

Federal Court



Cour fédérale

Date: 20100625

Docket: IMM-5987-09

Citation: 2010 FC 694

Ottawa, Ontario, June 25, 2010

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

SHOUPENG WEI

Applicant

and

**THE MINISTER OF
CITIZENSHIP AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) where the Board finds that the Applicant is not a Convention refugee nor a person in need of protection under the Act.

[2] The application for judicial review shall be granted for the following reasons.

Factual Background

[3] The Applicant, Shoupeng Wei, is a citizen of China. He claims that he is a practicing Christian and as such will be persecuted in China. He alleges that he became motivated to embrace Christianity when a friend's prayers cured him of gastric problems that he was suffering in July 2005. After he was cured, the Applicant mentions that he regularly attended an unregistered church until the Public Security Bureau's (PSB) raid in April 2006. He went into hiding for nine months and while he was in hiding, he was able to obtain a Canadian visitor's visa through a smuggler. He arrived in Canada on January 13, 2007 and made a claim for refugee protection on February 6, 2007.

Impugned Decision

[4] The Board's decision rests on the issue of credibility and the negative inferences that it draws with regard to the Applicant's religious activities in China and Canada and his being pursued by Chinese authorities.

[5] With regard to the Applicant's claim that he is being pursued by Chinese authorities, the Board draws a negative inference as the Applicant testified that the PSB issued an arrest warrant against him but this was never mentioned in his initial interview or in his Personnel Information Form (PIF). The Applicant explained that it was never mentioned previously because he was not asked about it directly and because he could not obtain a copy of the warrant.

[6] The Board draws another negative inference from the fact that the Applicant was issued an extension of his passport during the same period that he was supposedly being pursued by the PSB. Relying on documentary evidence that describes a computer-based information network (the Golden Shield) that allows for the sharing of information amongst different government agencies, the Board finds that it is not reasonable that the PSB would issue a passport to the Applicant ten days after the raid on the church since he was a person of interest in a criminal investigation.

[7] The Board finds the Applicant's testimony with regard to the PSB's active search for him to be implausible. The Board cites documentary evidence indicating that in order to leave China, the Applicant would have had to have his identity confirmed through a computer-based information system and finds that the Chinese authorities would have known that he left China as he testified that he used his own passport when exiting. The Applicant testified that the PSB continues to periodically attend on his home and enquire as to his whereabouts. The Board finds this implausible as the Chinese authorities should be aware that he has left China.

[8] The Board states that as the Applicant alleges that he was in hiding for nine months before leaving China, there was sufficient time for his name to be added to a PSB alert list and determines that his name would not have been removed seeing as the PSB was actively searching for him. In order to leave China, an individual must have their name compared with a list of people of interest to the PSB, thus the Applicant's testimony that he left China using his own passport and without any problems leads the Board to draw a negative inference.

[9] Based on the above findings, the Board determines that the PSB is not seeking the Applicant for his alleged religious activities.

[10] With regard to the Applicant's introduction to Christianity, the Board concludes that the Applicant embellished his testimony concerning his belief that his friend's prayers cured his medical problems. This finding is based on the Applicant's testimony that his illness was not that serious, that his illness did not prevent him from working on his family farm and that he received Western and Chinese medicines as treatment.

[11] The Applicant testified that he was aware that he could be detained for attending an unregistered church and that his wife, who was eight months pregnant, did not want him to do so. The Board finds it neither credible nor plausible that the Applicant would jeopardize the finance security of his pregnant wife and daughter for the sake of attending at unregistered church. The Board draws a negative inference from the Applicant's explanations with regard to his motivation to participate in an unregistered church.

[12] Finally the Board turns to the question of whether or not it finds that the Applicant is a genuine Christian today. The Board notes that the Applicant provided a letter from a pastor confirming that he attends mass and bible study regularly and a baptismal certificate. But little weight is given to this evidence as it does not attest to his motivation in attending the church or that he is a genuine, practicing Christian. The Board also notes the Applicant's good grasp of the basic concepts of Christianity and knowledge of the bible but observes that he did not appear to have

emotional commitment to the Christian faith. In the context on the totality of the negative inferences drawn, the Board finds that the Applicant's knowledge was acquired while in Canada and only for the purpose of supporting a fraudulent refugee claim.

Standard of Review and Analysis

[13] The Board's decision is based on its assessment of the Applicant's credibility. In reviewing credibility findings, the Court will apply the standard of reasonableness (*Lin v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 558, [2008] F.C.J. No. 700 at para. 4). Accordingly, the Court will only intervene if the decision falls outside of the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 47).

[14] The Applicant submits that the Board made substantive errors in its credibility findings and that justifies the intervention of this Court.

[15] I have carefully examined the findings made by the Board and I agree that two of them are reviewable errors because they are central to the applicant's claim.

[16] First, the Applicant argues that the Board overstated the information regarding the Golden Shield computer information system and that a review of the document relied on by the Board (Immigration and Refugee Board Canada, *Whether the Public Security Bureau (PSB) has set up a national computer network for information sharing; nature and extent of communication between*

PSB offices across the country; whether a link to a police computer network is available at international airports in China (2003 - 2006) (27 April 2006), Certified Tribunal Record at page 108) shows that it is uncertain whether or not the technology has been implemented. The information does not confirm that a centralised information sharing system was in place, rather it discusses the intention to put such a network in place but there is no confirmation that such a network has definitively been launched, implemented and functions in a way that would have prevented the issuance of a passport extension to the Applicant ten days after the church raid.

[17] Second, the Panel notes that the Applicant did not appear to have an emotional commitment to the Christian faith. This is a somewhat perplexing finding, particularly as the Applicant testified through an interpreter, and I don't see how the Board could properly assess the Applicant's emotional commitment in these circumstances.

[18] I am of the opinion that the Court's intervention is warranted.

[19] No question for certification was proposed and none arises.

JUDGMENT

THIS COURT ORDERS that the judicial review application is allowed. The matter is remitted back for me redetermination by a newly constituted Board. No question is certified.

“Michel Beaudry”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5987-09

STYLE OF CAUSE: **SHOUPENG WEI**
and
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 22, 2010

REASONS FOR JUDGMENT: BEAUDRY J.

DATED: June 25, 2010

APPEARANCES:

Shelley Levine FOR THE APPLICANT

Neal Samson FOR THE RESPONDENT

SOLICITORS OF RECORD:

Barrister & Solicitor FOR THE APPLICANT
Toronto, Ontario
Myles J. Kirvan, FOR THE RESPONDENT
Deputy Attorney General of Canada
Ottawa, Ontario