

Federal Court



Cour fédérale

**Date: 20110315**

**Docket: IMM-3057-10**

**Citation: 2011 FC 229**

**Ottawa, Ontario, March 15, 2011**

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

**BETWEEN:**

**QIN YUAN WANG**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of a decision of a member of the Immigration and Refugee Board (Board), pursuant to s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001 c 27 (Act) by Qin Yuan Wang (Applicant). The Board determined that the Applicant was neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the Act. Leave for this file was granted on November 5, 2010 by Justice Campbell.

**I. The Facts**

[2] The Applicant is a Chinese citizen from Chang Le City in Fujian province, born on August 28, 1983.

[3] In July 2007, after a period of depression brought on by the suicide of his girlfriend, the Applicant was encouraged by a work colleague to join an underground Christian church. The church had approximately eight (8) members and met in the homes of its members. The Applicant attended regularly.

[4] The Applicant alleges that on November 18, 2007, the Public Security Bureau (PSB) raided the home in which the church meeting was taking place. The members scattered. The Applicant allegedly escaped to the house of his uncle, who lives approximately 20 minutes away from the Applicant's parents' home (where he normally lived). The Applicant states that the PSB went to his parents' home two (2) days later, and then approximately 10 times more, looking for him.

[5] With the help of his uncle, the Applicant obtained the services of a smuggler who helped him travel to Canada on a false passport. The Applicant arrived in Canada on January 12, 2008, and claimed refugee status on January 23, 2008.

[6] The Applicant's brother was already living legally in Canada. In January 2010, the brother sponsored the parents to come to Canada. They were able to travel with their own visas and travel documents.

[7] The Applicant's hearing took place on April 8, 2010. During his testimony, the Applicant mentioned that several other members of his church had been arrested and sentenced to three (3) years of imprisonment. This information was not in his Personal Information Form (PIF).

[8] The decision was rendered on May 7, 2010, and received by the Applicant on May 15, 2010.

## **II. The Decision Under Review**

[9] The Board found that the determinative issue in the claim was credibility:

- (1) The Board found that the Applicant is not currently wanted for arrest by the PSB on account of membership in an underground Christian church in China:
  - (a) The Board found it incredible that the PSB had come to his parents' home 10 times to look for him and despite that, they had not looked anywhere else for him;
  - (b) The Board found it incredible that although the Applicant was in hiding a mere 20 minutes from his parents' home, he was not afraid of being discovered;

- (c) Before the Board, the Applicant provided an address [from when he was in hiding] that was different to the one provided at the Point of Entry (POE) and in his PIF regarding where he hid from the PSB;
  - (d) The Board found it incredible that the Applicant had not provided any information in his PIF regarding the arrest and subsequent three-year prison sentence of fellow believers. The Applicant responded that he was not aware that he needed all these details. The Board reminded the Applicant of the PIF instructions, of the Applicant's written declaration in the PIF and of the Applicant's oath at the beginning of his hearing that the contents of his PIF were complete, true and correct and that the contents had been interpreted back to him and that he had competent counsel; and
  - (e) The Board asked the Applicant if the three-year prison sentence was significant. The Applicant replied "I don't know." Further explanation revealed that the Applicant knew of the arrests before filing his PIF, but did not think about it. The Board found that the prison term information was crucial to the subjective and objective fear of the Applicant and failure to include the information in the PIF minimized the importance of the events.
- (2) The Board found that the Applicant was not a credible witness because his testimony ran counter to the documentary evidence about the PSB methods:
- (a) The Board found it incredible that not only had the PSB not left a warrant with or shown a summons or warrant to the Applicant's family indicating their interest in him, but they also had not threatened the Applicant's family

or removed access to any services such as health care in order to gain information on the whereabouts of the Applicant; and

- (b) The Board found it incredible that although the Applicant was a person of interest, and the PSB had a computer-linked security system containing information on persons of interest (such as their address – which would have been the same as his parents'), the Applicant's parents were able to leave China with no delays or problems when they emigrated to Canada in 2010.
- (3) The Board found that if the Applicant returned to his home in Fujian province in China, there was not a serious possibility that he would be persecuted in the province for his practice:
  - (a) The Board noted that the documentary evidence stated that Fujian province had one of the most liberal policies on religion in China, especially for Christianity;
  - (b) The Board noted that there were no documented arrests of Christians from Fujian province;
  - (c) The Board acknowledged the letter from the China Aid Association – that not all incidents of persecution are documented. However, the Board noted that none of the documentation mentioned Fujian province;
  - (d) The Board found that in Fujian province, unregistered groups carried out public activities including publishing materials, renting out spaces for events, running clinics, orphanages, homes for the elderly etc. In some regions government supervision was as minimal for the unregistered churches as it was for the registered ones;

- (e) The Board found that of the 40 to 70 million Protestant Christians in China, of which the Applicant was allegedly one, only 10 million attended a registered church; and
- (f) The Board found that only gatherings of believers with more than 40 people were required by law to be registered. The Applicant's alleged group only contained eight members.

[10] The Board concluded on a balance of probabilities that the Applicant had manufactured a fraudulent situation where the PSB was pursuing him in order to bolster his claim. The Board noted that the Applicant had not even provided any evidence that his church was raided, as he alleged. The Board also found that the Applicant displayed little evidence of subjective fear. Finally, the Board found that on a balance of probabilities, the Applicant would be able to practice his religion in any church in Fujian, without any serious possibility of persecution for doing so.

### III. The Relevant Legislation

[11] The relevant portions of the Act are as follows:

<u>Convention refugee</u>	<u>Définition de « réfugié »</u>
<p>96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,</p> <p>(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those</p>	<p>96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :</p> <p>a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;</p>

<p>countries; or  (b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.</p>	<p>b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.</p>
<p><u>Person in need of protection</u>  97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally  (a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or  (b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if    (i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,  (ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,  (iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and    (iv) the risk is not caused by the inability of that country to provide adequate health or medical care.</p>	<p><u>Personne à protéger</u>  97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :  a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;  b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant:    (i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,  (ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,  (iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,    (iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.</p>
<p><u>Person in need of protection</u>  (2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a</p>	<p><u>Personne à protéger</u>  (2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est</p>

person in need of protection.	reconnu par règlement le besoin de protection.
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#### IV. Issues and Standard of Review

[12] There are three issues in this application:

- A. *Was it unreasonable of the Board to conclude that the Applicant's story was fabricated and lacked credibility?*
- B. *Did the Board use the wrong legal test in determining whether the Applicant would face persecution if he were to practice his religion in Fujian province?*
- C. *Did the Board err in assessing the documentary evidence regarding religious persecution in Fujian province, or adopt a restricted concept of religious persecution?*

[13] The standard of review applicable to a Board's finding on credibility is reasonableness, according to *Nijjer v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1259, para 12, and *Sukhu v Canada (Minister of Citizenship and Immigration)*, 2008 FC 427, para 15. Therefore, the Board's conclusion must fall within the "range of possible, acceptable outcomes which are defensible in respect of the facts and the law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, para 47). This standard also applies to the Board's assessment and weighing of the documentary evidence (*Zhang v Canada (Minister of Citizenship and Immigration)*, 2010 FC 9, para 34; *Malveda v Canada (Minister of Citizenship and Immigration)*, [2008] FCJ No 527).

[14] The use of the correct legal test for persecution, being a question of law, is reviewable on the standard of correctness (*Ebonka v Canada (Minister of Citizenship and Immigration)*, 2009 FC 80, para 16).



**V. Analysis**

**A. *First Issue: Credibility finding***

[15] The Applicant submits that the Board could reasonably have arrived at a different conclusion had it not erred in many of its credibility findings.

[16] Regarding the pursuit by the PSB, the Applicant argues that the Board's conclusion that the PSB would have searched beyond the Applicant's own home is based on speculation regarding the mental processes and efficiency of the authorities, contrary to *Chen v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 996 (FCA), para 4.

[17] Regarding the summons, the Applicant contends that the Board misconstrued the evidence, and had no reasonable basis for concluding that a summons would have been left with the Applicant's parents. The Applicant argues that the documentary evidence does not support the Board's conclusion, as the document referred to in the decision clearly says that it is not the PSB's proper procedure to leave a summons with family members, though it may be common when officers are lazy or unaware of procedure. The Applicant cites the case of *Jiang v Canada (Minister of Citizenship and Immigration)*, 2008 FC 775, para 22, in which the same point was made regarding a summons being left with family members. In that case, the summons was the only point on which the Court found that the Board had acted unreasonably, and so it was not enough to impugn the decision, but the Court noted that it was a point "well taken" that "nothing in the

documentary evidence indicates that a summons would necessarily have been issued or shown to the family”.

[18] Regarding the Applicant’s parents’ ability to leave the country without any PSB interference, the Applicant argues that the Board’s conclusion that the PSB would have linked the Applicant’s parents to him in a database was based on speculation and not backed up by any documentary evidence.

[19] With respect to the Applicant’s confusing answers regarding the address of his hiding place, the Applicant contends that there was no actual omission, but that the address was written in the PIF in more detail than he gave at the hearing. He argues that he provided the same street number, unit number, and city.

[20] Finally, the Applicant argues that the Board’s reasoning is internally inconsistent with respect to the lack of persecution of Christians in Fujian province. The Applicant argues that it is illogical for the Board to both conclude that there are no arrests of Christians in Fujian, and then to make a negative credibility finding because the police do not appear to have put much effort into finding the Applicant.

[21] Regarding credibility, the Respondent contends only that the Applicant is merely disagreeing with the Board’s conclusions, but has not identified any reviewable error, and that this is insufficient to allow judicial review (*Karanja v Canada (Minister of Citizenship and Immigration)*, 2006 FC 574, para 8).

[22] After reviewing the transcript, the Court comes to the conclusion that the Applicant did provide a different address and that the Board did not err in its assessment of those facts. The discussion at the hearing (Transcript, page 440) shows that while the unit and street numbers were indeed the same, the name of the township was completely different between the PIF and the hearing testimony, and the Applicant was wholly unable to explain this inconsistency. It was therefore reasonable for the Board to find that this impacted the Applicant's credibility.

[23] It is true that while the Board cited documentary evidence to the effect that the PSB has a computer database of persons of interest, no specific citation was provided for the idea that such a database could be expected to link the other members of his household to the Applicant. However, in this issue the PSB's alleged failure to look anywhere other than the Applicant's own home, I am not convinced that the Board's conclusions can be overturned on the basis that they constitute 'speculation'. In *Chen*, above, the applicant's story involved him being in prison but released for three (3) days to visit his dying mother if he signed a confession, and the Board had concluded that this was implausible and it felt the police would have been unlikely to release him. Whereas that was clearly an instance of speculating on the mental processes of the police, in this case the Board was drawing a conclusion on a typical police procedure, namely to look in other family homes in the immediate area rather than simply attending the same home 10 times over. I cannot find it unreasonable for the Board to have concluded that if the PSB was putting that much effort into finding the Applicant, they would have tried his nearby uncle's home. In the same vein, the Court

finds that the conclusion regarding the computer database was a conclusion drawn on logic regarding PSB procedure, rather than on speculation regarding the mental processes of authorities.

[24] Though the above *Jiang* case appears on first glance to support the Applicant regarding the question of the summons, I do not believe this conclusion was determinative in the Board's finding with respect to the Applicant's credibility in the present case. It was one of several elements and though erroneous, it does not lead me to conclude that the Board's finding on credibility is unreasonable in these circumstances.

**B. *Legal test for persecution***

[25] The Applicant argues that the Board erred in law when it articulated the test for persecution as whether the Applicant faced a "significant risk of persecution" if he were to practice his faith in Fujian province. The Applicant submits that the correct legal test is whether there is "more than a mere possibility" of persecution, which is a far less rigorous threshold.

[26] The Respondent agrees with the Applicant's view of the proper legal test, but argues that a full reading of the decision indicates that the Board was fully aware of the test. The respondent states that while the phrase "significant risk of persecution" was used once, the phrase "balance of probabilities" was used seven (7) times.

[27] The Board never explicitly uses the phrase "mere possibility of persecution". While it did in fact, treat all of the evidence on the balance of probabilities, the phrase it uses in all instances (other than the one mention of "significant risk") is that of a "serious possibility" of persecution. I believe

that the Board, in fact, found that there was very little possibility at all that the Applicant would be persecuted for his religious practice in Fujian province, given the finding that non-registered religious groups were running clinics and orphanages, and publishing materials in print and on the internet, without any problems, which speaks to their ability to practice their religion freely.

However, the Board did not actually use the correct phrase to describe the legal test. While it is apparent that the Board has been using the correct test, it did not phrase it properly, as laid out in

*Chan v Canada (Minister of Employment and Immigration)*, [1995] 3 SCR 593, para 120:

In the specific context of refugee determination, it has been established by the Federal Court of Appeal in *Adjei v. Canada (Minister of Employment and Immigration)*, [1989] 2 F.C. 680, that the claimant need not prove that persecution would be more likely than not in order to meet the objective portion of the test. The claimant must establish, however, that there is more than a "mere possibility" of persecution.

I do not find this error, which is of a clerical nature rather than one of erroneous application of the proper threshold, to be fatal in these circumstances.

### **C. *Assessment of the documentary evidence***

[28] The Applicant argues firstly that the Board never made a finding as to whether or not the Applicant is, in fact, a Christian. The Applicant argues in his written submissions that the Board is required to make this finding before it can determine whether he can freely practice his religion, according to *Chong v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 999, para 4, and *Chen v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 480, para 19. The Applicant contends that even if the Board rejects the Applicant's version of events that occurred, it must still make a finding on the Applicant's Christian identity and whether as such he faces more than a mere possibility of persecution if he returns and attempts to practice his religion. The

Applicant argues that the Board's finding that upon his return the applicant "could practice in any church that exists" shows that the Board did not turn its mind to the Applicant's religious identity and the risk that he faces.

[29] At the hearing, counsel for the Applicant accepted that the Board had found the Applicant to be a Christian, but argued that the Board failed to take into consideration the fact that the Applicant was a member of an Evangelical Church. As such, he has a duty to spread the Gospel and to evangelize. His risk of persecution was therefore more severe and this fact has not been acknowledged nor assessed by the Board. The Board's decision is therefore erroneous. The Applicant also submitted that the Board erred in ignoring part of the documentary evidence which did not support the Board's conclusions on the situation in Fujian province.

[30] The Applicant then submits a two-fold argument regarding the nature of churches in China. He argues that the case law shows that it is unreasonable of a Board to find that an applicant would not face any persecution if they were to practice their religion in a state-sanctioned church, and cites the following cases in support of this proposition: *Zhou v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1210, paras 21-27; *Chen v Canada (Minister of Citizenship and Immigration)*, 2010 FC 258, para 23; *Song v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1321, paras 71-72; *Zhu v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1066.

[31] The Applicant also argues that it was unreasonable of the Board to conclude, on the basis of the documentary evidence, that the Applicant would be able to freely practice his religion in an

underground church in Fujian province. The Applicant argues that the Board focused only on the lack of arrests of Christians in Fujian province, and did not address other forms of persecution. The Applicant points especially to the letter from Bob Fu, founder of China Aid Association, in which Mr. Fu indicates that persecution of Christians, occurs in every province, including Fujian, and that not all incidents are reported. The Applicant argues that the Board did not address that letter at all, though it contradicted the Board's own conclusions, and that this is a reviewable error as per *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35. The Applicant also argues that a finding that the Applicant could practice his religion in hiding does not amount to a finding of religious freedom, according to para 25 of *Chen*, above. The Applicant notes that religious persecution can take many forms, including restrictions on worshipping in public or receiving religious instruction (*Fosu v Canada (Minister of Citizenship and Immigration)* (1994) 90 FTR 182).

[32] The Respondent distinguishes all of the cases relied upon by the Applicant, in order to establish that the Board did not err by not determining whether the Applicant was, in fact, a Christian. The Respondent argues that *Chong*, above, is distinguishable because in that case, it was not clear whether the Board had found that the Applicant's entire story was untrue or whether the Board had simply not addressed whether or not the Applicant was a Christian, whereas in the present case it is clear that the Board found that the entire story was untrue, as it stated "the claimant has manufactured a fraudulent situation where the PSB was pursuing him". The Respondent distinguishes *Chen*, above, on the basis that in that case the question of whether the Applicant was a Falun Gong member was central in determining whether or not he was a Convention refugee, but the Board had not addressed that issue.

[33] The Respondent disagrees with the Applicant's statement that the letter from Bob Fu "unequivocally indicates that persecution of Christians does exist in the applicant's province", and argues that this Court has found it to be insufficient to simply refer to country conditions in general without linking them to a personalized situation. The Respondent cites *Dreta v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1239 and *Ahmad v Canada (Minister of Citizenship and Immigration)*, 2004 FC 808.

[34] Regarding the characterization of religious persecution, the Respondent argues that the Applicant has relied on case law where the Court found that if the Board determined that the claimant could practice his religion safely in hiding, this did not amount to being free of persecution; the Respondent points out that the Board did not make any such statement in its decision. The Respondent contends that in the present case, the Board did not, as argued by the Applicant, restrict itself to analyzing the risk of being arrested, but rather took into account the public dimension of religious practice, finding that because of the size of the Applicant's church, it would not be subject to monitoring or regulation, and that the Applicant would not, in fact, have to hide his religious practice. The Respondent also pointed to paragraph 17 of the decision where the Board mentions the documents reviewed and finds that Christian groups are allowed to carry out public activities, convening seminars and publishing materials in the Fujian Province.

[35] The Court finds that there was no error in the Board's discussion of the Applicant as a Christian. Both the *Chong* and *Chen* decisions, above, are distinguishable from the present case. In both cases, the Board, in failing to determine whether the Applicants were in fact members of the



relevant religions, had also failed to examine whether they would face persecution in China. In the present case, though there is no explicit conclusion identifying the Applicant's religion, the reasons as a whole do not appear to disbelieve that the Applicant is a Christian. Moreover, the Board carefully analyzes whether churches such as the one to which the Applicant is alleged to have belonged are likely to face persecution in Fujian province. The Board carries out this discussion separately from the discussion of whether the alleged events actually happened to the Applicant. A careful reading of the decision gives no indication that the Board disbelieves that the Applicant is a practicing Christian, which was acknowledged by Applicant's counsel at the hearing. The Board fully addressed the likelihood of future persecution on these grounds.

[36] Contrary to the Applicant's contention, I find that the Board did, in fact, consider the letter from Bob Fu. Paragraph 17 of the Board's reasons refers to the "report and letters" from the China Aid Association, but explains that the Board was not able to find any reference to actual incidents of arrest or persecutions in any other report. It was open to the Board to weigh the evidence in this manner.

[37] Moreover, I find it clear from the Board's reasons that it concluded that even in the Applicant's own underground, eight-member church, he would be free to practice his religion in Fujian province. The Board did not find any evidence of any meaningful restriction on the Applicant's religious freedom, even in the public arena. As such, I find that the Board did take into consideration all the documentary evidence.

[38] Therefore for all the aforementioned reasons, the application for judicial review is dismissed.

[39] I find no general question to certify.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the judicial review is dismissed. No question is certified.

"André F.J. Scott"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3057-10

**STYLE OF CAUSE:** QIN YUAN WANG  
v.  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** February 3, 2011

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

**DATED:** March 15, 2011

**APPEARANCES:**

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