

**Date: 20090311**

**Docket: IMM-2670-08**

**Citation: 2009 FC 254**

**Ottawa, Ontario, March 11, 2009**

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

**BETWEEN:**

**MEI HUA LIN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Mei Hua Lin is a citizen of China. She sought refugee protection in Canada on the basis of allegations that she had been persecuted for practising her faith as a Christian and that she would be at further risk of persecution if she were to return to China. The Immigration and Refugee Board (Board) denied her claim in a decision rendered in Vancouver on May 20, 2008 and it is from that decision that Ms. Lin brings this application for judicial review.

## **I. Background**

[2] Ms. Lin came to Canada from Fujian Province. She is married and is the mother of a seven-year-old son. Her husband and child remain in China. She has four years of formal education and her reading and writing skills are marginal.

[3] It was not until 2006 that Ms. Lin began to attend a local underground Protestant church. She said she had been troubled by a dire prophecy concerning her son, related by a local fortune-teller to her father-in-law. Apparently her exposure to Christian teachings brought her some comfort.

[4] Ms. Lin's introduction to Christianity was through a friend who had been attending the local underground church. Ms. Lin was told that the practice was illegal but that she ought not to worry because a lookout was always posted during church services.

[5] Ms. Lin told the Board that on August 26, 2006 her church was raided by the PSB (police). She was in the backyard at the time of the raid and, during the ensuing commotion, she and several other members of the church escaped from the area.

[6] Ms. Lin did not return home. She said that her husband told her the police had been by the house looking for her. She was also told that five members of the church had been arrested. With the assistance of her husband and a "snakehead", Ms. Lin made her way to Vancouver. She now lives in Toronto where she is an active member of a Protestant congregation.

[7] Ms. Lin testified that she speaks with her husband every month. He has told her that the police visit him every couple of months enquiring about her whereabouts. At the time of the Board hearing in February 2008 she understood that the five members of the church who had been arrested were still in custody. She stated that a similar fate awaited her if she returned home.

***The Board's Decision***

[8] The Board found that Ms. Lin's claim to a well-founded fear of persecution in China was not credible. It also found that her evidence was not consistent with the objective country documentation. There is, though, nothing in the decision which identifies any concern with Ms. Lin's evidence concerning the police raid on her church or the initial arrest of five of the congregants.

[9] The Board also found, on a balance of probabilities, that the authorities were no longer seeking Ms. Lin and that they would not have any interest in her if she were to return home. This finding was based on the Board's assessment of the country condition evidence, which indicated that the arrest of Christian practitioners was a fairly rare phenomenon. Some of that evidence suggested that a degree of official tolerance or indifference was beginning to emerge in China as the number of practising Christians increased. This led the Board to find that the likelihood of Ms. Lin being persecuted amounted to no more than a mere possibility.

[10] The Board summed up its analysis of its credibility finding in the following passage:

The same report notes that the claimant's home province of Fujian, together with Guangdong, has "the most liberal policy on religion in China, especially Christianity." It was pointed out that, where arrests have been made, it is groups such as The Shouters and the Eastern Lightening (which are considered "heretical" by many Christians) that have been targeted. I cannot reconcile the claimant's allegation that five of the attendees at her small church are still under arrest with objective country documents which suggest that, if mere church members are detained it is likely that they would be released quickly.

[Footnotes omitted]

## **II. Issues**

[11] Was the Board's credibility analysis reasonable?

## **III. Analysis**

[12] The Board's credibility analysis involves a weighing and selection of evidence and attracts a standard of review of reasonableness: see *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 47; *Sukhu v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 427, [2008] F.C.J. No. 515 at para. 15.

[13] There are significant problems with the Board's approach to the issue of the well-foundedness of Ms. Lin's fear of persecution. The decision contains no specific findings as to the truthfulness of her account of the police raid on her church and the initial arrest of five of the congregants. Clearly the Board doubted that those arrested were "still under arrest", but it drew that inference from country condition reports which indicated that where mere church members are

detained they are typically released quickly. This, of course, suggests that the Board did not consider that the arrest and relatively brief incarceration of Christians in China amounted to a form of religious persecution. If that was the Board's view, it was wrong.

[14] The Board's observation that it could not reconcile this part of Ms. Lin's evidence with the country condition evidence also represents an error of logic. Although the country condition evidence disclosed an increasing level of tolerance for the practice of Christianity in China, that evidence also recognized that the approach taken was uneven and was based on the attitudes of the local authorities. The Board had before it a significant body of evidence indicating that extremely harsh treatment was meted out from time to time to Christian practitioners throughout China. It was thus an error for the Board to say that Ms. Lin's account could not be reconciled with the country condition evidence, because some of that evidence was consistent with her risk narrative.

[15] For the Board to fairly rely upon general evidence of a diminished risk of religious persecution in China it was critically important to make specific findings about the truthfulness of Ms. Lin's account of the police raid on her church. That is so because the generalized risk facing Christians in China had to be assessed against her particular profile including her past experiences with the authorities. It was not enough for the Board to find that the instances of persecution of individual Christian congregants are now fairly rare if the authorities in her community were of a persecutory persuasion as evidenced by their earlier behaviour directed at Ms. Lin and the others in her church. Her situation may well have been one of increased risk thus taking her case outside of the statistical norm in China, and it was an error for the Board not to have conclusively resolved that

point. It was also not a complete answer to Ms. Lin's alleged predicament to find that the local authorities would no longer be interested in her. What the Board needed to ask itself was whether, in her unique situation, she would be at risk of persecution if she returned home and resumed her religious practices.

[16] I am satisfied that the Board's decision in this case is unreasonable for the reasons given above. The Board's decision is, therefore, set aside. Ms. Lin's claim must be reconsidered on the merits by a differently constituted panel of the Board.

[17] Neither party proposed a certified question and no issue of general importance arises on this record.

**JUDGMENT**

**THIS COURT ADJUDGES that** this application for judicial review is allowed with the matter remitted for re-determination by a differently constituted panel of the Board.

“ R. L. Barnes ”

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2670-08

**STYLE OF CAUSE:** Lin  
v.  
MCI

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** January 27, 2009

**REASONS FOR JUDGMENT  
AND JUDGMENT BY:** Mr. Justice Barnes

**DATED:** March 11, 2009

**APPEARANCES:**

Mr. Shelley Levine  
(416)364-2345

FOR THE APPLICANT

Mr. Gordon Lee  
(416) 973-1331

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Levine Associates  
Barristers and Solicitors  
Toronto, ON

FOR THE APPLICANT

John H. Sims, Q.C.  
Deputy Attorney General of Canada

FOR THE RESPONDENT