

Federal Court



Cour fédérale

Date: 20101115

Docket: IMM-1052-10

Citation: 2010 FC 1141

Ottawa, Ontario, November 15, 2010

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

YUN JUAN WANG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application under s. 72(1) of the *Immigration and Refugee Protection Act* (IRPA) for a judicial review of the negative decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated January 28, 2010, where it was determined that the applicant is not a Convention refugee and is not a person in need of protection.

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

[3] The applicant is a citizen of the People's Republic of China (China), who fears persecution based on her attendance at an underground house church and her Christian faith.

[4] The Board looked at the country documentation and concluded that no arrest warrant was outstanding for the applicant and therefore the Public Security Bureau (PSB) was not looking for her.

[5] The Board determined that there was no persuasive information suggesting that religious persecution is present in the applicant's province of Fujian for groups that are small as the claimant's. It then came to the conclusion that no raid occurred and the PSB did not arrest three members of the applicant's church.

[6] The Board also found that the applicant was a genuine Christian, and that she would be able to practice her faith in her house church or in a registered church without fear of persecution.

[7] The assessment of evidence and the weight to be given to it are questions of fact that are within the expertise of the Board. They are accordingly reviewable under the standard of review of reasonableness: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339; *Ali v. Canada (Citizenship and Immigration)*, 2008 FC 1274, [2008] F.C.J. No. 1589 (QL). In applying this standard, the Court cannot substitute its own appreciation unless reviewable errors are demonstrated.

[8] The applicant's argument that the Board applied boilerplate reasoning to her claim and did not properly determine the case on its merits, cannot be accepted. It is true that the Board rendered a decision in another case two days after the applicant's and that portion of both decisions is identical. The facts in both cases were quite similar. Both applicants were from Fujian province and claimed persecution on their religious beliefs. The documentation submitted was also very similar. This submission in itself is not sufficient to overturn the decision.

[9] The applicant submits that the Board erred in finding that the applicant was not being sought by the PSB in China given that no summons had been issued for the applicant. The Board at para. 5 of its decision relied on a quote that indicates:

... it is very common in China for the police authorities to leave a summons or subpoena with family members (or possibly close friends, though that is probably less common), instructing them to pass it along to the person named on the summons. The person accepting the summons would be expected to sign an acknowledgment of receipt. This is not actually the proper procedure, but it happens all the time, especially in cases where the person on the summons is not easily locatable ...

[10] The applicant further submits that the documentation as a whole supports the fact that there is great variability and arbitrariness in law enforcement procedures in China that the leaving of a summons is not actually the proper procedure. The applicants therefore argue that the Board misconstrued the evidence and had no evidentiary basis for its conclusion.

[11] Even if the Court would assume that the applicants' submissions on this point is valid, and if it was the only error committed by the Board, the Court would not overturn the decision on that

error only (*Jiang v. Canada (Citizenship and Immigration)*, 2008 FC 775, [2008] F.C.J. No. 979 (QL)).

[12] Having said that, the Court agrees with the applicants that there is a contradiction between paragraphs 13 and 8 of the decision. On one hand, the Board states at paragraph 13:

... Having found her to be a genuine Christian and given the context of documentary evidence concerning Fujian province, she would be able to practice Christianity in her house church without fear of persecution if she returns to her home. ...

On the other hand, at paragraph 8, the Board states:

... In other areas, house church meetings of more than a handful of family members and friends are not permitted. House churches often encounter difficulties when there [sic] membership grows, ...

The evidence shows that the applicant's house church had grown from a few members to 28.

[13] Freedom of religion was central to the applicant's claim and therefore the Court's intervention is warranted here.

[14] The Court is also of the opinion that the Board's determination that the applicant could also practice Christianity in the registered church in China without any doctrinal constraints on the practice of a genuine Christian was unreasonable (para. 16 of the decision).

[15] Important documentation to the contrary, restrictions and obligations on members of registered church in China were either ignored or not analyzed by the Board (see Tribunal's Record pages 70-71, 108, 112, 192, 196, 727).

[16] No question for certification was submitted and none arises.

JUDGMENT

THIS COURT ORDERS that this application for judicial review be allowed. The matter is remitted back to a differently constituted Board for redetermination. No question is certified.

“Michel Beaudry”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1052-10

STYLE OF CAUSE: YUN JUAN WANG

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 4, 2010

REASONS FOR JUDGMENT: BEAUDRY J.

DATED: November 15, 2010

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