

Federal Court



Cour fédérale

Date: 20110119

Docket: IMM-2400-10

Citation: 2011 FC 65

Toronto, Ontario, January 19, 2011

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

LI XIAN LIANG

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] The Applicant is recognized as a genuine practising Christian from the Fujian province in China.

[2] The destruction of house churches in the Fujian province is evidence, in and of itself, that the Chinese authorities do not allow Christians to practice their faith freely. Freedom of religion encompasses the ability to espouse one's faith publicly, in a manner, individually or collectively,

chosen in as much as not to interfere with the fundamental rights of others. By destroying house churches, the Chinese government is infringing on that right in a persecutory manner.

[3] While there may not have been any reports of Christians being arrested in the Fujian, reports of persecution of house churches in the Fujian do exist: the destruction of house churches in that province have been reported. The China Aid Association considered a reliable, reputable source by the Board, itself, has had it reported as such. (page 106 at paragraph 3 of the Tribunal (Board) Record.)

[4] In connection with the size of the Applicant's house church group, the evidence relied upon is clearly qualified as the Board, itself, acknowledges in its reasons, the local Religious Affairs Bureaus (RABs) do disrupt home worship meetings, claiming that participants disturb neighbours, or social order or belong to an evil cult.

[5] Further, the information that groups under forty do not have to register is derived from the State Administration for Religious Affairs or the China Christian Council, itself, both Chinese government bodies. The U.S. State Department International Religious Freedom Report clearly indicates this rule is not followed because as it states there are many reports to the effect that the RABs disrupt home worship meetings.

[6] Thus, it would appear to be difficult to discern Chinese policy as to where, when and which church-group-gathering will be targeted next (whether church groups of over 40 members or less

than 40 members are at risk). That leaves church-group-gatherings in a continuous, unrelenting quandary as to their risk.

II. Introduction

[7] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001 c. 27 (IRPA), for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (Board), dated April 8, 2010, wherein it was determined that the Applicant was not a Convention refugee or a person in need of protection.

III. Facts

[8] The Applicant's claim for refugee protection was based upon her participation in an underground church in China and her continuing practice of Christianity in Canada.

[9] The Applicant, Ms. Li Xian Liang, began attending an underground church in March 2007. The church was raided by the Public Security Bureau (PSB) in October 2007. The PSB sought the Applicant. Several members of the church were sentenced to jail and 15 were sentenced to labour re-education camps.

IV. Issues

[10] (1) On a balance of probabilities was the panel's finding that the PSB had not sought the Applicant reasonable as no summons/warrant had been left at her home?

(2) Was the panel's finding that the Applicant could return to the Fujian province to continue to practice in an unregistered church and not face more than a mere possibility of persecution considered reasonable?

V. Analysis

Issue 1: On a balance of probabilities was the panel's finding that the PSB had not sought the Applicant reasonable as no summons/warrant had been left at her home?

[11] The Board found that on a balance of probabilities the PSB was not looking for the Applicant because no warrant/summons had been left at her home.

[12] According to the documentary evidence, the Applicant's testimony that no warrant/summons was left at her home, could have very well occurred. Negative findings of credibility could very well lack reasonableness where documentary evidence clearly indicates that which an applicant says occurred, could in fact have occurred.

[13] The documentary evidence indicated that it is not usual procedure to leave a summons/warrant with any other person other than the person to whom it is issued. Thus, the PSB in this case appears to have followed usual procedure.

[14] The documentary evidence also stated the procedures followed by the PSB vary from region to region; and, in most instances, routine procedures or rules give way to norms of the region. Therefore, if the norm in the Applicant's region is for the PSB not to leave a summons/warrant for anyone other than the person who is named, then presumably that norm is followed regardless of

how many times the PSB visits the Applicant's home or how many people in the Applicant's house church would have been arrested and sentenced.

Issue 2: Was the panel's finding that the Applicant could return to the Fujian province to continue to practice in an unregistered church and not face more than a mere possibility of persecution considered reasonable?

[15] The Board found that the evidence did not support that the Applicant has good grounds for fearing persecution in an unregistered house church. In making this finding, the Board reviews the documentary evidence on the Fujian and focuses particularly on reports of arrests of unregistered Christians in the Fujian and finds that there are no reports of arrests of unregistered Christians in the Fujian. The Board also focused on the size of the Applicant's church, twenty – thirty members, and found that a church of that size did not need to register.

[16] While there may not have been any reports of Christians being arrested in the Fujian, reports of persecution of house churches in the Fujian do exist: the destruction of house churches in that province have been reported. The China Aid Association considered a reliable, reputable source by the Board, itself, has had it reported as such. (page 106 at paragraph 3 of the Tribunal (Board) Record.)

[17] The destruction of house churches in the Fujian is evidence, in and of itself, that the Chinese authorities do not allow Christians to practice their faith freely. Freedom of religion encompasses the ability to espouse one's faith publicly, in a manner, individually or collectively, chosen in as much as not to interfere with the fundamental rights of others. By destroying house churches, the Chinese government is infringing on that right in a persecutory manner.

[18] Given the evidence of the destruction of houses of worship in the Fujian province, the Applicant does have substantial grounds to fear persecution if she chooses to freely exercise her right to freely practice her religion.

[19] In connection with the size of the Applicant's house church group, the evidence relied upon is clearly qualified as the Board acknowledges, itself, in its reasons, that local RABs do disrupt home worship meetings claiming that participants disturb neighbours, or social order or belong to an evil cult.

[20] Further, the information that groups under forty do not have to register is derived from the State Administration for Religious Affairs or the China Christian Council, itself, both Chinese government bodies. The U.S. State Department International Religious Freedom Report clearly indicates this rule is not followed because as it states there are many reports to the effect that the RABs disrupt home worship meetings.

[21] In its own decision in respect of the Applicant, the Board-Panel, itself, stated the following:

[10] Documentation reveals that there is a large discrepancy in the treatment of house churches (Exhibit R/A-1, item 12.5, Information Request CHN102492.E.). In some parts of the country, unregistered house churches with hundreds of members meet openly with the full knowledge of local authorities who characterize the meetings as informal gatherings to pray, sing and study the Bible. 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 their membership grows, when they arrange for the regular use of facilities for the specific purposes of conducting religious activities or when they forge links with other unregistered groups or with coreligionists overseas. Meetings of unregistered Protestants in small cities and rural areas may number in the hundreds (Exhibit R/A-1, item 2.3, p. 65). Documentation (Ibid) also

highlights, “Protestant Christians who worshiped outside of government-approved venues or in their homes continue to face detention and abuse, especially for attempting to meet in large groups, traveling within and outside of the country for religious meetings, and otherwise holding peaceful religious assemblies in unregistered venues.” The documentation (Exhibit R/A-1, item 2.3, p. 66) also reported that unregistered religious groups experienced the most abuses and harassment in Anhui, Hebei, Henan, Shanxi, and Xinjiang provinces.

[11] With respect to the situation of religious persecution within the claimant’s province of Fujian, there is no persuasive information suggesting that religious persecution is occurring for groups that are as small as the claimant’s. Although a number of different commentators have reported on the issue of religious persecution in China, one in particular, China Aid Association (CAA), stands out as being a significant source of up-to-date reporting and detailed accounts of harassment and repression of Protestant house churches in China (Exhibit R/A-1, item 12.4, Information Request CHN102491.E, item 12.5, Information Request CHN102492.E and item 12.7, Information Request CHN102494.E). The report identifies four main targets of persecution: House church leaders, house churches in urban areas, Christian publications and foreign Christians and missionaries living and working in China. With respect to the claimant’s particular circumstances, she testified that 22 members were arrested and long term prison sentences were imposed on the pastor and four others. Fifteen received re-education through labour for two and a half years and two had to pay fines. This is an example of an egregious situation where persons were arrested and would reasonably be expected to appear in reports dealing with religious persecution, not only from CAA but amongst the multitude of different resources which strive to inform the world of religious repression in China. Commentators have stated that the Chinese government has a “less antagonistic” attitude towards unregistered Protestants than it does towards unregistered Catholics, though it fears “house” churches may act as a cover for dissidents (Exhibit R/A-1, item 12.9, Information Request CHN100387.E). What is clear to the panel is that in China, religious persecution of Protestant “house churches” does occur, however, it is not general in nature. Such factors as whether there are close links with the West, evangelisation, membership growth to become large-scale congregations, arrangements for regular use of facilities, whether an individual is a leader, rural or urban areas and location within China are all factors to consider.

[12] The panel is mindful of the caveat that the number of persecution incidents is likely to be much higher because of censorship in communications (Exhibit R/A-1, item 12.10) and even considered the possibility that not all information is available to commentators. It concludes that since there is a significant amount of information detailing very specific examples from areas much more remote and difficult to access than Fujian, that it is reasonable for the panel to expect to see persuasive evidence that groups such as the claimant's, which are small and not required to register, are being raided and individuals being jailed in Fujian province.

[13] Counsel provided documentation (Exhibit C-4, item 133, p. 445) from a determination made by an Australian Tribunal where a citizen from Fujian was found to have protection rights. The panel is not bound by the decision of the Australian panel.

[22] Thus, it was unreasonable for the Board to rely on the size of the Applicant's group to find that she does not have good grounds to fear persecution should she return to China and practice in an underground church. It is clear that the Chinese authorities continue to raid churches regardless of their size.

VI. Conclusion

[23] Therefore, for all the above reasons, the application for judicial review is allowed and the matter is remitted for re-determination by a differently constituted panel.

JUDGMENT

THIS COURT’S JUDGMENT is that the application for judicial review be allowed and the matter be remitted for re-determination by a differently constituted panel. No certified question raised.

“Michel M.J. Shore”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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