

Federal Court



Cour fédérale

**Date: 20110218**

**Docket: IMM-4014-10**

**Citation: 2011 FC 199**

**Ottawa, Ontario, February 18, 2011**

**PRESENT: The Honourable Mr. Justice Barnes**

**BETWEEN:**

**ZHEN TING SHI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review by Zen Ting Shi seeking to set aside a decision of the Refugee Protection Division of the Immigration and Refugee Board (Board) by which his claim to refugee protection was denied.

**Background**

[2] Mr. Shi entered Canada on October 13, 2007 and shortly thereafter made a claim for refugee protection. He claimed to have entered Canada on a false Singapore passport which he said he

turned over to his Chinese smuggler upon arrival. Mr. Shi's claim to protection was based on an allegation of religious persecution because of his membership in an underground Christian church.

[3] When Mr. Shi prepared his personal information form (PIF) he declared only that he had come to Canada on a false Singapore passport, the details of which he could not provide. He also declared the existence of a resident identity card (RIC) and a household registration record (hukou) both of which were said to be in China and "to be provided". No mention was made in the PIF of the existence of a Chinese passport.

[4] On November 10, 2008 the Board wrote to Mr. Shi advising him that he would be required to produce an original RIC. It was not until the convening of Mr. Shi's refugee hearing before the Board that his PIF was amended to refer to his Chinese passport. Mr. Shi claimed that he did not know the details of his Chinese passport but that it could be produced along with his original birth certificate. He undertook to provide complete copies of both documents by fax within two days and the original documents by delivery within two weeks. He also maintained that his RIC had been seized by Chinese postal authorities and he produced a record of its seizure.

[5] Mr. Shi's refugee hearing was adjourned to allow him time to produce the required identity documents. Both the Board and Mr. Shi's counsel emphasized to him the importance of abiding by the undertaking to produce this information within the time stipulated. The Board was obviously and appropriately concerned that a long delay in producing the missing documents might facilitate their fabrication.

[6] When the hearing was reconvened more than three months later, Mr. Shi had failed to produce faxed copies of his identity documents as he had promised. He produced instead a copy of a single page of his purported Chinese passport and what was said to be his original birth certificate. Mr. Shi explained that a fax machine was unavailable to his father and that, like the earlier seizure of his RIC, his original passport had been seized by the Chinese postal authorities when his father had attempted to send it to Canada.

#### The Board Decision

[7] The Board found that Mr. Shi was not credible and it rejected all of the evidence concerning his identity. It also found that the documents he submitted to establish his identity as a Chinese national were not genuine. These conclusions were based on a number of perceived problems with Mr. Shi's testimony and conduct, which included the following:

- (a) The implausibility that Mr. Shi's parents, knowing that their son was wanted by the PSB, would disclose to Chinese postal authorities that they were sending his RIC to Canada;
- (b) The inconsistency between the postal seizure report and Mr. Shi's description of what took place at the time of the seizure of his RIC;
- (c) Mr. Shi's initial testimony that he did not have a birth certificate contrasted with his later statement that his birth certificate and Chinese passport were available to him in China;
- (d) Mr. Shi's failure to produce either his RIC or his passport at the Board's first hearing, despite being represented by experienced legal counsel and being aware that the Board would require both documents;

- (e) Notwithstanding his awareness of the Board's directives concerning proof of identity, Mr. Shi's blaming of his counsel for failing to advise him of the importance of providing all available identity documents;
- (f) Mr. Shi's claim that he did not initially ask his parents to mail his passport or birth certificate because an interpreter advised him that only his RIC was required;
- (g) Mr. Shi's failure to mention the existence of either his birth certificate or his Chinese passport in his PIF and his excuse that, despite a clear written direction, he was not told to do so;
- (h) Mr. Shi's declaration in his PIF of his fraudulent Singapore passport and the corresponding assertion that he had no other passport – an error that he blamed on the interpreter;
- (i) Mr. Shi's inability at the initial hearing to provide a serial number or dates of issue or expiry for his alleged Chinese passport and his inability to provide any explanation for not calling his parents to obtain those details;
- (j) Mr. Shi's failure to obtain his birth certificate and Chinese passport for more than two years;
- (k) After declaring his PIF to be complete and correct, Mr. Shi's belated correction concerning the existence of his birth certificate and passport;
- (l) Mr. Shi's failure to immediately provide as promised complete faxed copies of his birth certificate and passport following the adjournment of the hearing;
- (m) Mr. Shi's failure to provide an original copy of his birth certificate until weeks after the date he had promised to the Board;

- (n) Mr. Shi's production of a copy of a single page from his Chinese passport weeks after the date he had promised to produce a copy of the entire document to the Board;
- (o) Mr. Shi's failure to offer a timely explanation for not meeting his production undertakings to the Board;
- (p) Mr. Shi's uncorroborated explanation for his breached undertaking to the effect that there were no fax machines available to his parents despite them living in an urban area with millions of residents. This was followed by the excuse that his father was unsophisticated and his 21 year old educated sister could not be bothered to help him;
- (q) The inconsistency between Mr. Shi's original undertaking to obtain faxed copies and his subsequent testimony that fax technology was unavailable;
- (r) Mr. Shi's disposal of the envelope allegedly used to send his birth certificate from China to Canada;
- (s) Mr. Shi's failure to produce corroboration of the alleged postal seizure of his Chinese passport;
- (t) The absence of expected information on the face of Mr. Shi's alleged birth certificate;
- (u) The absence of expected information on the face of the household register (hukou);
- (v) The prevalence of forgeries of hukous in China; and
- (w) Mr. Shi's inability to offer expected information about the significance of the hukou in China and its many uses in accessing government services.

[8] It is evident from the Board's reasons that it did not believe that Mr. Shi was a Chinese national and that his failure to produce expected and available identity records suggested that he was not who he said he was. Mr. Shi contends that the Board reached its decision on the strength of unreasonable plausibility findings and on the basis of an erroneous examination of his birth certificate.

#### Issue

[9] Did the Board err in its assessment of Mr. Shi's identity evidence to the extent that its assessment of his credibility was no longer reliable or reasonable?

#### Analysis

[10] The issues raised by Mr. Shi on this application involve the Board's assessment of the evidence bearing on his credibility. These are matters that must be reviewed on the standard of reasonableness: see *Sun v The Minister of Citizenship and Immigration*, 2008 FC 1255 at para 3.

[11] Mr. Shi contends that the Board was overzealous and entered into the realm of speculation when it doubted that his parents would have disclosed to Chinese postal authorities that they were sending his RIC to Canada. In addition, Mr. Shi argues that the Board's finding of an inconsistency between the postal seizure report and his evidence about the discovery of his RIC was unreasonable because the two versions could easily be reconciled. He also criticizes the Board's reliance on the absence of his parent's resident identity numbers on the face of his birth certificate. According to other evidence, the Chinese identification system involving RICs only came into existence after the

date of his birth so that the absence of this information could not be reasonably relied upon to support the Board's finding of the inauthenticity of that record.

[12] There is some merit to some of Ms. Coulthard's criticisms of the above findings. As I said in *Zheng v The Minister of Citizenship and Immigration*, 2009 FC 327, 343 FTR 247 at para 7, a person's unwillingness to lie to the authorities is not usually a sound basis for questioning credibility. I also agree with her that the Board's concern about the absence of resident identity information on Mr. Shi's birth certificate is unwarranted in the face of other reliable evidence that the RIC system was only introduced later in China. In addition, I would ordinarily agree with the Respondent that it was open to the Board to rely upon what it saw as an inconsistency between the postal seizure report and Mr. Shi's hearsay account of that incident. Here, however, the Board was warned by the interpreter at the hearing that the language of the seizure report did not support the inconsistency that the Board later adopted. It is therefore a finding that cannot be sustained by the evidence.

[13] Notwithstanding the above findings, the essential problem for Mr. Shi's claim is that his credibility was so seriously damaged by his conduct and inconsistent testimony that it could not be redeemed with a more favourable assessment of these relatively minor points of contention in the evidence. That is particularly true of the Board's concern about the absence of resident identity data on Mr. Shi's birth certificate. That was only one of several such concerns which led the Board to conclude that Mr. Shi's birth certificate was fraudulent.

[14] Mr. Shi had the burden of establishing his identity through the production of acceptable documentation or, failing production, a reasonable explanation for its absence: see s 106 of the *Immigration and Refugee Protection Act*, 2001 c 7. The Board gave Mr. Shi every opportunity to establish his identity and to produce the documents that he said were readily available. His excuse for failing to fax his passport was entirely unbelievable and, as his own counsel acknowledged to the Board, “a passport is a lot harder to just manufacture”.

[15] As was stated by Justice Judith Snider in *Qiu v The Minister of Citizenship and Immigration*, 2009 FC 259, 176 ACWS (3d) 493, it is always open to the Board to draw negative credibility findings based on an applicant’s failure to provide key identity documents absent compelling reasons as to why they could not be obtained. Mr. Shi’s situation is no different. The Board’s adverse assessment of Mr. Shi’s credibility was amply established by the multitude of inconsistencies, omissions and implausibilities in his testimony and there is no basis for disturbing that conclusion on judicial review.

[16] Neither party proposed a certified question and no issue of general importance arises on this record.



**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application for judicial review is dismissed.

“ R. L. Barnes ”

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-4014-10

**STYLE OF CAUSE:** SHI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** February 7, 2011

**REASONS FOR JUDGMENT:** BARNES J.

**DATED:** February 18, 2011

**APPEARANCES:**

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