

Date: 20091114

Docket: IMM-2117-08

Citation: 2008 FC 1266

Ottawa, Ontario, November 14, 2008

PRESENT: The Honourable Mr. Justice Kelen

BETWEEN:

WEN BIAO HUANG

Applicant

and

**THE MINISTER OF
CITIZENSHIP AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada (the Board), dated April 15, 2008, that the applicant, a citizen of China, is not a Convention refugee or a person in need of protection because the applicant is not credible.

FACTS

[2] The applicant is a 21 year old Chinese citizen. He owned and operated a bookstore in the Fujian province of China which had been transferred to him from his father on March 1, 2006.

[3] On May 15, 2006, the Industry and Commercial Bureau examined the bookstore and found some Falun Gong books hidden underneath old books in the corner of a storage room. The Bureau accused the applicant of selling Falun Gong books, sealed the store and immediately fined him 18000 RMB.

[4] The Bureau reported the applicant to the Public Security Bureau (PSB), whereupon he was arrested. At the hearing, the applicant testified:

1. the PSB held him at the police station from 10:00 or 11:00 in the morning until 10:00 o'clock at night, and thereafter he had to report every Monday and would be detained about 2 hours at the police station;
2. when he was arrested on May 15th, he was interrogated from 11:00 a.m. to 2:30 p.m. about the source of the books. When he said that he did not know the PSB would "use violence. They would hit the back of my head". Under questioning from the presiding member the applicant said that he was hit on the back of the head more than 10 times;
3. when he could not answer the questions after the interrogation, the PSB sent him outside to do manual labour in the form of moving bricks. When asked by the presiding member if the PSB hurt him in any other way the applicant said that the PSB had shined a lamp into his eyes when questioning him;

4. when he later reported to the PSB on Mondays, the PSB would ask him again the source of the books, and when he did not answer, they would hit him again; and
5. the presiding member asked the applicant why he had not mentioned this physical violence on his Personal Information Form (PIF) and the applicant said that he did not know.

[5] After being told during a visit to the PSB that he would be arrested again, the applicant fled China. He maintains that he is not a Falun Gong member and was framed by an enemy of his family.

Decision under review

[6] The Board member found that the applicant was not credible for three reasons:

- i. the applicant did not fit the profile of a person who would be persecuted by the Chinese authorities in that:
 - a. the applicant was not a Falun Gong member;
 - b. the applicant did not fit the profile of a non-Falun Gong member who would be persecuted for supporting the Falun Gong; and
 - c. the applicant is from a region known to be lenient to the Falun Gong;
2. the applicant omitted significant details about his treatment on his Personal Information Form (PIF) and Point of Entry (POE) form. The Board held at paragraph 24:

The claimant did not report any of the torture or any of the manual labour in his Personal Information Form (PIF) when he describes his initial arrest.

3. there were inconsistencies between the documentary evidence and the applicant's testimony:
 - a. the applicant stated that he was fined on the same day that he was arrested, i.e. May 15, 2006. However, the fine notice is dated May 16, 2006; and
 - b. the applicant said his father paid the fine the same day. However, the receipt for payment is dated May 26, 2006.

ISSUE

[7] The issue in this application is whether the Board erred in finding that the applicant's story was not credible and therefore concluding that he is not a Convention refugee or person in need of protection.

STANDARD OF REVIEW

[8] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, 372 N.R. 1, the Supreme Court of Canada held at paragraph 62 that the first step in conducting a standard of review analysis is to "ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of [deference] to be accorded with regard to a particular category of question."

[9] Prior to *Dunsmuir*, it was trite law that that the Board's factual findings, including those relating to credibility, were subject to a standard of review of patent unreasonableness. Post-*Dunsmuir*, this Court has applied a "reasonableness" standard of review to determinations of credibility. *Malveda v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 447, per Mr. Justice Russell at paragraphs 18-20; *Khokhar v. Canada (MCI)*, 2008 FC 449, 166 A.C.W.S. (3d)

1123, per Justice Russell at paragraph 22; *Aguirre v. Canada (MCI)*, 2008 FC 571, 167 A.C.W.S. (3d) 773, per Justice Mandamin at paragraphs 13-14; *Arizaj v. Canada (MCI)* 2008 FC 774, per Justice Teitelbaum at paragraphs 16-18.

[10] In reviewing the Board's decision using a standard of reasonableness, the Court will consider "the existence of justification, transparency and intelligibility within the decision-making process" and "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." (*Dunsmuir* at paragraph 47).

ANALYSIS

[11] The Board's decision found the applicant not credible for three reasons as discussed above. The Court finds that the first reason by the Board for finding that the applicant was not credible is not reasonable. It is well-established that a claimant need not necessarily hold as true beliefs or opinions for which he or she fears persecution. The relevant issue is whether the persecutor attributes these opinions to the claimant. See *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689; *Sertkaya v. Canada (MCI)* 2004 FC 734, 131 A.C.W.S. (3d) 729 per Justice Layden-Stevenson at para. 6; *Yonn v. Canada (MCI)* 2003 FC 881, 125 A.C.W.S. (3d) 1228, per Justice Rouleau at para. 14, *Mwika v. Canada (MCI)* (1999) 173 F.T.R. 155 per Justice Teitelbaum at paras. 18-21.

[12] The Board further stated that the only non-Falun Gong members who are known to be persecuted are journalists or lawyers who defend or support the Falun Gong. This observation is only relevant if it is established that the Chinese authorities did not perceive the applicant to be a

Falun Gong member, an issue the Board did not consider. Finally, the Board stated that Fujian is a province known to be more lenient towards the Falun Gong, and that no incidents of non-Falun Gong members being persecuted for supporting the Falun Gong have been documented there. Again, this presupposes that the applicant was not perceived as a Falun Gong member. Moreover, the document referred to by the Board does not actually state that the authorities in Fujian are lenient, but merely identifies other regions as the areas where the worst persecution against the Falun Gong takes place.

[13] The second reason given by the Board for finding that the applicant is not credible is that the applicant omitted details about his “torture” at the police station on his Personal Information Form. The Court has reviewed the applicant’s testimony before the Board and reviewed the applicant’s Personal Information Form.

[14] The evidence of the applicant was that he was interrogated for three and a half hours, and subjected to violence when he did not provide the answers the police were seeking. He was hit on the head more than 10 times.

[15] It was reasonably open for the Board to find the applicant not credible for omitting this violence by the PSB on his PIF when bringing this refugee claim. The applicant could provide no explanation for this significant omission.

[16] The third reason, the slight inconsistencies between the dates on the documentary evidence and the applicant's testimony, is unreasonable. The Board must not engage in a microscopic examination of the evidence. See *Warnakulasuriya v. Canada (MCI)*, 2008 FC 885, per Justice Mandamin at para. 7; *Jamil v. Canada*, 2006 FC 792, 295 F.T.R. 941, per Justice Lemieux at para. 24; *R.K.L. v. Canada (MCI)* 2003 FCT 116, 228 F.T.R. 43 per Justice Martineau at para. 11. These inconsistencies were minor and do not undermine the credibility of the applicant's story.

[17] This application for judicial review must be dismissed because the significant omission on the PIF is a reasonable basis by itself for a finding by the Board that the applicant is not credible.

[18] Neither counsel proposed a question for certification. No question will be certified.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

This application for judicial review is dismissed.

“Michael A. Kelen”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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CITIZENSHIP AND IMMIGRATION

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**REASONS FOR JUDGMENT
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APPEARANCES:

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