

Federal Court



Cour fédérale

Date: 20110719

Docket: IMM-3673-10

Citation: 2011 FC 902

Ottawa, Ontario, July 19, 2011

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

GONG DAO YAO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act) for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated November 18, 2009 wherein the applicant was determined not to be a Convention refugee or person in need of protection under sections 96 and 97 of the Act.

[2] The applicant requests that the decision of the Board be set aside and the claim remitted for redetermination by a different member of the Board.

Background

[3] Gong Dao Yao (the applicant) is a citizen of the Peoples Republic of China. He fears persecution because he is a Christian and an alleged member of an underground Christian church in China.

[4] The applicant alleges that he was introduced to Christianity through a friend in 2007 and that he attended an underground house church in Fujian Province. The applicant states that in August 2007, the Public Security Bureau (PSB) raided the church. The applicant escaped but alleges that he was pursued by the PSB and left China to avoid arrest.

Board's Decision

[5] The Board found that the applicant was not credible with regard to his membership in an underground church and his pursuit by agents of the PSB.

[6] The Board did find, however, that the applicant is a genuine Christian, given his knowledge of Christianity and corroborative evidence including photographs and his baptismal certificate. As such, the Board assessed whether there is a serious possibility that the applicant would be persecuted if he returns to China and practices Christianity in an unregistered church.

[7] The Board found that although persecution of Christians in China does exist, the applicant's subjective fear is not supported by the documentary evidence. The applicant has lived and worked all his life in Fujian Province and the evidence states that Christians in Fujian Province "enjoy one of the most liberal policies on religious freedom in China."

[8] The Board reviewed the evidence and found that there was no recent evidence of arrests of Christians in Fujian Province.

[9] The Board noted that house churches had been destroyed in Fujian Province but gave this evidence little weight for lack of detail.

[10] The Board found that unregistered religious groups continue to expand and no longer operated in strict secrecy. Many groups carry out public activities and social service work. The Board also found that prayer and bible groups among friends need not register and that house churches were more likely to have problems when membership grew, forged links with other groups or foreign organizations and that there was no evidence that the applicant's group did this.

Issues

[11] The only issue raised by the applicant was:

Was the Board's finding that the applicant could practice his Christian faith which the Board found the applicant genuinely held, reasonable?

[12] As such, the issues are as follows:

1. What is the appropriate standard of review?
2. Was it reasonable for the Board to find that the applicant could practice Christianity in Fujian Province, China?

Applicant's Written Submissions

[13] The applicant submits that the Board erred in finding that he can practice Christianity in Fujian Province without persecution. The Board's own Request for Information Response (RIR) states that Christian home churches were destroyed in Fujian Province and this Court has held in *Dong v Canada (Minister of Citizenship and Immigration)*, 2010 FC 575 that actions other than arrest may be persecution, including the destruction of places of worship.

[14] The applicant submits that there was wider evidence that the holding of religious assemblies in unregistered venues results in detention and abuse and that police and local officials disrupt home worship meetings claiming individuals belonged to cults.

[15] The Board found that the situation in Fujian Province does not reflect what is happening in other provinces. However, the applicant submits that nothing in the evidence states that there is no repression of Christians in Fujian Province or that Christians can practice without facing more than a serious possibility of persecution for doing so. This finding was therefore unreasonable.

Respondent's Written Submissions

[16] The respondent notes that the Board found the applicant not credible that he had attended an underground church that was raided by the police and that he is wanted by the PSB for illegal religious activities.

[17] The respondent submits that the Board considered the objective evidence and determined that the applicant is able to practice his faith freely in Fujian Province. This was a reasonable assessment. This Court has upheld several decisions where the Board found on the documentary evidence that Christians are free to practice in Fujian Province.

[18] The Board considered and weighed the evidence of the destruction of home churches but gave it little weight due to a lack of details about the reason for the destruction. It is the Board's prerogative to rely on some evidence over others and the Court is not to reweigh the documentary evidence.

[19] The respondent submits that the Board found that the documentary evidence indicated that the situation is better in Fujian Province than the rest of country. The Board considered evidence beyond arrests including the increase in religious freedom and the expansion of Christian groups.

Analysis and Decision

[20] **Issue 1**

What is the appropriate standard of review?

The issue here concerns the Board's assessment of evidence and the weight to be given to that evidence. These are questions of fact that are within the Board's expertise and are thus reviewable under the reasonableness standard of review (see *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190; *Khosa v Canada (Minister of Citizenship and Immigration)*, 2009 SCC 12, [2009] 1 SCR 339).

[21] **Issue 2**

Was it reasonable for the Board to find that the applicant could practice Christianity in Fujian Province, China?

While the Board did not accept that the applicant had been part of an underground group and then targeted by the PSB, it did accept that he is a genuine Christian.

[22] The Board considered the documentary evidence concerning Christians in Fujian Province. It was a reasonable conclusion that Christians may practice relatively freely in that province compared with the rest of China. This finding of the Board was based on the evidence before it that:

- The reports stating that Christians in Fujian Province “enjoy one of the most liberal policies on religious freedom in China.”;
- The lack of evidence of any arrests of Christians in Fujian Province in recent years;

- The general evidence that unregistered religious groups continue to expand and do not operate in strict secrecy.

[23] This Court has held on several occasions that the Board's finding that Christians may practice freely in Fujian Province is reasonable.

[24] For example, in *Jiang v Canada (Minister of Citizenship and Immigration)*, 2010 FC 222, Mr. Justice Francois Lemieux dismissed a review application involving a claimant from Fujian Province stating that "the documentary evidence shows where the applicant lives there are minimum restraints, people practice generally freely and those who may be affected unduly do not fit [the applicant's] profile." (see also *Yu v Canada (Minister of Citizenship and Immigration)*, 2010 FC 310 and *Wu v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1102).

[25] The applicant takes issue with the Board's treatment of the RIR, CHN102492.E which states that, "There were also reports of house churches being destroyed in the provinces of Jilin and Fujian....".

[26] The Board acknowledged this evidence but gave it little weight as evidence of persecution because:

...no information was given in this document regarding the reasons for the destruction, which could have been for reasons other than religious persecution.

[27] I accept the applicant's submission that in *Dong* above, Mr. Justice Sean Harrington held at paragraph 17 that the Board erred in finding that "...a religious adherent is not subject to persecution if only her place of worship is destroyed, but she is not subject to arrest." I agree with Mr. Justice Harrington that actions other than arrest may amount to persecution on the basis of religious belief. However, the Board's handling of the documentary evidence in the case at bar is not the same as in *Dong* above. Rather, in the case at bar, the Board found that the details included in the documentary evidence on the destruction of home churches were not sufficient to found the refugee claim.

[28] The weighing of evidence is within the prerogative of the Board. It is not the role of this Court to reweigh the evidence (see *Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125, [2002] 4 FC 358).

[29] I find that the Board's assessment of the evidence and conclusions based on that evidence are within the range of possible acceptable outcomes on the facts and law as per the standard of reasonableness in *Dunsmuir* above, at paragraph 47.

[30] As a result, the application for judicial review is dismissed.

[31] Neither party wished to submit a proposed serious question of general importance for my consideration for certification.

JUDGMENT

[32] **IT IS ORDERED that** the application for judicial review is dismissed.

“John A. O’Keefe”

Judge

ANNEX

Relevant Statutory Provisions*Immigration and Refugee Protection Act, SC 2001, c 27*

72. (1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is commenced by making an application for leave to the Court.

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,

(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 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.

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

72.(1) Le contrôle judiciaire par la Cour fédérale de toute mesure — décision, ordonnance, question ou affaire — prise dans le cadre de la présente loi est subordonné au dépôt d'une demande d'autorisation.

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 :

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;

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.

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) 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.

(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.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3673-10

STYLE OF CAUSE: GONG DAO YAO
- and -
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 10, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT OF:** O'KEEFE J.

DATED: July 19, 2011

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