

Federal Court



Cour fédérale

Date: 20110602

Docket: IMM-4488-10

Citation: 2011 FC 636

Ottawa, Ontario, June 2, 2011

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

**JIAN ZHONG WANG, QING CHEN, SIMON
YAN WANG, and JENNIFER WANG**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants seek an order setting aside the June 14, 2010 decision of the Refugee Protection Division of the Immigration Refugee Board (the Board), which found the applicants to be neither Convention refugees nor a persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, 2001, c. 27 (*IRPA*). The application is brought pursuant to subsection 72(1) of the *IRPA*. For the reasons that follow, the application for judicial review is dismissed.

[2] The adult applicants, Mr. Jian Zhong Wang and his wife Ms. Qing Chen (the adult applicants), claimed to be citizens of China. The applicants also claimed to be Roman Catholics. Using fraudulent documents the male applicant came to the United States (U.S.) on January 19, 1995. He made a claim for asylum in the U.S. but it was rejected and he was given a Departure Order. He ignored the Departure Order and remained in the U.S. He began attending a Catholic church and was later baptized. He also worked illegally. A friend subsequently informed him that one of the friend's relatives had made a successful refugee claim in Canada.

[3] The female applicant entered the U.S. in 2000, also using fraudulent documents. Her claim for asylum was rejected by the U.S. in 2001. The applicants were, nonetheless, married in Boston, Massachusetts, in October 2002. They attended the Boston Catholic church, but the female applicant was not baptized. The minor applicants - the children of the applicants - were born in 2003 (son) and 2006 (daughter) and were baptized. The children are U.S. citizens.

[4] The male applicant arrived in Vancouver on December 7, 2008 and made a claim for Convention refugee protection in Toronto on December 15, 2008. The female applicant and the minor applicants entered Canada at Fort Erie on January 19, 2009 and made their refugee claims that same day. The claims were joined and rejected by the Board on June 14, 2010. The Board found that the determinative issues in the claims were the credibility of the adult applicants' identities and the Personal Information Form (PIF) narratives, as well as oral testimony of both applicants concerning their identity as members of the Catholic faith. The second issue before the Board was the adult applicants' fear of forced abortion and/or sterilization for breaching China's

family planning policy if forced to return to China. The determinative issue with respect to this portion of the claim was the relationship of the applicants' subjective fear of persecution to the objective situation of birth control policies in their home province of Fujian.

[5] The Board found that "the male and female claimants are neither Convention refugees nor persons in need of protection...[and]...that the two minor claimants are not Convention refugees as they are citizens of the United States of America and hence have no credible basis for a refugee claim in Canada against the USA." Additionally, the Board found that the male applicant did not establish his identity as a national of China by his testimony or his supporting documentation.

[6] In sum, the Board concluded, at paras 51-52:

In assessing all of the evidence available, the panel concludes that the claimants have not supplied credible testimony or evidence to support their claims. The lack of acceptable documentation and proof of the alleged asylum claim in the USA for the female claimant, as well as the lack of credible testimony detracts from her claim. The failure of the male claimant to establish his identity as a national of the country of China is critical to his claim and the panel has no requirement for further analysis of this claimant's allegations, given that it matters not, pursuant to section 106 of the Immigration and Refugee Protection Act, whether the male claimant is a practicing Catholic or may be subject to the rules of the "One-Child Policy".

The panel has found that there is no significant evidence to support the allegations made by the adult claimants with respect to the Catholic church in China and have found, on a balance of probabilities, that an enhanced fine rather than abortion or forced sterilization is more likely than not the greatest penalty that would be faced by the female claimant in respect of "One-Child Policy" issues should she choose to return her United States born children to China.

[7] In the result, while the Board refers to the fear of persecution on the part of both applicants, the Convention ground needed to be assessed only in respect of the female applicant as her identity alone was established.

Issue

[8] Counsel for the applicants argues that the Board erred at law by rejecting the male applicant's Chinese identity documents without a proper evidentiary basis.

[9] The applicants also contend that the Board erred at law by conducting a highly selective analysis of the objective documentary evidence by engaging in sheer speculation when it came to its consideration of China's One-Child Policy.

Was the Board finding that the male applicant's identity had not been established reasonable?

[10] The Board rejected the male applicant's claim that he is a Chinese national. The Board found:

The male claimant's testimony and the supporting documentation filed do not establish the male claimant's identity as a national of China. In order to establish his identity, the male claimant provided an original resident identity card (RIC), a household register (hukou) and a marriage certificate.

With respect to the assessment of the documents, section 106 of the *Immigration and Refugee Protection Act* states:

The Refugee Protection Division must take into account, with respect to the credibility of a claimant, whether the claimant possesses acceptable documentation establishing identity, and if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain the documentation.

Rule 7 of the Refugee Protection Division Rules states:

The claimant must provide acceptable documents establishing identity and other elements of the claim. A claimant who does not provide acceptable documents must explain why they were not provided and what steps were taken to obtain them.

In assessing the authenticity of the male claimant's documents, the panel is guided by the Federal Court decision in *Sertkaya*, which asserts that it is open for the Board to consider the authenticity of documentary evidence and the ability of the claimant to obtain and use fraudulent documents. The panel is also mindful of the Federal Court decision in *Rasheed*, which asserts that the basic rule in Canadian law is that foreign documents (whether they establish the identity or not of a claimant) purporting to be issued by a competent foreign public official, should be accepted as evidence of their content unless the Board has some valid reason to doubt their authenticity.

[11] Counsel for the applicants contends that a document official in capacity is presumed to be authentic unless the Board can provide a clear evidentiary basis calling the document into question and that, in consequence, the Board erred in rejecting the identity documents. It is the exception to this general principal however that formed the basis of the Board's decision. The Board provided a number of reasons why the authenticity and therefore validity of the male applicant's identity documents ought to be doubted:

The male claimant presented an original RIC... issued in 2001, in support of his identity as a national of the People's Republic of China. The male claimant stated that this RIC was a second generation identity card and that he had previously replaced one RIC. A second generation card began circulating in the People's Republic of China in 2004. The new computer-readable identity card replaces the first generation card that has been in circulation for more than 20 years. The panel notes that the male claimant did not have a second generation RIC but had an 18-digit version of the first generation RIC. The male claimant was asked about what became of his RIC prior to this one. He stated that it was at his home in China. Documentary evidence indicates that an individual is required to hand in his previous card at the local PSB office and obtain the new card pursuant to the Chinese government rules. He was asked how he obtained this RIC in 2001, when he alleges he was in the USA. The

male claimant stated that he sent a picture of himself to his mother and she applied for the RIC and sent it to him in the USA. He was asked what procedure she took to get the card. He replied that he did not ask. Documentary evidence [citation removed] states that Chinese citizens must apply in person to the Public Security Bureau (PSB) to obtain a RIC. The applicant's photograph is taken by the PSB at the time of application. A fee is required to obtain a new identity card. The claimant was given an opportunity to comment on this and he noted that he had obtained the card the way he had described. In her submissions, claimants' counsel quotes from a U.K. Home Office document where it discusses procedures for replacing a lost or stolen identity card. The panel notes that the RIC allegedly obtained in 2001 by the male claimant was a new card replacing a card that was about to expire, not a lost or stolen card. The current documentary evidence is quite specific in its description of the issuance procedures for new RICs.

The panel draws a negative inference in regard to the credibility of the male claimant, given his adamant claim that the RIC before the panel was obtained by mailing a picture to his mother, that he did not report, that he had to exchange his prior RIC at the local PSB office when receiving a new RIC and incorrectly stating that his RIC was a second generation card.

[12] To counter these conclusions, the applicants contend that the Board was incorrect in its finding that it is not possible for a Chinese national to obtain a new RIC with the assistance of a third party and that they must apply in person. The applicants point to a U.K. Home Office report dated April 20, 2004 which states that "a person does not have to come in themselves with the photo, a relative may come in their place." As the Board noted, the phrase "a person does not have to come in themselves with the photo, a relative may come in their place" is made with respect to lost RIC cards. The distinction is important because the male applicant claims to have replaced an expired RIC, not a lost one. This evidence does not therefore support his position.

[13] The applicants further contend that there is no evidentiary basis upon which to confirm the Board's conclusion that it is simply impossible to obtain a RIC from abroad. There was, however,

an evidentiary basis on which the Board founded its conclusion. The Board clearly stated “documentary evidence states that Chinese citizens must apply in person to the Public Security Bureau (PSB) to obtain a RIC” and referenced “Exhibit R/A-1, item 3.151 Information Request CHN43360.E.” in support of this conclusion.

[14] The applicants contend that the documentary evidence was inconclusive with regard to the issuance of a RIC and/or RIC renewal and that there was nothing inherently implausible or unreasonable about the male applicant’s explanation that his mother obtained the new RIC for him. In my view, the Board’s rejection of this explanation was within its jurisdiction to make findings of credibility and to reject the explanation as implausible. In this case, not only was the explanation inconsistent with the country information on how RICs are obtained, the Board was entitled to reject the explanation as implausible. It was reasonable for the Board to find that the Chinese government would not issue an official identity document in such a laissez-faire manner as asserted by the male applicant.

[15] Counsel asserts with respect to the documents themselves, that to avoid making adverse or negative findings with respect to the RIC, the Board could have requested the RCMP investigate the documents. This argument cannot succeed.

[16] First, the onus is on the applicant to establish his identity. Secondly, there is no duty incumbent on the Board to obtain an RCMP report where there is sufficient evidence to *prima facie* cast doubt on a document’s authenticity. A similar argument with respect to the male applicant’s

passport, i.e. that the Board should have contacted the Chinese Embassy in Washington D.C. to confirm the passport's authenticity, fails for the same reason.

[17] The Board also drew a number of further negative inferences with respect to the male applicant's effort to establish his identity:

In considering the negative inference above, the panel has cause to question the authenticity of the RIC submitted by the male claimant. The panel considered the country documents in regard to RICs, specifically those that appear to be genuine cards but that may not be legitimately obtained and found that "counterfeit (Resident Identity) cards and fraudulent documents such as Resident Identity Cards are relatively easy to obtain." The documentary evidence notes:

The first generation RIC is relatively easy to counterfeit as it is made of laminated paper, and can reportedly be bought on the streets for a "few hundred yuan" ... In addition, these cards, which are issued by provincial authorities, do not have a nationwide tracking number so fraud detection is difficult. According to the Ministry of Public Security (MPS) official in charge of the Second Generation Identity Card Replacement Office, the first generation identity card "adopts photochemical reaction and lithographic as the main printing technology, which can be forged or imitated easily." The official also stated that the government had encountered serious problems with forged RICs being used in committing crimes.

According to information provided to the Research Directorate by a program officer with the Intelligence and Interdiction Unit of Citizenship and Immigration Canada (CIC) in 1999:

...both counterfeit cards and fraudulently obtained but legitimately produced cards are obtainable and in circulation, and ... possession of a legitimately produced identity card does not guarantee that it was legitimately obtained.

The male claimant was questioned about why in 1995 he did not apply for a passport and travel legally to the USA. He replied that his household registry (hukou) did not allow him, as a farmer, to go abroad. He was asked to confirm he had a rural hukou. He responded in the affirmative. The male claimant was asked to confirm that he could not apply for a Chinese passport and travel out of the country.

He replied 'yes' that was true. The male claimant was asked if he did apply to travel out of the country. He responded 'yes'.

The panel noted that the male claimant had a Chinese passport. He was asked when he acquired it. He replied that it was in 2006, while he allegedly resided in the USA. When asked about the process he went through to apply for this document, he stated that he filled in a form at the Chinese embassy and showed his Massachusetts driver's license. Documentary evidence taken from the website of the Chinese embassy in Washington indicates that for passport renewal, citizens must fill out an application form and submit the original passport, as well as the pages, "with photograph and personal information, previous endorsements or extensions, and visas for entry into the United States", along with a passport photograph meeting embassy specifications. Green card holders must also provide the original card, plus a photocopy thereof. Applications may be submitted in person or by mail. The male claimant testified during the hearing that he had previously applied for a Chinese passport and been refused, hence he had no expired passport to renew, nor did he hold a green card or current status in the USA. It should also be noted that if as the male claimant alleged during testimony, he could not be granted a passport previously in China, none of his circumstances had changed in 2006. In actual fact, he was in the USA without valid status and illegally absent from the country he alleges citizenship in. The panel finds this is an implausible situation that would not allow one to legally obtain a Chinese passport. [Emphasis added]

To apply for a new passport, the Passport Law of the People's Republic of China states:

Article 5: A citizen who intends to go abroad for non-official purposes, such as residing, visiting relatives, studying, working, travelling or engaging in business activities, shall apply in person for an ordinary passport to the entry-exit control department of the public security organ under the people's government at or above the county level where his residence is registered.

Article 6: A citizen who applies for an ordinary passport shall present his resident identity card, resident household registration book, recent bareheaded photos and the materials related to his reasons for application. Where a State functionary applies for an ordinary passport for any of the reasons as specified in Article 5 of this Law, he shall present the relevant certification documents according to relevant State regulations.

The male claimant denied presenting any of the documents required as detailed above to obtain a Chinese passport in assessing the testimony provided in the hearing and given the absence of a reasonable explanation for how the male claimant obtained his RIC and Chinese passport and the absence of any collaborating evidence, the panel rejects the male claimant's explanation.

In assessing the male claimant's testimony and the totality of evidence presented in respect of the male claimant's RIC and passport, the panel finds, on a balance of probabilities, that the RIC and passport submitted in support of this claim are fraudulent and that the male claimant knowingly submitted false identification documents. [Emphasis added]

The male claimant also provided a "notarial birth certificate", dated June 27, 1996. This document was allegedly signed and sworn before a notary in China utilizing a picture of the male claimant. At the time of signing, the male claimant alleged he was in the USA and not present. There is no statement in the certificate indicating what documents were utilized to produce the "certificate". As discussed above, fraudulent documents are readily available. The panel has cause to question the authenticity and validity of this document and assigns it little evidentiary weight.

After considering the totality of the evidence, representations, relevant documents and statutory provisions and case law, the panel finds that the male claimant has failed to produce sufficient credible documents and evidence to establish his identity as a national of the People's Republic of China, nor has he satisfactorily explained why they were not provided. The male claimant has not met the requirements of section 106 of the Immigration and Refugee Protection Act and Rule 7 of the Refugee Protection Division Rules and has knowingly submitted false documents. Accordingly, the panel finds that the male claimant is not a credible witness. Given the magnitude of the misrepresentation regarding the male claimant's national RIC and passport, the credibility of the male claimant's entire account is cast into serious doubt. [Emphasis added]

[18] Again, and contrary to the applicants' argument, there was no duty incumbent on the Board to obtain expert reports or confirmation of the RIC's, passport's and notarial birth certificate's authenticity. The identity documents on their face, together with their provenance and

inconsistency with country information reports constituted sufficient foundation for the Board's conclusions on the lack of credibility in the explanation proffered and authenticity of the documents. Once the Board concluded that the male applicant had not established his identity, it was not necessary for the Board to conduct any further analysis of the evidence. In light of the Board's finding that the male applicant had not established his identity, the Board's analysis of the male applicant's religious persecution claim became unnecessary.

[19] The Board then addressed the female applicant's claim. Contrary to the male applicant, her identity and citizenship had been established by the evidence she tendered. Throughout its reasons the Board, however, refers to the applicants' claim and its findings in the plural. While this gives rise to some confusion in the context of its finding that the male applicant failed to establish his identity, it is immaterial to the legal analysis, and cannot be said to give rise to an error. Put at its highest, it is a second, if unnecessary, reason for rejecting the male applicant's claim. The reasoning in this regard does, however, constitute the basis for the Board's rejection of the female applicant's claim, whose identity and nationality it accepted, and hence requires further review.

[20] The evidence before the Board with respect to religious freedom in China is mixed. Certainly, there was sufficient credible evidence upon which the Board could find that there was, within the female applicant's home province of Fujian, a low risk of persecution for Catholics. The Board was cognizant of the existence of evidence to the contrary, which it rejected after considering both its content and provenance:

This leads the panel to determine that the claimants are free to choose to worship in the Catholic congregation of their choosing. The panel has chosen to rely on the documentary evidence because it originates from a variety of reputable independent sources, which would

reasonably be expected to be knowledgeable with respect to the situation of Catholics in Fujian. The documentary evidence is seen as reliable, probative, detailed information, so as to provide the panel with a thorough understanding of the situation of the Catholic church in Fujian province.

[21] The Board was entitled to weigh the competing evidence and come to a view, provided it did so in a substantively and procedurally fair manner. I find that it did. It is not sufficient for the applicants to point to evidence that points in the opposite direction; it is only where the conclusion reached, in light of the weight of the evidence, or in light of a specific material element of the evidence, is unreasonable, that the Court will interfere: *Velinova v Canada (Citizenship and Immigration)*, 2008 FC 268.

[22] In this regard, the reasoning of Justice James Russell in *Yang v Canada (Citizenship and Immigration)*, 2010 FC 1274 is directly apposite. There, Justice Russell rejected the argument advanced here, noting that it was not unreasonable to conclude that if there were incidents of arrest in Fujian province (the same province in this case), they would have been documented. The findings of the Board were sustained, and the inference not considered to be speculation.

[23] Every case is unique and is comprised of its own unique evidentiary record. I agree with the observation of Justice Russel Zinn in *Yu v Canada (Citizenship and Immigration)*, 2010 FC 310 that one should be cautious in applying country findings from one decision of this Court to another. Here, however, there was evidence upon which the Board reasonably concluded that the risk of persecution did not meet the legal threshold.

[24] There remains, however, a concern as to the finding on the question whether the female applicant can practice her faith in the “patriotic” Catholic churches of China. The female applicant contends that the Catholic churches that are state sanctioned are not true churches of the Catholic faith.

[25] In sum, the female applicant’s objection is that the findings of the Board, in effect, require her to practice her faith in the official Catholic church of China, which she does not consider to be a true Catholic church. The Board examined this proposition carefully, and its finding that the core tenets of the Catholic faith remained unaltered and open and available to her, was supported by the evidence and was reasonable. It concluded that the Vatican and Beijing are reconciled, that priests and bishops publicly acknowledge their appointments, and that Vatican-approved adherents in the official church recognize and accept the Vatican’s spiritual authority.

[26] The female applicant maintains that the Board’s decision is flawed as it in effect forces her to change her faith. This mischaracterizes the Board’s ruling which was that the female applicant could practice her faith within the sanctioned church. Other than the issue of abortion, the applicant did not identify any aspect of practice or belief other than hearsay testimony that the Church preached love of country and of the communist party, which was said to be fundamentally unacceptable to her and incompatible with church doctrine, she was required to change her faith.

[27] One particular tenet of faith that comes into conflict with state policy was that of abortion. The female applicant desires more children, and claims that China’s One-Child Policy would preclude her from having more children, resulting in either the use of contraception or an abortion,

either of which contravenes her faith. In this regard, the Board had before it two reports indicating that the policy did not apply to foreign born children, and that even if the policy did apply, a fine, rather than forced abortion, was the consequence of a breach. This “Social Compensation Fee” which is a monetary penalty, cannot as a law of general application, constitute a basis for a persecution in these circumstances.

[28] The female applicant also contends that the Board engaged in speculative and unsustainable inferences in concluding, from the absence of documentation of arrests or incidents of persecution, there was a low risk that she would be persecuted. This argument fails here, as it has in other cases: *Yang* and *Yu* above. There was evidence before the Board, from multiple credible sources, on which it could predicate its finding that the risk of persecution fell short of the Convention threshold.

[29] In conclusion, the finding that there was not a serious possibility that the applicants would be persecuted if returned to China is reasonable per *Dunsmuir v New Brunswick*, [2008] 1 SCR 190, 2008 SCC 9.

[30] The application for judicial review is dismissed.

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-4488-10

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