. 62). Given that the number of standards of review has been reduced from three to two, the level of deference to be afforded will fall either within the realm of reasonableness or correctness.

[9] A review of the Court's jurisprudence reveals that the standard of review applicable to credibility assessments is that of patent unreasonableness (*Xu v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1701, [2005] F.C.J. No. 2127 (QL), at para. 5; *Asashi v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 102, [2005] F.C.J. No. 129 (QL), at para. 6; *Canada (Minister of Citizenship and Immigration) v. Elbarnes*, 2005 FC 70, [2005] F.C.J. No. 98 (QL), at para. 19).

[10] Given the factual nature of credibility determinations, and in light of the Supreme Court of Canada's decision in *Dunsmuir*, above, I am of the view that the standard of review applicable in the present instance is that of reasonableness.

[11] Thus, "the existence of justification, transparency and intelligibility within the decision-making process [and also] […] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" will form the basis of the present exercise of judicial review (*Dunsmuir*, above, at para. 47).

ANALYSIS

[12] The applicant submits that the tenor of the Board's reasons is generally microscopic and overreaching and thus constitutes a reviewable error. I note that while it is true that the Board should not engage in a microscopic and overzealous interpretation of the evidence (*Gill v. Canada (Minister of Citizenship and Immigration*), 2004 FC 921, [2004] F.C.J. No. 1144 (QL) at para. 13), there is a corresponding obligation on the reviewing court to read the Board's decision as a whole and within the context of the evidence (*Miranda v. Canada (Minister of Employment and Immigration*), [1993] F.C.J. No. 437 (QL)).

[13] Indeed, this view was reiterated, albeit in the criminal context, by the Supreme Court of Canada in *R. v. Gagnon*, [2006] 1 S.C.R. 621, [2006] S.C.J. No. 17 (QL), at para. 19, where it held that:

> A trial judge's language must be reviewed not only with care, but also in context. Most language is amenable to multiple interpretations and characterizations. But appellate review does not call for a word-by-word analysis; rather, it calls for an examination to determine whether the reasons, taken as a whole, reflect reversible error.

Similarly, in my view, it is imperative to avoid minutely dissecting the reasons provided by an administrative tribunal.

[14] Much deference is owed to the Board in respect of credibility determinations as they constitute the "heartland of the Board's jurisdiction" (*R.K.L. v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116, [2003] F.C.J. No. 162 (QL), at para. 7).

[15] This deference is tempered by the principle that a refugee claimant's allegations are presumed to be true. (*Valtchev v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776, [2001] F.C.J. No. 1131 (QL), at para. 6; see also *Maldonado v. Minister of Employment and Immigration*, [1980] 2 F.C. 302). However, this presumption is capable of being refuted based on inconsistencies and contradictions in testimony (*Canada (Minister of Employment and Immigration) v. Dan-Ash*, [1988] F.C.J. No. 571 (QL)), perceived implausibilities so long as they are based on inferences that are not unreasonable and set out in reasons which employ "clear and unmistakable terms" (*R.K.L.*, above, at para. 9), and where "the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the [applicant]" (*Valtchev*, above, at para. 7).

[16] After carefully reviewing the parties' written and oral submissions, the contested decision of the Panel, the documentary evidence and the hearing transcript, I am of the view that overall the decision is sound and unassailable on a reasonableness standard.

[17] In its decision, the Board highlighted numerous inconsistencies in the applicant's testimony and Personal Information Form (PIF) narrative. For example, in the applicant's PIF he stated that he had originally offered to write the Falun Gong leaflets for his uncle, while in his testimony he indicated that he was asked by his uncle to do so. When asked if he was aware that his family could be at risk because of the assistance he was providing to the Falun Gong, his answers were inconsistent, responding contradictorily that he was aware that his family could be harassed by the PSB, and also that he did not realize that this would happen.

[18] Further, when questioned about the leaflet that he had prepared, specifically whether the leaflet attempted to repudiate government propaganda indicating that Falun Gong was evil, he originally answered that the principles of Falun Gong, included in the leaflet, meant that Falun Gong was not bad, to which the Board responded that this was not the case. Later, he indicated that he also explicitly wrote in the leaflet that Falun Gong was not a cult. The Board saw this as an effort to embellish the leaflet that he allegedly wrote in response to its questions.

[19] The Board noted that there were inconsistencies regarding how he found out that the PSB had been to his home. While in his PIF he indicated that he was informed of the PSB visit by his mother, in his testimony he stated first that his uncle told him and then that his mother told his grandfather who told him. In addition, there was nothing in his PIF indicating that he had been in hiding before he found out that the PSB had been to his house, but rather that he simply had not been home when they went looking for him.

[20] Moreover, the Board indicated that the applicant's story with respect to how he fled China did not ring true. Specifically, that he put on the costume of a duty free worker and was able to go directly to the plane without a security check. The Board also stated that there was no further testimony regarding what the applicant did with this costume when he went to the plane. While the applicant correctly points out that no questions were specifically posed on this last point, I am of the view that the Board's implausibility findings in this regard are set out in clear and unmistakable terms (*R.K.L.*, above, at para. 9) and based on common sense and rationality (*R.K.L.*, above, at para. 10) as per the jurisprudence. The Board indicated that in the post 9/11 security climate it was not

plausible that someone working in a duty free shop would have access to a plane without having to pass a security checkpoint.

[21] In coming to its conclusion that the applicant's parents would have been pressured to a greater extent by the PSB, the Board referred to the Response to Information Request CHN102560.E, dated July 11, 2007. It found that on a balance of probabilities, and in the context of a search for the applicant reflected in a wanted poster, his parents would have suffered more determined pressure from the PSB in order to press the claimant to turn himself in to the PSB. The applicant cites a section of the document entitled "Treatment of family members" which indicates that according to a representative of the Falun Dafa Association of Canada:

> [The Chinese] authorities use (. . .) family members as "hostages" to force [Falun Gong] practitioners to give up the practice. If practitioners do not cooperate with the authorities, their family members are subject to punishment as well. (. . .) The punishment includes harassment by the police (random visit by police to the home), arbitrary interrogation, losing [a] job, losing [the] chance of promotion, losing [a] pension/state housing, etc.

According to the applicant, this is indicative of a spectrum of harassment that does not necessarily have to exceed the level of visits by the PSB. I agree that this passage is indicative of a spectrum of harassment; however, the Board framed this finding in light of the allegation that a wanted poster had also been issued for the applicant. Thus, the existence of the wanted poster was indicative of the context of the search for the applicant and given this context, the Board was of the view that on a balance of probabilities his parents would have been pressured to a greater degree.

[22] The Board found that, based on a Response to Information Request dated June 1, 2004, and in the context of the wanted poster, the PSB would have issued and shown a summons to the applicant's family members when they were looking for him. The applicant cites the same document where it states that:

> However, in 21 April 2004 correspondence with the Research Directorate, the associate professor further noted that while procedural laws in China are expected to be uniformly implemented and concerted efforts have been made by the Ministry of public Security to improve policing standards, in practice the "PSB [Public Security Bureau] has yet to arrive as a rule of law institution." According to the associate professor, there can be substantial regional variances in law enforcement, in which some differences are written into policies, but "in most instances rule of the book gives way to norms in the street" (21 Apr. 2004).

The applicant argues that nothing in the documentary evidence indicates that a summons would necessarily have been issued or shown to the family. While this point is well taken, I am of the view that it is not sufficient to impugn the entire decision.

[23] The applicant further challenges the Board's conclusion that the prisoner visitation card he submitted as proof of his uncle's arrest and imprisonment was fraudulent. The Board relied on documentary evidence indicating that the manufacture of fraudulent documents in China was common, the lack of safety features on the document, its apparent unused condition, and the context of his previous negative inferences to find that the document was fraudulent. I note that the Board is entitled to draw conclusions on the evidence before it. While the Board's expertise in identifying fraudulent documents may be a debatable point, taking the decision as a whole, this argument is insufficient to impugn the Board's findings.

[24] Overall, I find the Board's credibility analysis "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" pursuant to *Dunsmuir*, above, at para. 47.

[25] For the preceding reasons, this application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS that the application of judicial review is dismissed. No question was submitted for certification.

"Max M. Teitelbaum"
Deputy Judge

FEDERAL COURT

SOLICITORS OF RECORD

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