

Federal Court



Cour fédérale

Date: 20101019

Docket: IMM-6129-09

Citation: 2010 FC 1020

Ottawa, Ontario, October 19, 2010

PRESENT: The Honourable Mr. Justice Mandamin

BETWEEN:

FANG HUI LIN

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 applies for judicial review of the decision of the Immigration and Refugee Board, Refugee Protection Division dated November 3, 2009 refusing his application for refugee status.

[2] I have concluded that the judicial review should be dismissed for the reasons that follow.

Background

[3] In May 2007, the Applicant says he was notified by Chinese authorities that his home was going to be expropriated and that he would have to leave the property in three months. The Applicant felt that the compensation offered for the property was not a fair amount for the work he had put into the property.

[4] In August 2007, government officials visited the village homes to perform an inspection and informed the Applicant and the other villagers that they would be driven out of their homes if they did not evacuate by September 11, 2007.

[5] On September 11, 2007, the villagers stood in line to stop the government officials and workers who had arrived to bulldoze the houses. When the Public Security Bureau (PSB) appeared to disperse the villagers, the Applicant ran away and went into hiding at his aunt's home. He later found out that six villagers had been arrested, and the PSB has been searching for him at his family's home twice a week since.

[6] The Applicant left China and sought refugee protection in Canada on October 16, 2007.

Decision Under Review

[7] In its decision dated November 3, 2009, the Refugee Protection Board member (the RPD) found that the Applicant was not a Convention refugee nor a person in need of protection.

[8] The RPD had problems with the Applicant's credibility due to the inconsistencies in his testimony particularly regarding: whether and when the Applicant lived on the property that was expropriated; how he came to learn of the arrests of the other villagers; whether he was required to sign the restitution agreement; whether the government officials had given his parents "trouble"; and how often the PSB had visited his family.

[9] Due to these inconsistencies, the RPD found on a balance of probabilities that the claimant's evidence regarding the persistence of the PSB was neither plausible nor credible. The RPD thus found that the PSB was not pursuing the Applicant as claimed and there was no serious possibility that the claimant would be persecuted in China or that he would be subjected personally to a risk to his life, cruel and unusual treatment or punishment or to a danger of torture.

Legislation

[10] *Immigration and Refugee Protection Act, 2001, c.27 (IRPA).*

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,
 (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

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) 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

country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

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,

(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...

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.

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) 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,

Standard of Review

[11] The standard of review with respect to questions of mixed fact and law are assessed on the standard of reasonableness as set out in *Dunsmuir v. New Brunswick*, 2008 SCC 9, para 47:

In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making

process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

Analysis

[12] The Applicant submits that the question of the Applicant's residence was an irrelevant consideration, and that the Board erred in basing its negative credibility inference on this inconsistency. Given that the Board had accepted that the Applicant's property had been expropriated, the Applicant argues that it is not relevant where the Applicant actually lived.

[13] The Applicant also submits that the Board misconstrued the evidence regarding how the Applicant learned of the arrests of the other villagers. Although the Board found the Applicant's explanation that he thought beating and pinning people down meant they were arresting people to be an unreasonable explanation, the Applicant argues that the Board did not explain why it had rejected this explanation as unreasonable.

[14] The Applicant submits that the Board took the Applicant's evidence regarding the restitution agreement out of context. The Applicant explains that he believed his failure to sign the agreement was one of the ways he would have been identified as a person involved, but that this was not the main reason that the authorities were interested in him. Rather, the authorities were interested in the Applicant because he protested and organized a demonstration against them.

[15] The Applicant further submits that he mentioned in his Personal Information Form (PIF) that the authorities had given his family trouble, and that not mentioning the specific incident at his property was not a material omission from the PIF.

[16] Finally the Applicant submits that the Board misconstrued the evidence regarding the frequency of the PSB's visits to his family home. The Applicant points out that he had led evidence to show that he had played more than the limited role in the protest as described by the RPD. Furthermore, the RPD did not ask the Applicant why the PSB visited his family at home so many times, or why the PSB showed so much interest in him.

[17] The RPD may make decisions about an Applicant's credibility based on inconsistencies in the claimant's story, as well as on inconsistencies between the claimant's story and other evidence before the RPD. The Court must be careful not to substitute its own decision for that of the Tribunal, especially where the decision is based on an assessment of credibility: *Ankrah v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 385 (F.C.T.D.).

[18] Although the Applicant submits that the question of his residence should not have been a relevant consideration, it was still open to the RPD to find it to be an inconsistency reflecting on the Applicant's credibility. The same could be said regarding the RPD's other findings of inconsistency, such as how the Applicant learned of the other villagers' arrests. Similarly, although the Applicant believes his failure to mention the restitution agreement and a specific incident where

the PSB gave his family trouble should not have been considered significant enough to be considered a material omission from his PIF, it was still open to the RPD to find it so.

[19] I find that the decision did not, at any point, fall outside a range of possible, acceptable outcomes. The RPD gave detailed reasons to explain why, due to the concerns of credibility; it did not find that the Applicant was a Convention refugee or a person in need of protection.

[20] The burden rests on the Applicant to show that the inferences drawn by the RPD could not have reasonably been drawn: *Aguebor v. Canada (Minister of Employment and Immigration)*, [1993], 160 N.R. 315 (F.C.A.) at para 4. I find that the Applicant has not met this burden. I would therefore dismiss this application for judicial review.

Conclusion

[21] The application for judicial review is dismissed.

[22] The Parties have not proposed a general question of importance for certification and I do not certify any question.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is dismissed.
2. I do not certify any question of general importance.

“Leonard S. Mandamin”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6129-09

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AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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

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