

Federal Court



Cour fédérale

Date: 20100218

Docket: IMM-3053-09

Citation: 2010 FC 169

Ottawa, Ontario, February 18, 2010

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

LING LAN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision (the decision) of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated May 8, 2009, wherein the Board determined that the Applicant is neither a convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, R.S. 2001, c. 27 (*IRPA*).

[2] For the reasons set out below, the application is dismissed.

I. Background

[3] The Applicant is a 41 year-old female Chinese citizen. The Applicant's refugee application was based on her claim that she faces persecution in China as a practicing Christian and member of an illegal house church.

[4] The Board refused her claim based on credibility. The Board member drew a negative inference and credibility finding against the Applicant based on inconsistencies between her Personal Information Form (PIF), her testimony and the evidence, and the implausibility of her testimony.

[5] The Board cited four examples of where it found the Applicant's testimony to be not credible:

A. *The Applicant's Description of How She Came to be Introduced to the Underground Church*

[6] The Board found inconsistencies between the information in the Applicant's PIF and her oral testimony as she did not state that two people, as opposed to one, preached to her about Christianity.

B. *The Applicant's Knowledge of Important Christian Dates*

[7] The Board drew a negative inference from the Applicant's response to an Immigration Officer's questions regarding important dates in Christianity. The Applicant had responded that the most important dates for a Christian are Thanksgiving, after baptismal and December 25. The Board took issue with the fact that she did not identify Easter and that she provided only a cryptic description of "Thanksgiving" at the hearing.

C. *The Applicant's Account of What Transpired on the Day She Learned About the Arrest of Her Fellow Church Members*

[8] The Board held that, based on cumulative omissions, implausibility and negative inferences, the Applicant was not a member of an underground church, that the church she attended in China was not raided by the Public Security Bureau (PSB) and that the claimant is not wanted by the PSB.

D. *The Applicant's Knowledge of the Meaning of Holy Communion*

[9] The Board drew a negative inference from the Applicant's alleged inability to detail the reasons for taking Holy Communion, considering her stated commitment to Christianity over a period of three years, her baptismal preparation classes, and her regular attendance at church.

[10] The Board determined that the Applicant was not a genuine Christian and had not satisfied her burden of establishing a claim under section 96 or 97 of *IRPA*.

II. Issue and Standard of Review

[11] The Applicant raises only one issue in this matter: are the Board's credibility findings unreasonable?

[12] This question will be reviewed on a standard of reasonableness (see *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190; *Canada (Minister of Citizenship and Immigration) v. Khosa*, 2009 SCC 12; [2009] 1 S.C.R. 339; *Sun v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1255; [2008] F.C.J. No. 1570).

[13] As set out in *Dunsmuir*, above, and *Khosa*, above, reasonableness requires the existence of justification, transparency, and intelligibility in the decision-making process. It is also concerned with whether the decision falls within a range of acceptable outcomes that are defensible in respect of the facts and law.

[14] The Court is to demonstrate significant deference to Board decisions with regard to issues of credibility and the assessment of evidence (see *Camara v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 362; [2008] F.C.J. No. 442 at paragraph 12). The Board, who has heard the oral testimony, is in the best position to gauge the credibility or plausibility of a claimant's account (see, for example, *Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315; [1993] F.C.J. No. 732 (F.C.A.), and *Sun*, above).

[15] It is also important to note that the Court ought not to substitute its discretion for that of the Board, even if the Court might have drawn different inferences or reached a different conclusion. In other words, it is not sufficient for the Applicant to demonstrate that different conclusions could have been reached on the evidence - the Applicant must show that the findings of the Board are unreasonable (see *Sun*, above, paragraph 3).

III. Analysis

[16] The Applicant argues that the majority of the Board's adverse credibility findings are unreasonable. With regard to the specific points identified by the Board, see above, the Applicant argues:

A. *Introduction to the Church*

[17] It was unreasonable for the Board to reject the Applicant's explanation for inconsistencies between her oral evidence and the PIF with regard to how she was introduced to the church. The Applicant argues that her explanation for omitting a name from her PIF, that she thought she could add it in later, was reasonable.

B. *Knowledge of Important Christian Dates*

[18] The Applicant admits that a challenge to this aspect of the Board's decision would be weak.

C. *Description of the Arrests*

[19] The Applicant argues that the Board appears to fault the Applicant for not having discussed the detailed security precautions taken by church members in her PIF. The Applicant continues that the Board did not have enough information about the surrounding circumstances to come to the conclusion that the Applicant was describing an implausible deviation.

D. *Explanation of the Holy Communion*

[20] The Applicant argues, based on the hearing transcript, that she demonstrated no deficiency in her knowledge of Holy Communion.

[21] The Respondent argues that the Applicant was unable to establish that she was a Christian on a balance of probabilities. It is the Respondent's position that even if there were small errors, the decision as a whole is reasonable and the application should be dismissed.

[22] In this case, the Board took a very narrow approach when considering the appropriate words required to accurately describe the meaning of Holy Communion. By taking such a narrow

approach, the Board erred when it drew a negative inference from the Applicant's explanation. The Board's credibility findings on the other three points are reasonable.

[23] The Court is not to scrutinize isolated sections of a decision but read them as a whole. In *Larue v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 484, 40 A.C.W.S. (3d) 952 (F.C.T.D.) Justice Marc Noël held that even if some of the findings maybe questionable, the Court should not interfere with the decision based on evidence that, taken as a whole, could support a negative assessment of credibility.

[24] Even where the Court finds that the Board erred in one of its implausibility findings, as long as the overall finding of a lack of credibility is not perverse, capricious or made without regard to the evidence, then the decision is not so flawed that no amount of deference can justify letting it stand (see *Pan v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 515, [2007] F.C.J. No. 697).

[25] I also note that credibility finding can be based on implausibility, contradictions, irrationality and common sense (*Sun*, above).

[26] The Court has found that errors in implausibility and credibility findings by a Board can result in the decision not being reasonable. In *Song v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1321; 76 Imm. L.R. (3d) 81, Justice James Russell held that it was the

cumulative impact of the erroneous plausibility and credibility findings that was important and rendered the decision unreasonable.

[27] In this case, I find that the error in the Board's credibility findings based on point D did not have a cumulative impact that resulted in the decision, taken as a whole, to be unreasonable. The Board's overall finding of a lack of credibility was not so flawed as to render the decision to be outside the range of acceptable outcomes that are defensible in respect of the facts and law.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. this application for judicial review is dismissed; and
2. there is no order as to costs.

“ D. G. Near ”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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**REASONS FOR JUDGMENT
AND JUDGMENT BY:** NEAR J.

DATED: FEBRUARY 18, 2010

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