

Federal Court



Cour fédérale

Date: 20100105

Docket: IMM-1850-09

Citation: 2010 FC 8

Ottawa, Ontario, January 5, 2010

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

**XIA FENG SHI
(a.k.a. XIAFENG SHI)**

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant is a citizen of the People's Republic of China who came to Canada in May 2007 on a study permit and subsequently claimed refugee protection. While he was born in the Fujian Province, the Applicant lived in Shanghai before coming to Canada. His claim was based on his fear of persecution on religious grounds. The Applicant claimed to be a member of a house church, in Shanghai, China, where he practised Christianity for the two years prior to his arrival in Canada. After the Applicant's arrival in Canada, he was told that his church group had been discovered and raided.

[2] In a decision dated March 13, 2009, a panel of the Immigration and Refugee Board, Refugee Protection Division (the Board) rejected the Applicant's claim. Although the Board found that the Applicant practised Christianity as a member of a house church and that he continued to practise his religion in Canada, the Board was not persuaded that the Applicant's house church was or would be discovered and raided. In addition, the Board appears to have concluded that the Applicant could practise Christianity in a registered Church.

[3] The Applicant seeks judicial review of this decision.

[4] There is no question that the Board's decision is entitled to considerable deference. Nevertheless, even a standard of reasonableness requires "justification, transparency and intelligibility within the decision-making process" (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 47).

[5] The determinative issue is whether the Board's conclusion that the Applicant's small, home-based church would not have been raided was reasonable. For the reasons that follow, I am not satisfied that the decision demonstrates the necessary elements of a reasonable decision. Accordingly, the application for judicial review will be allowed.

[6] As noted above, the Board, without any credibility concerns, accepted that the Applicant was practising Christianity as a member of a house church in China and that he continued his practice of Christianity in Canada. The Board then turned to a consideration of whether it was

credible that the Applicant's church would have been discovered and raided. In this analysis, the Board considered the size of the church and the non-leadership role of the Applicant.

[7] With respect to the size of the church, the following paragraph contains the essence of the Board's analysis:

The claimant testified that he was a member of a house church with a maximum of 14 members. The panel finds that on a balance of probabilities, a house church with this size membership would not have been raided. Documentation indicates that the treatment of house churches varies regionally. Although enforcement of religious regulations is stricter in urban areas such as Shanghai, according to the United States Department of State, urban house churches are generally limited to meetings of a few dozen members or less. The documentary evidence indicates that small prayer meetings and Bible study groups held among friends and family in homes are not subject to raids. [Emphasis added.]

[8] The meaning of the reference to Shanghai in this paragraph is unclear. Did the Board mean that, except for Shanghai, small, home-based churches are tolerated? Or, did the Board mean that, even though enforcement of regulations is stricter in large urban centres, small, home-based worship groups are tolerated in Shanghai? If the first possible interpretation is correct, the Board has misapprehended the Applicant's claim that he was worshiping in and would return to Shanghai – and not elsewhere, where religious tolerance may be greater. This would be a serious factual error. Since it is always important to read a decision in its entirety, I turn to the balance of the decision to see if, indeed, the Board understood that the Applicant's church was in Shanghai and not elsewhere in China.

[9] Throughout the decision, there are only a few references to Shanghai. In the summary of allegations (at page 1 of the decision), the Board notes that the Applicant was living in Shanghai.

The analysis of the question of whether the Applicant was practising Christianity as a member of a house church makes no explicit reference to Shanghai. The only other reference to Shanghai is at page 4 of the decision where the Board states that: “Meetings were held in four different locations in Shanghai”.

[10] On the other hand, the decision contains an explicit reference to the Fujian Province. At page 5 of the decision, the Board states that:

The documentary evidence is seen as reliable, probative and details information so as to provide the panel with a thorough understanding of the situation of Protestants in Fujian Province. [Emphasis added]

[11] The Respondent submits that the Board’s reference to the Fujian Province was a simple error and that the balance of the decision reflects the Board’s analysis of the situation in Shanghai. I am not persuaded that this was a simple slip of the pen. Contrary to the assertions of the Respondent, the balance of the decision is not entirely clear as to whether the Board’s mind was directed to Shanghai or to the Fujian Province. This problem is particularly serious in this case because the documentary evidence appears to show that the authorities in the Fujian Province are more tolerant of Christian underground churches than elsewhere in China.

[12] The foregoing error indicates a lack of care in the handling of this case that makes me doubt the presence of the required “justification, transparency and intelligibility within the decision-making process”. There are also other concerns in the Board’s decision that could justify this Court’s intervention in the present case. There is no need here to elaborate on other concerns, since one serious error is sufficient to allow the judicial review; however, I will briefly illustrate another weakness of the Board’s decision.

[13] In my view, the decision reflects a selective use of the documentary evidence. For instance, relying on the U.S. Department of State Report on religious freedom in China for 2007, the Board stated, at page 3 of its decision: “The documentary evidence indicates that small prayer meetings and Bible study groups held among friends and family in homes are not subject to raids.” If we go back to the documentary source, this statement seems to be taken out of context. Indeed, in the same U.S. Department of State Report, it is written at page 5:

...although prayer meetings and Bible study groups held among friends and family in homes are legal and do not require registration. SARA [State Administration for Religious Affairs] has not publicly defined the terms “family and friends.” House churches report that local authorities frequently disrupted meetings of friends and family in private homes and arrested participants on the grounds that they were participating in illegal gatherings.

[14] The uncertainty regarding the area of China considered by the Board to evaluate the Applicant’s case, along with the problems in the treatment of evidence, are errors serious enough to allow this judicial review.

[15] Neither party proposed a question for certification. None will be certified

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. the application for judicial review is allowed, the decision of the Board is quashed and the matter is sent back to the Board for re-determination by a differently-constituted panel of the Board; and
2. no question of general importance is certified

“Judith A. Snider”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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

DATED: JANUARY 5, 2010

APPEARANCES:

Mr. Michael Korman FOR THE APPLICANT

Ms. Adrienne Rice FOR THE RESPONDENT

SOLICITORS OF RECORD:

Otis & Korman FOR THE APPLICANT
Barristers and Solicitors
Toronto, Ontario

John H. Sims, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario