

Date: 20090316

Docket: IMM-3382-08

Citation: 2009 FC 259

Ottawa, Ontario, March 16, 2009

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

HUAN QUAN QIU

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

**REASONS FOR JUDGMENT
AND JUDGMENT**

[1] The Applicant is a 24-year-old homosexual male who came to Canada in January 2006. He claims to have been born in China but moved to Panama at the age of four, returning to China in 2004 to live with his grandfather. The Applicant's claim for protection in Canada was initially based on a risk of persecution, in both China and Panama, due to his sexual orientation. At this point in time, the Applicant acknowledges that, since his Panamanian passport was illegally obtained, his claim of persecution will be pursued only in respect of China.

[2] In a decision dated July 9, 2008, a panel of the Refugee Protection Division of the Immigration and Refugee Board (the RPD or the Board) determined that the Applicant was not a Convention refugee or a person in need of protection. The decision was based on two key findings:

- (a) the Applicant was unable to establish his identity with respect to either Panama or China; and
- (b) in any event, the Applicant failed to provide credible evidence that he experienced persecution in or would experience persecution if returned to either Panama or China.

[3] The Applicant seeks judicial review of the Board's decision, arguing that both of the conclusions of the Board were made in error.

[4] The decision of the Board on both of these issues required determinations of fact or, at most, mixed fact and law. Such decisions are reviewable by this Court on a standard of reasonableness.

[5] Section 106 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) and s. 7 of the *Refugee Protection Division Rules*, SOR/2002-228 (the Rules) sets out the importance of establishing a claimant's identity.

106. The Refugee Protection Division must take into account, with respect to the credibility of a claimant,

106. La Section de la protection des réfugiés prend en compte, s'agissant de crédibilité, le fait que, n'étant pas muni de papiers

whether the claimant possesses acceptable documentation establishing identity, and if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain the documentation.

d'identité acceptables, le demandeur ne peut raisonnablement en justifier la raison et n'a pas pris les mesures voulues pour s'en procurer.

7. The claimant must provide acceptable documents establishing identity and other elements of the claim. A claimant who does not provide acceptable documents must explain why they were not provided and what steps were taken to obtain them.

7. Le demandeur d'asile transmet à la Section des documents acceptables pour établir son identité et les autres éléments de sa demande. S'il ne peut le faire, il en donne la raison et indique quelles mesures il a prises pour s'en procurer

[6] The onus is on the claimant to produce acceptable documentation establishing his identity; however, where he is unable to do so, the Board must take into account whether he has provided a reasonable explanation for the lack of documentation or has taken reasonable steps to obtain the documentation (See *Zheng v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 877, [2008] F.C.J. No. 1090 (QL), at para. 14).

[7] In this case, the Applicant produced only three documents purporting to establish his identity. These were:

- A driver's licence and high school diploma from Panama; and
- A birth certificate from China.

[8] The Board determined that the Applicant failed to establish his national identity based on the following factors:

- Various identity documents provided by the Applicant were issued in different names. The Panamanian documents used “Luis Yau Chang” while the Applicant’s name on his birth certificate and the current name on his Personal Information Form (PIF) is Huan Quan Qiu. In his Record of Examination and his pre-amended PIF, the Applicant stated that his other name was Luis Yau. When asked why he had not indicated his full name as Luis Yau Chang, the Applicant replied that he did not know;
- The Applicant stated that he had a Panamanian national identity card in China but that his grandfather could not find it;
- The Applicant stated that he had a Panamanian passport but that the agent who had arranged for his travel to China took it. The Board found this to be implausible and not credible given the Applicant’s 12 years of education and extensive world travel experience;
- The Applicant could not explain why he travelled on a false Singapore passport when he could have travelled on a Panamanian passport;

- The Applicant could provide no documentation, such as a police report or a death certificate, to corroborate the claim that his parents died in Panama as the result of a violent robbery;
- The Applicant made no effort to obtain a new passport and national identity card despite having minimal documentation concerning his Panamanian identity. The Applicant's explanation for this was that he did not consider it because he had a driver's license. The Board did not find this credible given that the Applicant was represented by counsel and had had more than sufficient time to obtain relevant identity documents;
- The Applicant's only Chinese identity document was a birth certificate, which, according to the Board, could have been fraudulently obtained with ease; and
- Though the Applicant was able to speak Spanish and Cantonese, the Board found that it was insufficient to establish his nationality because he could be a resident of Hong Kong or of any other country with a large Chinese population.

[9] The Applicant submits that in assessing his identity documents, the Board undertook an approach that was overly-critical and unfair by rejecting the authenticity of some documents without any evidence that they were fraudulent.

[10] As noted above, the Applicant bears the onus of producing acceptable identity documents to establish his or her identity. In the present case, the Applicant produced only one document (a birth certificate) to establish his identity as a Chinese citizen. He produced only one piece of photo identification (a driver's licence), which was issued in a different name from his own, to prove his Panamanian citizenship. Having read the transcript of the hearing, I am satisfied that the Board gave the Applicant every opportunity to explain why he had no other documents and to explain what steps he had taken to obtain documents.

[11] It was open for the Board for draw negative credibility findings based on the Applicant's inability to provide key documents, such as his Panamanian national identity card or passport and his parents' death certificates, and based on his inability to provide compelling reasons as to why these documents were not obtained and submitted to the RPD.

[12] The Applicant raises particular concern with respect to the Board's treatment of his alleged Chinese birth certificate. The Board gave little weight to the birth certificate because "a fraudulent birth certificate is an easily obtained document". In the Applicant's view, the Board ought to have submitted the document for forensic testing before dismissing it as fraudulent. I do not agree. In spite of claiming to have been in China for two years, the Applicant had absolutely no other documents to prove his identity or presence in China. In light of the lack of any corroborating documents, it was not unreasonable for the Board to conclude that the birth certificate – a document that could easily be fraudulent – was not determinative of his identity.

[13] In sum, I am satisfied that the Board reached a reasonable conclusion based on the limited number of identity documents that had been submitted by the Applicant and the problems with those that he did produce.

[14] Where identity is not established, it is unnecessary to further analyze the evidence and the claim must fail (*Li v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 296, [2006] F.C.J. No. 368 (QL), at para. 8; *Husein v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 726 (QL)). Accordingly, there is no need to examine the reasonableness of the Board's finding that the level of discrimination experienced by the Applicant, in either China or Panama. Nevertheless, I would observe that, having reviewed the record, I am satisfied that the Board's decision on that issue of identity falls "within the range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 47).

[15] The application for judicial review will be dismissed. Neither party requested that a question be certified. In my view, none should be certified.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. the application for judicial review is dismissed; and
2. no question of general importance is certified.

“Judith A. Snider”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3382-08

STYLE OF CAUSE: HUAN QUAN QIU v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 11, 2009

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

DATED: MARCH 16, 2009

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