

Federal Court



Cour fédérale

**Date: 20110728**

**Docket: IMM-5917-10**

**Citation: 2011 FC 958**

**Ottawa, Ontario, July 28, 2011**

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

**BETWEEN:**

**CHONG LI SHU**

**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*, S.C. 2001, c. 27 (Act) for judicial review of the decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated 9 September 2010 (Decision), which refused the Applicant's application to be deemed a Convention refugee or a person in need of protection under sections 96 and 97 of the Act.

## **BACKGROUND**

[2] The Applicant is a citizen of the People's Republic of China. He began attending a 23-member unregistered house church in June 2007. In October 2007 and, again on 13 December 2007, he joined other church members in distributing to residential mailboxes flyers promoting the Christian faith. The members divided themselves into groups of three or four, and each group was deployed to a particular location.

[3] The October distribution was without incident but, during the December distribution, two members of a three-member group were arrested by the Public Security Bureau (PSB) and subsequently disclosed the identities of everyone belonging to their church. The Applicant went into hiding.

[4] PSB officers allegedly came to his house on approximately ten different occasions to arrest him. They searched the home where he lived with his parents. The PSB informed the Applicant's father of the allegations against his son: that he had joined an illegal religious group and that he had distributed illegal religious flyers to poison people's minds.

[5] The Applicant fled to Canada, arriving here on 14 February 2008. He claims that the PSB continues to make inquiries about him, that officers have visited his home three times since he fled to Canada and that the two captured church members remain in detention.

[6] He appeared before the RPD on 4 August 2010. He was represented by counsel and an interpreter was present. In a written Decision, the RPD rejected the Applicant's claim, having found that he was neither a Convention refugee nor a person in need of protection. This is the Decision under review.

## **DECISION UNDER REVIEW**

### **Credibility Concerns**

[7] The RPD identified two aspects of the Applicant's evidence that gave rise to credibility concerns. The first related to the issuance of an arrest warrant and the second related to the PSB's questioning of the Applicant's father.

[8] The Applicant stated that his father did not tell him that an arrest warrant or summons had been issued in the Applicant's name. The RPD did not find this evidence believable. It noted that, according to the Applicant, the PSB maintained a continuing interest in him. Were this true, in the RPD's view, the PSB would likely have left a warrant for his arrest in the care of his parents during one of their thirteen visits to the home. According to the documentary evidence, it is "very common in China for the police authorities to leave a summons or subpoena with family members ... instructing them to pass it along to the person named on the summons." Although this is not proper procedure, it "happens all the time, especially in cases when the person on the summons is not easily locatable ...."

[9] The Applicant also stated that his father never told him that the PSB ever inquired about the father's participation in the unregistered church. The RPD found this to be unlikely. Given that the PSB had allegedly caught two members distributing Christian flyers and had accused the Applicant of distributing such flyers and poisoning people's minds, it was reasonable to expect the PSB to inquire about the Applicant's family and whether they, too, were members of the Christian faith. In the RPD's view, it was also reasonable to expect the Applicant to know if the PSB had made such an inquiry, given that he and his father have exchanged information about the PSB's visits to their home and the fate of the arrested church members.

[10] The RPD weighed the Applicant's evidence against the documentary evidence and found the former lacking. According to the documentary evidence, while Christian groups have no legal protection, they continue to increase in both number and notoriety. In fact, most groups no longer operate in strict secrecy but, rather, carry out public activities and social service work.

### **Documentary Evidence**

[11] The RPD examined the documentary evidence regarding religious persecution in China. It found that, although religious persecution of house churches does occur in China, "it is not general in nature."

[12] The RPD noted that, in China, Protestant Christians number between 50 and 70 million in churches other than those sanctioned by the state. There is a significant discrepancy in the treatment of house churches throughout the country. In some areas, unregistered house churches with

hundreds of members meet openly with the full knowledge of local authorities, particularly in small cities and rural areas. Elsewhere, those who participate in house church meetings of more than a handful of family members and friends face detention and abuse.

[13] There were “many” reports that authorities routinely disrupted home worship meetings, claiming that participants had disturbed their neighbours or the social order or belonged to an “evil cult.” One source stated, however, that family and friends could hold religious meetings and did not need to register with authorities. This was confirmed by another source, which observed that gatherings of more than 40 are required by law to register with the government.

[14] The RPD also examined the documentary evidence regarding religious persecution in the Applicant’s home province of Guangdong. It found “no persuasive information suggesting that religious persecution is occurring for groups that are similar to the [Applicant’s].” It acknowledged the China Aid Association (CAA) as a “significant source of up-to-date reporting and detailed accounts of harassment and repression of Protestant house churches in China.” CAA reported that the main targets of persecution include house church leaders, house churches in urban areas, Christian publications and foreign Christians and missionaries living and working in China. The RPD recognized that, according to the President of CAA, “[s]ome forms of repression fall below our radar such as warnings, fines, and harassment.”

[15] The RPD concluded that, had the arrests occurred in Guangdong (as the Applicant alleges), they would be considered so egregious that one could reasonably expect to see them reported not only by CAA but by “the multitude of different resources which strive to inform the world of

religious repression in China.” The one reported incident for Guangdong province occurred in 2008; it was a raid on Liangren church in Guangdong. The pastor of that church has since filed an administrative lawsuit, and the court accepted the filing. Aside from this incident, there are no other reports for Guangdong. Consequently, the RPD concluded that there was “[n]o other persuasive evidence ... that Protestant unregistered church members are facing persecution in Guangdong province.”

[16] The RPD stated that it was “mindful of the caveat that the number of persecution incidents is likely to be much higher because of censorship” and that “not all information is available to commentators.” However, as there is available a significant number of detailed examples of religious persecution of varying degrees of seriousness in areas much more remote than Guangdong, it was reasonable to expect the Applicant to present persuasive evidence that individuals in circumstances similar to his are being jailed or facing other forms of persecution in Guangdong province. As such evidence was not presented and, as the documentary evidence suggests otherwise, the RPD found, on a balance of probabilities, that the Applicant was not arrested for distributing flyers and that the authorities are not seeking him.

[17] The RPD found the Applicant to be a Christian, who would be able to practise his Christian faith in Guangdong if he were to return there. Consequently, it rejected his refugee claim.

## ISSUES

[18] The Applicant raises a number of issues, which can be summarized in the following manner:

- i. Whether the RPD erred in its credibility findings; and
- ii. Whether the RPD erred by ignoring relevant evidence, relying on irrelevant evidence, misinterpreting the evidence and making erroneous findings of fact.

## STATUTORY PROVISIONS

[19] The following provisions of the Act are applicable in these proceedings:

### **Convention refugee**

**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

### **Définition de « réfugié »**

**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.

country.

**Person in need of protection**

**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

**Personne à protéger**

**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



provide adequate health or medical care.

pays de fournir des soins médicaux ou de santé adéquats.

**Person in need of protection**

**Personne à protéger**

(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 person in need of protection.

(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 reconnu par règlement le besoin de protection.

**STANDARD OF REVIEW**

[20] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9, held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to the particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[21] Both credibility assessment and treatment of the evidence are within the RPD's areas of expertise and, therefore, deserving of deference. They are reviewable on a standard of reasonableness. See *Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315, 42 ACWS (3d) 886 (FCA); *Aguirre v Canada (Minister of Citizenship and Immigration)*, 2008 FC 571 at paragraph 14; *Dunsmuir*, above, at paragraphs 51 and 53; and *Ched v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1338 at paragraph 11.

[22] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with “the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.” See *Dunsmuir*, above, at paragraph 47; and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraph 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the “range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

## **ARGUMENTS**

### **The Applicant**

#### **Credibility Concerns Related to the PSB’s Failure to Issue an Arrest Warrant Are Unjustified**

[23] The Applicant notes that, in Response to Information Request (RIR) CHN42444.E, a senior fellow of the Open Society Institute stated that Chinese authorities would almost always issue an arrest warrant to the named individual (as opposed to a family member). This opinion was corroborated by a law professor from the University of Washington. However, a representative of Human Rights in China (HRIC) stated that it is “very common” for the authorities to leave an arrest warrant with a family member with instructions to pass it on to the person named in the warrant, even though this is “not actually the proper procedure.”

[24] The Applicant argues that the RPD should have based its Decision on the corroborated evidence and not on the unconfirmed alternative evidence. In ignoring the corroborated evidence

and preferring the evidence that went against the Applicant, the RPD erred. There cannot be “selective reliance on evidence presented to the detriment of the person concerned.” See *Mui v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1020 at paragraph 28. While there is a presumption that the RPD considered all of the evidence, as Justice Yves de Montigny observed in *Saraci v Canada (Minister of Citizenship and Immigration)*, 2005 FC 175 at paragraphs 33-34:

... the more important the evidence which is not specifically mentioned and analysed, the more likely it is that a reviewing court may infer from the failure to mention the evidence that it was overlooked.

A careful reading of the tribunal's decision shows that many aspects of the applicant's evidence were overlooked, or ignored. It is equally disturbing to see that the Board failed to comment on important, or relevant, material evidence.

[25] The Applicant's sworn evidence is presumed to be true unless there is reason to doubt his truthfulness. See *Maldonado v Canada (Minister of Employment and Immigration)* (1979), [1980] 2 FC 302, [1979] FCJ No 248 (QL) (FCA).

**Credibility Concerns Related to the PSB's Failure to Question the Applicant's Father Regarding His Involvement in Christian Activity Are Unjustified**

[26] The Applicant argues that it is unreasonable for the RPD to expect the PSB to question the Applicant's father about their family's involvement in Christian activities. According to the Applicant's evidence, the members who had been arrested in December disclosed to the PSB the names of the other members of the underground church. Therefore, the Applicant argues, the PSB had no reason to question the father because they already knew the identities of all other members.

[27] Where the RPD finds a lack of credibility based on inferences, there must be a basis in the evidence to support the inferences. See *Frimpong v Canada (Minister of Employment and Immigration)*, (1989), 8 Imm LR (2d) 183, [1989] FCJ No 441 (QL) (FCA).

### **The RPD Erred in Its Treatment of the Documentary Evidence**

[28] The Applicant contends that the RPD's treatment of the documentary evidence was in error for the following reasons.

[29] Since 1999, the U.S. Secretary of State has continued to identify China as a "Country of Particular Concern" under the International Religious Freedom Act for "particularly severe violations of religious freedom."

[30] The RPD's comments regarding the increased public freedom enjoyed by Chinese Christians fail to appreciate the ongoing power struggle between the house church movement and the government. In 2010, CAA published a report indicating that, although members of Christian house churches may evangelize and otherwise operate in public, this in no way means that they are not being persecuted when they do so. To suggest otherwise is perverse. Moreover, as indicated above, among the four most-targeted groups are Christian publications. The Applicant has been accused of distributing Christian publications, which makes him particularly vulnerable.

[31] Also, with respect to the level of persecution in the Applicant's home province of Guangdong, the RPD's understanding of the facts is "completely in error," as the documentation from CAA demonstrates. The Applicant argues:

[I]t is clear there are 8 instances involving over 300 persons for the most recent statistics of Guangdong. Further, Guangdong is the only area targeted in all of Southern China. All instances of persecution for southern China occurred in Guangdong. This makes it a lightning rod of persecution. Guangdong has the third or fourth highest incidences of persecution in all of China.... The [RPD] acknowledges that the Applicant is a Christian, but suggests because he lives in Guangdong, he has nothing to fear, because Protestants are being treated well there. The documentary evidence was misinterpreted. Guangdong is one of the worst places for persecution of Christians in all of China.... As the panel itself notes, this could well be only the tip of the ice berg [*sic*] in terms of persecution given the tight grip the State has over media.

[32] The Applicant further notes that in December 2008, authorities raided the Liangren Church, a house church, in Guangdong province and charged the members with organizing an illegal gathering. Clearly, contrary to the RPD's findings, Christians such as the Applicant are facing severe persecution not simply in China generally but in Guangdong particularly.

### **The Respondent**

#### **The RPD's Credibility Findings Were Reasonable**

[33] The Respondent notes the Court's jurisprudence supporting the proposition that decision-makers such as the RPD are in the best position to gauge issues of credibility and plausibility, based on the evidence and on common sense, and to draw the necessary inferences. See *Aguebor*, above at 316.

[34] The Respondent contends that the RPD's credibility findings are firmly rooted in the evidence. The RPD reviewed the documentary evidence as well as the evidence of the Applicant that the authorities visited his family house thirteen times. Based on that evidence, it concluded that it would be reasonable to expect the PSB to leave an arrest warrant or summons with the Applicant's family. The RPD did not say that it expected the PSB to issue and serve arrest warrants for the Applicant's family members. The RPD's observations in this regard are entirely consistent with the documentary evidence referenced by the Applicant, which states that it is "very common" for the PSB to leave a warrant with family members.

[35] Moreover, the RPD reasonably expected that, in the course of inquiries, the PSB would have asked whether other family members were participants in the Christian faith and that the Applicant would then speak of this with his father. The Applicant's argument that the PSB knew exactly who the members were and therefore did not need to ask these questions does not accord with common sense and rationality.

### **The RPD's Treatment of the Evidence Was Reasonable**

[36] There is nothing in the record to show that the RPD failed to consider the totality of the evidence before it. An administrative decision-maker, such as the RPD, is empowered to decide how to weigh the evidence, and it is assumed to have weighed and considered all of the evidence unless that presumption is rebutted. See *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) (QL). The Respondent contends that the Applicant has not rebutted the presumption in this case. Moreover, the RPD is entitled to prefer documentary evidence

to that of the Applicant. See *Zhou v Canada (Minister of Employment and Immigration)* (1994), 49 ACWS (3d) 558, [1994] FCJ No 1087 (FCA) (QL).

### **The Applicant Has Misunderstood the Statistics Provided by CAA**

[37] The Respondent argues that the RPD acted reasonably in finding that there is no persuasive information suggesting that underground churches similar to the one attended by the Applicant are suffering religious persecution. The Applicant has misunderstood the statistics on the incidence of religious persecution in Guangdong, as reported by CAA for 2010 and cited by the Applicant.

[38] These statistics do not contradict the RPD's findings. The statistics clearly list 0 arrests for, presumably, the year of publication (that is, 2010) and 0 arrests for the previous year. Moreover, the "Total incidents of persecution" is reported as 8 for 2010 and 1 for the previous year. The "Total number of people persecuted" is reportedly less than 300, presumably meaning 300 throughout the entire reportable history.

[39] Overall, the Applicant's position amounts to a disagreement with the RPD's conclusion, one that was clearly open to it based on the evidence before it. As such, it does not afford a basis for this Court's intervention.

## ANALYSIS

[40] The RPD finds that the Applicant has not satisfied the burden of establishing persecution or that he would personally be subjected to a risk to his life, or a risk of cruel and unusual treatment or punishment, or a risk of torture, if he returns to the People's Republic of China.

[41] The Decision is based upon "a number of credibility concerns" and the Applicant says that the RPD's reasons and conclusions are unreasonable.

### **No Arrest Warrant or Summons**

[42] The RPD concluded that

Given that the authorities have allegedly arrested two members and continue to inquire about the claimants (*sic*), it is reasonable to expect, given the documentary evidence, that an arrest warrant or summons would have been left with the claimant's family.

The Applicant says that the RPD is being selective in the evidence it chooses to rely upon for this conclusion and that the RPD "should have based its decision on the predominant, corroborated evidence, not the unconfirmed alternative stand." Alternatively, the Applicant says that the RPD "was required at the very least to consider the more authoritative first position, and explain why it preferred the second alternative position over the primary corroborated evidence."

[43] The Response to Information Request relied upon by the RPD had the following to say on point:



### **Whether Summonses are Given to Individuals or Households**

According to information provided to the Research Directorate on 10 December 1998 by a senior Open Society Institute, a summons would almost always be issued to the individual, rather than to a registration or family member (10 Dec. 1998). The University of Washington law professor corroborated information in correspondence to the Research Directorate, saying that he was not aware of any change in practice, as of April 2004 (22 Apr. 2004).

[44] It is clear, then, that the RPD does select and rely upon that portion of the information request that supports a particular conclusion, rather than providing the full context of the evidence on point and explaining why it should rely upon the evidence of the HRIC representative in New York.

### **Religious Activities of the Applicant's Family**

[45] A further credibility concern is addressed by the RPD at paragraph 6 of the Decision:

The panel questioned the claimant if the authorities had asked his father whether he participated in the unregistered church. His response was that his father didn't say anything about that in conversations that the claimant had with his father. Given that the authorities had allegedly caught two members distributing fliers promoting the Christian faith and the claimant was being accused of distributing illegal religious fliers and poisoning people's minds, it is reasonable to expect them to make inquiries about the claimant's family and whether they were participants in the Christian faith. It is also reasonable for the claimant to know if inquiries were made given that his father had provided him with information about visits and the current information regarding the detained fellow practitioners.

[46] The Applicant says that this is unreasonable because his PIF had made it clear that the "PSB officers also said that two of the group members had been caught and confessed about the

involvement of the other group members.” This means that “the PSB know exactly who all the members are” and that “the father is not a member, and there is no need to ask the father if he is involved.”

[47] In my view, the RPD’s finding on this point is unreasonable. It is based upon speculation and conjecture and has no real basis in evidence. In any event, the Applicant’s evidence was not that his father had not been questioned but that, as the RPD itself concludes in the Decision, “that his father didn’t say anything about that in conversations that the claimant had with his father.” There may have been many reasons why the father did not discuss this issue over the phone with his son who had fled to Canada. However, the RPD did not explore this matter and relied upon speculation and conjecture. See *Canada (Minister of Citizenship and Immigration) v Hamdar*, 2006 FC 290 at paragraph 41.

[48] Given the context, any negative inference based upon the father’s failure to mention something is, in my view, unreasonable.

### **Documentary Evidence**

[49] The third basis for the RPD’s “credibility concerns” is documentary evidence to the effect that unregistered religious groups continue to expand and no longer operate in strict secrecy.

[50] The fact that unregistered groups continue to expand and no longer operate in strict secrecy does not mean that persecution does not occur. Hence, as a basis for questioning the Applicant's credibility as to what happened to him and his church, this is an extremely tenuous ground.

[51] The RPD also fails to address the fact that the Applicant did not say that he was being sought by the PSB because he had practised his religion in a house church. The Applicant's narrative was that he had been handing out flyers that were highly critical of the government church. The RPD fails to address how the documentary evidence relied upon relates to the specifics of the Applicant's conduct in China that caused him to flee to Canada.

[52] The RPD's conclusion is based upon all of the above factors:

Given all of the above, the panel determines, based on a balance of probabilities, that the claimant was not being sought for joining an illegal religious group and distributing illegal religious fliers and that the authorities are not interested in the claimant.

[53] Because this conclusion is based upon a selective use of the evidence, speculation and conjecture, and faulty reasoning with respect to the present persecutory treatment of unregistered churches, it is unreasonable and cannot stand.

[54] In its handling of the general documentation package, the RPD again appears to leave out of account the specifics of the Applicant's claim: i.e. that he was being sought by the PSB because he had gone beyond attending a small house church and had been identified as someone who was distributing fliers that were highly critical of the Chinese government's approach to religion. There was evidence before the RPD that the Chinese government uses various forms of persecution to

“block controversial writings” (U.S. DOS Human Rights Report, 2009, page 11) and that local officials in China appear to be increasingly using “forcible psychiatric treatment to silence critics ....” (U.K. Border Agency Report, January 2010 at paragraph 12.10). The Applicant presented himself as someone who was distributing writings highly critical of the government’s approach to religion. When the RPD examines the general documentary package on religious persecution, it does not assess the Applicant’s claims to persecution and section 97 risks with the specifics in mind. Rather it looks at the treatment of house church meetings.

[55] In my view, these errors in the Decision render it unreasonable and it should be referred back for reconsideration.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that**

1. The application is allowed. The Decision is quashed and the matter is returned for reconsideration by a differently constituted RPD.
2. There is no question for certification.

“James Russell”

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Judge

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

**DOCKET:** IMM-5917-10

**STYLE OF CAUSE:** CHONG LI SHU

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** June 2, 2011

**REASONS FOR JUDGMENT  
AND JUDGMENT** Russell J.

**DATED:** July 28, 2011

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