

Date: 20100223

Docket: IMM-3279-09

Citation: 2010 FC 205

Ottawa, Ontario, February 23, 2010

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

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Applicant

and

**THE MINISTER OF
CITIZENSHIP AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72 (1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of the negative decision of the Refugee Protection Division of the Immigration and Refugee Board (Board), dated May 26, 2009 (Decision), which refused the Applicant's application to be deemed a Convention refugee or person in need of protection under sections 96 and 97 of the Act.

BACKGROUND

[2] The Applicant is a citizen of the People's Republic of China (China). After ending her relationship with her boyfriend the previous month, the Applicant accepted Christianity in May, 2005. She began to attend an underground church in June, 2005, and was baptized in March, 2006.

[3] The Applicant alleges that her church was raided in January, 2007. The Applicant fled the church and went to hide in a friend's house. News came to the Applicant that four members of her church had been arrested. In January, 2007, the Public Security Bureau (PSB) went to the Applicant's house to find her.

[4] The Applicant arranged to come to Canada for fear of being arrested. She alleges the PSB has been to her home on several occasions to try to arrest her since her departure from China.

DECISION UNDER REVIEW

[5] The determinative issue in the Applicant's hearing was credibility. Despite a finding that the Applicant was indeed Christian, the Board determined that the Applicant's account of her membership in an underground church and the pursuit by PSB agents was not credible.

[6] The Board concluded that the Applicant was not being sought by the PSB on account of her religious activities in China. Furthermore, the Board found that there was not a serious possibility of persecution should the Applicant return to her home province of Fujian.

[7] The Board acknowledged the Applicant's "adequate knowledge" of Christianity and also accepted the letter from the Applicant's church in Canada confirming her faith. Thus, it determined that on a balance of probabilities, she is a Christian.

[8] However, the Board determined the Applicant lacked credibility for the following reasons:

- a. The Applicant's lack of concern prior to attending an illegal underground church, considering the serious consequences of being caught and the church's need for a security plan;
- b. The fact that it took several questions before the Applicant admitted that she felt a "bit nervous" about breaking the law, although she claimed to have never done so before, and the fact that her parents disapproved of her decision;
- c. The Applicant's lack of emotion in discussing the alleged recent PSB raid on her church, as compared to the emotion she displayed when speaking of her break-up with her boyfriend, which occurred years before.

[9] Furthermore, the Board determined that, prior to attending the house church, the Applicant did not know of the illegality of attending the church, despite her claim to the contrary.

[10] The Board considered documentary evidence and found that the Applicant's province of Fujian, along with the province of Guangdong, has the "most liberal policy on religion in China, especially on Christianity." While the Board noted that there were arrests of Christians documented in 2005-2008, none of the arrests were noted as having occurred in Fujian province.

[11] Furthermore, while there were "house church crackdowns" in 2005, none of these crackdowns were reported in the documentary evidence as having occurred in the Applicant's province; nor did the documentary evidence support a finding of Christians being arrested in Fujian province in 2006 and 2007. The only mention of arrests made in Fujian province was in 2002.

[12] The Board determined that, if there had been arrests in Fujian province after 2002, such arrests would have been documented. According to the Board, "the situation in Fujian province does not reflect what is happening in many other provinces where there have been arrests of ordinary Christians."

[13] The Board also considered the Applicant's house church in the context of the documentary evidence and found that: a) prayer meetings and Bible study groups are legal and need not be registered; and b) house churches are more likely to have problems when membership is growing, where the group arranges for the use of facilities, or where the church forges links with other groups. There was no evidence that the Applicant's group had done any of these things.

[14] The Board determined, on a balance of probabilities, that “the house church the claimant attended was never raided by the authorities and consequently, the claimant was not wanted by the PSB.” As such, the Applicant could practise her religion in an unregistered church if she was to return to Fujian province.

ISSUES

[15] The issues on the application can be summarized as follows:

1. Whether the Board erred in its adverse finding of credibility;
2. Whether the Board erred in its assessment of the evidence which resulted in an unreasonable conclusion with regard to the risk of persecution faced by the Applicant.

STATUTORY PROVISIONS

[16] The following provisions of the Act are applicable in these proceedings:

Convention refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d’être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Person in need of protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

Person in need of protection

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Personne à protéger

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

STANDARD OF REVIEW

[17] The Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to the particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search

proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[18] The determination of credibility is within the expertise of the Board. For this reason, credibility findings attract a standard of reasonableness on review. See *Aguirre v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 571, [2008] F.C.J. No. 732 at paragraph 14.

[19] The issue of whether the Board erred in its assessment of the facts and evidence is a fact-based question. As such, it will attract a standard of reasonableness upon review. See *Dunsmuir* at paragraph 51.

[20] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with “the existence of justification, transparency and intelligibility within the decision-making process [and also with] 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. Put another way, the Court should only intervene if the Decision was unreasonable in the sense that it falls outside the “range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

ARGUMENTS

The Applicant

[21] The Board determined that, contrary to her claim, the Applicant was unaware of the illegality of attending the underground church prior to her attendance. The laws of China make it clear that attendance at an unregistered church is illegal. Therefore, it was unreasonable for the Board to determine that the Applicant would believe otherwise. Moreover, the Applicant explained to the Board why she attended the church despite knowing that attendance was illegal. First, she placed reliance on her friend's assurances that even though the church was unregistered it had not encountered any problems in the past. Second, precautions were taken to ensure the safety of those in attendance. As such, the Board's finding that the Applicant was not aware that attendance at the church was illegal is not reasonable.

Evidence

[22] Despite its fairly detailed review of the documentary evidence, the Board failed to cite the evidence in the 2007 Annual Report of Persecution by the Government on Christian House Churches within Mainland China (Report of Persecution) which determined that "there were also reports of house churches being destroyed in the provinces of Jilin and Fujian."

[23] The Applicant submits that this evidence is pertinent because it is evidence of persecution of unregistered Christians in Fujian province. Furthermore, this Report was from January of 2007,

which was exactly when the Applicant claims the raid on her church occurred. This evidence was directly on point in considering whether or not the Applicant's church had been raided.

Furthermore, it directly counters the Board's finding that the Applicant could practise her religion in Fujian without facing a serious possibility of persecution.

[24] Thus, it can be concluded that this evidence was either ignored or disregarded by the Board in making its determination as to the credibility of the Applicant's story. See *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, 157 F.T.R. 35, [1998] F.C.J. No. 1425. The Board chose to rely on portions of the Report to come to the opposite conclusion, but ignored the evidence directly on point with regard to the persecution of unregistered Christians in Fujian.

The Applicant's Ability to Practise Christianity in China

[25] After a review of the documentary evidence, the Board determined that the Applicant would be able to practise her religion in an unregistered church in Fujian without facing a serious possibility of persecution. This determination was made without full consideration of the evidence, such as the destruction of house churches in Fujian, as stated in the Report.

[26] The Board erred in determining that the Applicant would be able to practise in an unregistered church upon her return without facing a serious risk of persecution. This error was compounded by the Board's additional error in presuming that all incidents of persecution in China

are listed in the Report, which is contrary to what is stated in the Report itself. The Report states that it contains likely only a fraction of the incidents of persecution that have actually occurred in China.

[27] The Board also relied on the documentary evidence that prayer and bible study meetings among friends and family were legal in China and need not be registered. The Applicant's group is clearly distinguishable from a prayer meeting or a bible study, since the church had a pastor that attended on occasion to administer Holy Communion and perform baptisms. It is difficult to reconcile the Board's description of the Applicant's group as a prayer meeting or bible study group with the description provided by the Applicant. The Chinese authorities would most likely consider her group to be an unregistered church instead of a prayer meeting or bible study group. The Board erred by failing to consider pertinent aspects of the Applicant's evidence when characterizing the Applicant's group. See *Cepeda-Gutierrez*.

[28] The Board erred further in relying on the U.S. Department of State 2008 Human Rights Report: China (U.S. Department of State Report) which stated that unregistered groups are more likely to encounter difficulties when their membership is large or when they create links with other groups. While the Board took this evidence to be determinative that the Applicant's church would not experience persecution, the evidence did not state that unregistered groups that do not have such characteristics do not experience persecution. Rather, this evidence determined that meetings that consisted of more than a few friends and family were strictly prohibited in some areas.

[29] Finally, the Applicant submits that it was unreasonable for the Board to determine that she could maintain her religious practices and freedom of religion in China simply because "from time

to time the government in question is not enforcing laws which infringe one's freedom of religion." Indeed, it is unreasonable to have to undertake an illegal act in order to maintain one's freedom of religion.

The Respondent

Reasonable Credibility Findings

[30] Findings of credibility are at the core of the specialized jurisdiction of the Board. As such, the Court should be reluctant to set aside the Board's findings with regard to credibility. See *Solis v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 372. As long as the inferences drawn by the Board with regard to the Applicant's credibility are not unreasonable, its findings are not open to judicial review. See *Aguebor v. Canada (Minister of Employment and Immigration)*, 160 N.R. 315, [1993] F.C.J. No. 732.

[31] Negative decisions with regard to an Applicant's credibility are properly made where the tribunal in question provides reasons for its finding of credibility in "clear and unmistakable terms." See *Hilo v. Canada (Minister of Employment and Immigration)*(1991), 130 N.R. 236, 15 Imm. L.R. (2d) 199.

[32] In this case, the Board explained its negative credibility findings in detail, which stemmed from the Applicant's lack of concern with regard to breaking the law. Indeed, the Board noted:

- a) That it was only after several questions about how she felt that the Applicant stated that she was a bit nervous about breaking the law;
- b) The Applicant's claim that she had never broken the law before;
- c) The Applicant's claim that she had disobeyed her parents when they opposed her attendance at the underground church;
- d) The Applicant's initial response that God gave her hope and helped her make the decision;
- e) The Applicant's lack of concern prior to attending the illegal church;
- f) The serious consequences of being caught in attendance; and
- g) The fact that the church members believed that a security plan was necessary.

[33] The Board also compared the Applicant's emotional reaction with regard to her 2005 break-up with her boyfriend with her lack of emotion with regard to the more recent raid on her church and the ensuing chain of events, including: the arrests of fellow church goers; going into hiding; and an illegal departure from China. The Board determined that it was implausible that the Applicant would show such strong emotion with regard to the former instance and display no emotion with regard to the more recent traumatic chain of events.

[34] The Respondent submits that the Board gave a thorough explanation for its negative finding of credibility in "clear and unmistakable terms." Furthermore, its findings are supported by the evidence before it and are within the range of possible and acceptable outcomes, as required by *Dunsmuir*.

Properly Assessed Evidence

[35] The Board undertook a proper examination of the Applicant's evidence by assessing it against the country condition documentation. The Board did not ignore any of the evidence before it. Rather, it referred to several country condition reports in determining whether there was a serious possibility of the Applicant's facing persecution upon her returning to China and continuing to practise Christianity in an unregistered church.

[36] For example, the Board noted that Fujian (the Applicant's province) and Guangdong have the most liberal policy in China with regard to religion, and especially Christianity. It also noted that among the arrests documented in 2005-2008, none had taken place in Fujian province. Similarly, the Board noted that in 2007, 788 Christians had been persecuted in China, and 693 had been arrested and detained, among whom 415 of these individuals were church leaders.

[37] In examining the documentary evidence before the Board, the only mention of the arrest of Christians in Fujian province was in 2002, in which 20 unregistered Catholics were arrested for attending Catechism class.

[38] The Applicant has argued that the Board ignored evidence because it did not cite the documentary evidence that house churches in Jilin and Fujian were destroyed. The Applicant is essentially arguing that the Board should have given more weight to this portion of the country conditions. However, it is the Board's prerogative to rely on some evidence over other pieces of

evidence where the evidence is conflicting. It is not the Court's role to intervene and reweigh the documentary evidence that was before the Board. See *Legault v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125, 288 N.R. 174.

[39] Furthermore, it must be noted that the Applicant alleged that members of her church had been arrested and that the PSB continues its attempts to arrest her. She has not alleged that her church has been destroyed as per the documentary evidence. None of the evidence before the Board supported the Applicant's claim of arrests of Christians occurring in the Fujian province between 2005 and 2008.

[40] Finally, the Board also considered that prayer meetings and bible study groups between friends and families need not be registered. The Board noted the characteristics of the house churches that are more likely to have problems. There was no evidence before the Board that the Applicant's house church had any of these characteristics, as her group remained small and mainly focused on bible discussions and prayer. The Board's characterization of the Applicant's group was reasonable.

[41] The Applicant has argued that, despite its size and common practices, her unregistered church is nonetheless open to punishment. This alone is not enough to prove that there is a more than a mere possibility of persecution. The Applicant's arguments are based on mere speculation and do not show a prospective risk of persecution.

[42] The Applicant relies on a portion of the documentation package which states that “meetings of more than a handful of family members and friends were strictly proscribed.” However, the beginning of this paragraph says that the handling of unregistered groups varies in different regions of the country, and that in some regions “unregistered groups or house churches with hundreds of members met openly.” This passage must be viewed in the context of the other documentary evidence which states that the Applicant’s province has the most liberal policy in China with regard to Christians.

[43] The Board’s assessment of documentary evidence was fair and balanced. It considered all relevant documentary evidence having regard to the Applicant’s profile as a Christian who practised in a small unregistered church in Fujian province.

ANALYSIS

The Country Documentation

[44] The Applicant says that the Board does a detailed analysis of Christian repression in China but fails to refer to evidence of arrests and repression of churches in Fujian province.

[45] The Information Request relied upon by the Board for authority that there were no arrests in Fujian in 2005, 2006, 2007 and 2008 actually mentions that in 2003, a group of seminarians in Changhe, near Fuzhan (which is in Fujian) were arrested and that in 2005 Father Lin Daixian, along

with nine parishioners and one seminarian, were arrested when Father Lin Daixian conducted mass in a private home.

[46] As a result, the Board's statement concerning arrests in Fujian is not entirely accurate. However, I cannot say that these mistakes are particularly material to the Applicant's experiences in 2007 or that they materially qualify the general statements in the Information Request that Fujian, together with Guangdong, has "the most liberal policy in China, especially on Christianity."

[47] The Board uses the documentary evidence to assess the plausibility of the Applicant's assertion that her church was raided and four members were arrested in January, 2007. I am not convinced that the arrest of a group of seminarians in 2003, or the experience of Father Lin Daixian in 2005, materially undermines the Board's assessment of whether the Applicant's account of what happened at her church in 2007 was believable.

[48] There was also evidence before the Board in a 2007 U.S. Department of State Report that the government closed churches in Fujian, but we do not know whether such churches correspond to the kind of house church that the Applicant claimed she belonged to. The same report makes it clear that there is a significant difference in the way that house churches are treated depending upon a variety of factors:

In some areas unregistered house churches with hundreds of members met openly with the knowledge of local authorities. In other areas house church meetings of more than a handful of family members and friends were proscribed. House churches could encounter greater difficulties when their membership grew, when they arranged for the regular use of facilities for the specific purpose

of conducting religious activities, or when they forged links with other unregistered groups or with coreligionists overseas.

This information is given in a paragraph dealing with Zhejiang, Jilin, and Fujian Provinces, so that it is difficult to see what the situation in Fujian is, or whether this information changes the general picture of tolerance that is used to describe Fujian elsewhere and upon which the Board relies. So, once again, I cannot say that the information that the government closed churches in Fujian necessarily contradicts the Board's general conclusions or required specific mention.

[49] The same can be said of the June 2007 Report of Persecution ... on Christian House Churches, which says that "there were also reports of house churches being destroyed in the provinces of Jilin and Fujian." As other documentation makes clear, much depends on the kind of house church involved and the activities that take place. It is not possible for me to say that the Board overlooked information that contradicted its conclusions or that this particular evidence required specific mention in accordance with the principles set out in *Cepeda-Gutierrez*.

[50] The same can be said for the Board's analysis of the size and kind of house church involved. It is possible to point to references in the documentation which suggests that even legal house churches and small groups can be raided. However, it is not clear of the extent to which the information on this issue contained in the U.S. Department of State International Religious Freedom Report of 2007 applies to the Applicant's situation in Fujian province, or the extent to which it contradicts the Board's general conclusions and should have been specifically addressed in assessing the plausibility of the Applicant's account.

[51] The Board's analysis of what risks the Applicant faces if she returns to Fujian and practises her religion is based upon the same body of evidence referred to above. Once again, bearing in mind the kind of church that the Applicant belonged to, I cannot say that the Board's analysis of this issue was unreasonably flawed.

[52] As regards the Board's analysis of the Applicant's subjective fears, I can see that there is room for disagreement over the significance of the details relied upon and the general conclusion that "the activity that the claimant was about to begin, attending a house church, was not an act which she and the people she associated with knew to be illegal. However, I cannot say that such a conclusion falls outside the range of possible, acceptable outcomes which are defensible in respect of the facts and law.

Conclusions

[53] The Applicant raises various points of concern about the way the Board dealt with the evidence in arriving at his negative credibility finding. I have examined each point in turn.

[54] While it is possible to say that the Board could have taken more note of particular factors, I do not think it is possible to say that the Board overlooked evidence that directly contradicted its conclusions so as to render the Decision unreasonable within the principles enunciated in *Cepeda-Guitierrez*.

[55] The points raised by the Applicant go to emphasis and interpretation of evidence given by the Applicant and the relevant country documentation. In the end, it all comes down to matters of weight for the Board and not for this Court. See *Legault*. Reviewed as a whole, the Decision falls within the range of possible acceptable outcomes which are defensible in respect of the facts and the law which, in accordance with *Dunsmuir*, is all that is required.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. The application is dismissed;
2. There is no question for certification.

“James Russell”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-3279-09

STYLE OF CAUSE: LI LI

- and -

MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: FEBRUARY 3, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:** HON. MR. JUSTICE RUSSELL

DATED: FEBRUARY 23, 2010

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