

Federal Court



Cour fédérale

Date: 20110304

Docket: IMM-3583-10

Citation: 2011 FC 262

Ottawa, Ontario, March 4, 2011

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

XING LIU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant seeks an order setting aside a May 27, 2010 decision of the Refugee Protection Division of the Immigration Refugee Board (the Board), which found him to be neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, 2001, c. 27 (*IRPA*). For the reasons that follow, the application for judicial review is dismissed.

[2] The applicant, Mr. Liu, is a Chinese citizen. With the assistance of a smuggler and an admittedly fraudulent passport, he arrived at Pearson International Airport in Toronto, Canada on February 3, 2008. He made a refugee claim on February 8, 2008. On March 29, 2010 the Board denied the applicant's refugee claim on the basis that he was neither a Convention refugee nor a person in need of protection under sections 96 and 97 of *IRPA*. The Board also found that the applicant had advanced a fraudulent refugee claim.

[3] Before the Board the applicant claimed that the Public Security Bureau (PSB) in China was seeking to arrest him because he allegedly injured a PSB officer while the officer was attempting to arrest his mother and father for their participation in an underground church. The applicant apparently tried to restrain the arresting officer which caused a second officer to trip and hit his head on a table. The applicant's father then restrained another, third, officer who attempted to arrest the applicant so that he, Mr. Liu, could escape from their house. Mr. Liu then went into hiding at a friend's house. The applicant contended that that same evening, the PSB came back to his parents' home looking for him. He also contended that it was not until June 16, 2008, almost an entire year later, that the PSB left a Summons for him with his parents in connection with the above described incident. The PSB also appeared at the hospital on the day the applicant's daughter was born, presumably to arrest him. The applicant claimed that the PSB continues to seek him out, and by inference continues to seek him out for assaulting a police officer. This is the nature of the applicant's claimed persecution.

[4] The Board characterized the authenticity of the corroborating documents supplied by the applicant as determinative in arriving at its decision in this case.

[5] The Board concluded that the Summons and Notices of Detention filed by the applicant were fraudulent. It noted two discrepancies between the supposedly corroborative documents provided by the applicant and the sample documents provided pursuant to in a Response to Information Request. The Summons left with the applicant's parents was missing a serial number and was also missing the applicant's address. Additionally, it was dated a year after the events in question allegedly took place. The Notices of Detention were also missing a serial number.

[6] The applicant challenges the reasonableness of the decision made on the basis of these discrepancies. In this regard, the applicant put forth three primary arguments: first, that the evidence demonstrated that there were regional discrepancies in the procedure by which criminal justice is administered in China; second, that evidence showed that it was not uncommon for the PSB to leave summonses with family members, as was done here; and finally, that documents relied on by the Board for the purpose of comparison were dated 2004, three years prior to the events in question.

[7] Counsel for the respondent argued that the Board was entitled to make the credibility findings it did, and that the Court is not to reweigh the evidence supplied to and before the Board. This Court is also aware that the existence of an alternative interpretation of the evidence but not chosen by the decision maker does not, in and of itself, constitute reviewable error. The respondent argues that it was open to the Board to assess the documents and to draw reasonable inferences from them. This is a persuasive argument.

[8] The attachments to the Response to Information Request include three types of summons and all three provide a space for an address. It was reasonable for the Board to expect that the applicant's Summons should bear some resemblance to one of these three types of summonses. In other words, the absence of an address on the Summons allegedly issued by the PSB to the applicant provided a reasonable evidentiary foundation for the concerns that the Board had in respect of the applicant's claim, particularly so given the PSB's familiarity with the applicant's place of residence.

[9] The applicant could not explain the variance between the documents tendered and those forming part of the information package. With respect to the questions he did answer, the Board found the applicant to be evasive and hesitant. In some cases, the applicant simply did not answer the questions put to him. Counsel argues that it was unreasonable to expect the applicant to be able to explain discrepancies and deviations in practice, particularly in light of the unchallenged evidence that there were in fact discrepancies and deviations in the administration of the criminal justice system in China. It is argued by counsel for the applicant that the Board thereby engaged in speculation as to how and why the Chinese police acted as they did in this case, and that it was therefore unreasonable to draw negative inferences and credibility findings based on the applicant's inability to explain the variations.

[10] It is true that asking an applicant to provide answers to questions to which he could only speculate and then to draw negative credibility inferences from a claimant's inability to provide equally speculative answers may in some cases constitute an error. However, in respect of comparing documentary evidence tendered by an applicant with that of evidence contained in a Response to Information Request, this Court has held that:

In order to find that the summons was not a reliable document, the Board relied upon inconsistencies between it and samples of summonses attached to a Response to Information Request. The evidence of the sample summonses provided a proper evidentiary basis for the RPD's conclusion and its finding cannot be said to be patently unreasonable. (*Li v Canada (Citizenship and Immigration)*, 2007 FC 1030, at para 20)

The same may be said in the decision presently under review by this Court.

[11] In sum, there was on the record evidence before and upon which the Board reasonably predicated its findings of credibility. The negative inferences about the applicant's credibility drawn from this documentary evidence were reasonably open and available to it to make. As long as the actual outcome of the case falls within the range of possible, acceptable outcomes in respect of the facts and law, the possibility that another decision maker might view the same facts differently, or come to another interpretation, does not constitute grounds upon which this Court will review and disturb a decision of the Board. Before this Court the applicant has set forth an alternative explanation of what the evidence might have demonstrated; however, this does not necessarily entail that the assessment of the evidence as determined by the Board is unreasonable.

[12] Accordingly, the application for judicial review is dismissed.

[13] No question for certification has been proposed and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review be and is hereby dismissed. No question for certification has been proposed and none arises.

"Donald J. Rennie"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3583-10

STYLE OF CAUSE: XING LIU v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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REASONS FOR JUDGMENT: RENNIE J.

DATED: March 4, 2011

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