

Date: 20080710

Docket: IMM-1163-07

Citation: 2008 FC 856

Ottawa, Ontario, July 10, 2008

PRESENT: The Honourable Mr. Justice Mandamin

BETWEEN:

SUZHEN FANG

Applicant

- and -

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Suzhen Fang, a citizen of the People's Republic of China, came to Canada on a Temporary Resident Permit to assist her ailing father. She claims to have taken up the practice of Falun Gong to cope with the grief flowing from her father's death. She feared to return to China because of the persecution of Falun Gong followers by the authorities and applied for refugee status. The Refugee Protection Division (the "Board") found she was not credible and denied her claim for refugee status. Ms. Fang applies for a judicial review of the Board's decision.

[2] Two issues arise in this judicial review:

1. Did the Board err in assessing Ms. Fang's credibility?
2. Did the Board err in not conducting a separate section 97 analysis?

[3] I find this application for judicial review should be dismissed. My reasons follow.

Did the Board err in assessing Ms. Fang's credibility?

[4] Ms. Fang submits that the Board made numerous errors in assessing credibility. She contends that the Board erred in failing to accept her explanations and in rejecting other evidence without proper justification, including:

- failing to accept her explanations;
- failing to allow for variations in the performance of Falun Gong movements;
- not accepting documentary evidence she supplied;
- failing to confirm the existence of a website that showed her participation in an anti-government demonstration;
- doubting that Chinese authorities would take action against family members in China a year after discovering her Falun Gong affiliation;
- drawing a negative inference from similarities between her PIF narrative and that of her brother.

[5] Ms. Fang submits that this Court may interfere with the Board's credibility findings where such findings are not justified by internal contradictions, inconsistencies or evasions and further

submits that the Board must express its adverse credibility findings in clear and unmistakable terms (*Kilola v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 401 at paras. 46, 50).

[6] This application was heard but not decided before the Supreme Court of Canada's decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9. The decision in *Dunsmuir* has established that there are now only two standards of review: correctness and reasonableness (*Dunsmuir* at para. 34). Where questions of fact and credibility are reviewed, the standard of review is reasonableness (*Sukhu v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 427 at para. 15).

[7] A claimant's testimony is presumed to be true (*Valtchev v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para. 6). The presumption may be refuted by the presence of inconsistencies and contradictions in testimony, implausibility and where facts as presented are not what could reasonably be expected (*Jiang v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 775 at para. 15). Lastly, the Board is entitled to deference in regard to its credibility determinations (*Lubana v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at para. 7).

[8] I have reviewed the Tribunal Record, including the PIF Narrative and the Tribunal hearing transcript. In my view, the Board did consider the evidence relating to each of Ms. Fang's points of contention. I cannot say the Board's findings on each were not justified. Nor can I say the Board did not articulate its reasons for its credibility findings in clear and unmistakable terms. The Board

considered the evidence and gave ample reasons for not accepting Ms. Fang as credible. I do not find the Board's conclusion on credibility to be unreasonable.

Did the Board err in not conducting a separate section 97 analysis?

[9] Ms. Fang argues the Board failed to conduct a separate section 97 analysis of the risk to her life or to cruel and unusual treatment or punishment if she were to return to China. Ms. Fang submits there was independent objective evidence to support her claim that her adherence to Falun Gong makes her a person in need of protection. However, the Board found Ms. Fang not credible and not likely of interest to the Chinese authorities.

[10] In *Brovina v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 635 at para. 17, Justice Layden-Stevenson held:

Thus, while a separate section 97 analysis is desirable, the failure to conduct such an analysis will not be fatal in circumstances where there is no evidence that would require it. Here, there were no other grounds to support a finding of person in need of protection and the risk analysis was performed for Mrs. Brovina in the context of refugee protection. Moreover, the board did conduct a brief analysis related to a section 97 risk when it found that there was "no reason to believe" that Mrs. Brovina would face any risk in returning to Albania. There was no objective evidence before the board that might have led to any other conclusion (emphasis added).

[11] In her submissions on the Board's failure to provide a section 97 analysis, Ms. Fang also referred this Court to *Soleimanian v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1660 at para. 19. In that paragraph, Justice Mosley commented that a recitation of a boilerplate about the content of section 97 does not amount to an analysis. Of more significance is paragraph 22 in the same decision where Justice Mosley stated:

This Court seems to have come to a consensus that a separate section 97 analysis is not required if there is no evidence that could go to establishing that the person is in need of protection: *Brovina v. Canada (Minister of Citizenship and Immigration)*,

[2004] F.C.J. No. 771, 2004 FC 635; *Islam v. Canada* (Minister of Citizenship and Immigration), [2004] F.C.J. No. 1711, 2004 FC 1391; *Nyathi v. Canada* (Minister of Citizenship and Immigration), [2003] F.C.J. No. 1409, 2003 FC 1119; *Ozdemir v. Canada* (Minister of Citizenship and Immigration), [2004] F.C.J. No. 1242, 2004 FC 1008 (emphasis added).

[12] The sole basis for Ms. Fang's claim was that she was a Falun Gong follower who was known to the Chinese authorities. Her assertion was not accepted by the Board because it decided she was not credible. I have found the Board's credibility finding was not unreasonable.

[13] As a result, a separate section 97 analysis was not required since there is no evidence that Ms. Fang is in need of protection.

[14] This judicial review application is dismissed.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The judicial review application is dismissed.
2. No question of general importance is certified.

“Leonard S. Mandamin”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1163-07

STYLE OF CAUSE: SUZHEN FANG v. MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 22, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** MANDAMIN J.

DATED: July 10, 2008

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