

Federal Court		Cour fédérale
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Date: 20100429

Docket: IMM-4453-09

Citation: 2010 FC 468

Toronto, Ontario, April 29, 2010

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

LIN YANG

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The present Application concerns a citizen of China who claims refugee protection on the ground that, as a Christian, he would suffer more than a mere possibility of persecution should he return to China.

[2] In a detailed decision, the Refugee Protection Division (RPD) rejected the Applicant's claim and in doing so made this statement: "after consideration of the totality of the evidence available to the panel, I find on a balance of probabilities that the claimant is not a genuine practicing Christian" (Decision, para. 19). In reaching this conclusion, the RPD took into consideration that the Applicant lives in Guangzhou City, Guangdong Province, and that a "lack of any information regarding instances of arrests and other forms of persecution for Guangdong Province in any of the documents available to the panel" was "significant and convincing" (Decision, para. 16). It is agreed that the finding with respect to the Applicant's residence was made in fundamental error; the Applicant is a native of Fujian Province. As a result, Counsel for the Applicant argues that the decision was made in reviewable error.

[3] Counsel for the Respondent argues that the fundamental error of fact can be separated from findings with respect to negative credibility, and, thus, the rejection of the Applicant's claim can still stand. In my opinion, the separation is impossible to make. As noted above, the fundamental error of fact was taken into consideration with other features of the Applicant's claim, and, in my opinion, had an unfair contaminating influence on the outcome. Thus, I find that the fundamental error of fact constitutes a reviewable error which renders the decision as unreasonable.

ORDER

Accordingly, I set aside the decision under review and refer the matter back to a differently constituted panel for re-determination.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4453-09

STYLE OF CAUSE: LIN YANG v. THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: April 28, 2010

**REASONS FOR ORDER
AND ORDER:** CAMPBELL J.

DATED: April 29, 2010

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