

Federal Court



Cour fédérale

Date: 20110216

Docket: IMM-3668-10

Citation: 2011 FC 187

Toronto, Ontario, February 16, 2011

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

JIAN DONG CHEN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The only issue in this application is whether the Refugee Protection Division of the Immigration and Refugee Board erred in its assessment of the genuineness of a summons the applicant claimed had been issued to him by Chinese police.

[2] Mr. Chen claimed refugee status on the basis of alleged persecution as a Christian in China. He filed as part of his case a summons purportedly left by the police with his wife after a raid on the

church he was attending. The Board cited documentary evidence that a summons would almost always be issued to the individual rather than a household or family member and then noted that:

However, it is also noted that it is very common in China for the police authorities to leave the summons with family members, 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. Though this is not actually the proper procedure it happens all the time, especially in cases when a person in the summons is not easily locatable.

[3] The Board observed that the summons the applicant presented was inconsistent with the documentary evidence in two respects: the section acknowledging receipt of the summons was blank, and the PRC Criminal Procedure Law number was not on the summons. The Board considered the inconsistencies between the summons and the documentary evidence in the context of its finding that fraudulent documents, including summonses, can easily be acquired in China, and it held, on a balance of probabilities, that the summons provided by the applicant was not genuine.

[4] The applicant submits that the Board's reasoning in its analysis of the summons is unsound. He submits that it "seems incongruous to rely on the lack of a signature or acknowledgment of receipt to impugn the Summons where the Reasons provide, in part, that it is not proper procedure for a person not named in the summons to sign the acknowledgment of receipt." The fallacy with this submission is that the evidence indicates that while it is not proper procedure for the police to serve the summons on a person not named in it, they do so regularly and that when they do, that person is expected to sign the acknowledgment of receipt.

[5] The respondent acknowledged that had the Board accepted the summons as genuine this could have had a direct impact on the decision as it would have provided the Board with corroboration of the applicant's claim.

[6] Despite the able submissions of counsel for the applicant, I am unable to find that the Board's assessment of the summons and its conclusion that it was not genuine was unreasonable.

[7] The Board relied on a Response to Information Request dealing with summonses issued in China. It reveals that while a summons is to be served upon the addressee himself, there are provisions in the Criminal Procedure Law for delivery to someone on the addressee's behalf.

[8] The Criminal Procedure Law then goes on to provide that if the addressee himself or the person receiving on his behalf "refuses to accept a document or refuses to sign his name or place his seal upon a document" the person serving the document may have another person witness that the document was left and record this on the service certificate. This is deemed to be proper service. The Response to Information Request goes on to cite a representative of Human Rights in China who, in 2004, stated that:

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 in 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 when the person on the summons is not easily locatable. ...[S]ome police officers themselves are not well versed in the proper procedures, and probably think that this is a perfectly acceptable practice (while others may simply be too idle to chase the person down, and rely on the public sense of intimidation to do their work for them).

[9] The Board also noted that the Response to Information Request provided that Chinese summonses should contain the appropriate PRC Criminal Procedure Law number. Thus, the summons offered by the applicant was deficient in two respects – it lacked the PRC Criminal Procedure Law number and it lacked the signature of the applicant’s wife acknowledging receipt of the summons. Given these two inconsistencies, and considering the availability of fraudulent documents in China, the Board concluded “on a balance of probabilities, that the summons provided by the claimant is not a genuine document.”

[10] Essentially, the applicant's complaint is with respect to the Board’s assessment of the evidence. While it may be possible that a genuine Chinese summons may not contain the signature of the recipient or may lack a Criminal Procedure Law number, the evidence before the Board was that these two details are to be expected to be present on a genuine summons. The absence of these items and the availability of fraudulent documents in China led the Board to conclude that the summons was not genuine. That decision cannot be said to be unreasonable. It was based on the evidence before the Board.

[11] Accordingly, this application is dismissed. Neither counsel proposed any question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3668-10

STYLE OF CAUSE: JIAN DONG CHEN v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 15, 2011

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

DATED: February 16, 2011

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