

Federal Court



Cour fédérale

Date: 20110908

Docket: IMM-7597-10

Citation: 2011 FC 1062

Ottawa, Ontario, September 8, 2011

PRESENT: The Honourable Mr. Justice Mandamin

BETWEEN:

GUANG CHEN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Guang Chen applies for judicial review of the December 15, 2010 decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada (RPD) finding the Applicant is not a convention refugee and not a person in need of protection.

[2] The Applicant is a citizen of the People's Republic of China (PRC) and claimed refugee protection because he feared persecution for being a practitioner of Guan Yin Fa Men which is banned as a "cult" in the PRC. Cult members may be sentenced to 3 to 7 years in prison.

[3] The RPD refused the Applicant's claim because it decided he filed a fraudulent summons to bolster his claim, failed to observe a basic tenant of Guan Yin Fa Men to abstain from intoxicants (smoking tobacco), was unclear as to the requirement not to be involved in politics and took two years to join up with a group of Guan Yin Fa Men practitioners in Canada.

[4] For reasons that follow, I am granting the application for judicial review.

Background

[5] The Applicant was saved from serious injury at his work place by his supervisor in December, 2006. The supervisor was injured and hospitalized. The Applicant visited the supervisor in the hospital and was impressed by the fact that the supervisor, despite being badly injured, was optimistic about life. He later learned the supervisor was a Guan Yin Fa Men believer and practitioner. The Applicant was so impressed he began to practice the belief and regularly attend group sessions.

[6] On November 4, 2007, the Applicant's group session was raided by the Public Security Bureau (PSB). He escaped to his cousin's home. On November 6, 2007, his father informed him that the PSB had been to their home searching for the Applicant to arrest him. The PSB returned two days later and continues to search for the Applicant.

[7] The Applicant exited China with the assistance of a smuggler and arrived in Canada on January 21, 2008. He applied for refugee protection on February 8, 2008.

Decision Under Review

[8] The RPD decided the Applicant was not a credible witness. It concluded the Applicant submitted a fraudulent summons as corroborating documentary evidence. It further found that the Applicant was not a genuine practitioner of Guan Yin Fa Men.

[9] The RPD concluded the summons submitted by the Applicant was fraudulent because:

- a. it did not contain information that is ordinarily contained in a summons as evidenced by the sample summons contained in the National Documentation Package for China;
- b. the manufacture of forged documents including summons was common in China;
- c. the Applicant did not mention the summons at the Citizenship and Immigration Canada (CIC) intake interview and he stated he has never committed, been arrested for, charged with, or convicted of a criminal offence; and
- d. he did not mention the summons in his initial Personal Information Form (PIF) narrative.

[10] The RPD also decided that Applicant was not a genuine practitioner of Guan Yin Fa Men because:

- a. the Applicant did not adhere to the fifth precept prohibiting the use of intoxicants which includes smoking tobacco;
- b. the Applicant was evasive when asked if followers of Guan Yin Fa Men are permitted to be involved in politics;
- c. the Applicant did not make a concerted effort to practice Guan Yin Fa Men in Canada.

[11] The RPD refused the Applicant's refugee claim and found he was not a person in need of protection.

Issue

[12] The Applicant submits the issue is simply:

Was it reasonable for the RPD to conclude the Applicant was not a genuine practitioner of Guan Yin Fa Men?

Standard of Review

[13] The Supreme Court of Canada has held in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paras 50 and 53 [*Dunsmuir*], that there are only two standards of review: correctness for questions of law and reasonableness involving questions of mixed fact and law and fact. The Supreme Court has also held that where the standard of review has been previously determined, a standard of review analysis need not be repeated: *Dunsmuir* at para 62.

[14] This Court has held that on matters of credibility, the standard of review is reasonableness: *Huang v Canada (Minister of Citizenship and Immigration)*, 2008 FC 346 at para 7.

Analysis

[15] The Applicant submits the RPD erred in deciding that the Applicant did not adhere to the fifth precept prohibiting the use of intoxicants which include smoking tobacco. Further, the Applicant submits this tainted the balance of the RPD's findings about the Applicant not being a practitioner of Guan Yin Fa Men.

[16] The Respondent submits the RPD was correct in concluding the Applicant had submitted a fraudulent summons and this finding supports the RPD conclusion that the Applicant was not credible.

The Summons

[17] The summons was mailed to the Applicant by his father. It was issued November 9, 2007, and delivered to the Applicant's father on the second visit by the PSB.

[18] The RPD convened a second hearing to address the issue of whether the summons was genuine. At that hearing the RPD stated, "The summonses I've seen in the past usually have two officers who identify themselves on it. In addition to that, they usually indicate a procedural number, a law regulation and they indicate, I already said this I think, an address. Yours doesn't have any of those features."

[19] The RPD, in its decision, states, "Upon review of the claimant's PSB summons, the Panel observed a number of deficiencies with regard to this document when it was compared to a sample contained in the National Documentary Package." The RPD went on to note the proffered summons did not contain the Applicant's address, PSB officers' names, any procedural or administrative law, or an acknowledgement line.

[20] The difficulty is that the RPD does not consider the statement in Response to Information Request CHN42444.E (the "RIR") which identifies two types of summonses: *Zhaunhaun*, which is used to summon a suspect for questioning without arrest, and *Juzhaun*, an arrest-summons. The RIR states the *Zhaunhaun* summons for someone to appear for interrogation must state the person, time, and place of appearance for questioning. The duplicate copy is signed, dated and returned by the suspect who keeps one copy. The description of the *Zhaunhaun* summons more closely matches the summons presented by the Applicant. The same RIR goes on to attach samples of an arrest warrant, an arrest-summons for interrogation and a notice of summons to testify but not the *Zhaunhaun*

summons. The failure of the RPD to consider and analyse the existence of more than one type of summons is a serious flaw in the RPD's analysis.

[21] The RPD also decided that the Applicant had failed to mention the summons at the CIC intake interview and had said he has never committed, been arrested for, charged with, or convicted of a criminal offence. The Applicant did say the PSB were looking for him because he joined Guan Yin Fa Men and that, "... we were told it was illegal." The RPD fails to have regard for this statement in its assessment of the CIC intake interview.

[22] The RPD also draws an adverse inference for the fact that the Applicant did not mention the summons in his initial PIF. However, that approach disregards the Applicant's amendment which included reference to the summons. Applicants are permitted to amend their PIF statements before a refugee board hearing once they have secured the assistance and advice of counsel knowledgeable about the immigration process. The RPD's approach is problematic as it suggests that amendments may be readily disregarded simply because they are amendments.

[23] In result, I consider the RPD's analysis concerning the summons the Applicant submitted as documentary evidence to be flawed.

The Applicant as a Practitioner

[24] The RPD also decided the Applicant was not a genuine practitioner of Guan Yin Fa Men because the Applicant did not adhere to the fifth precept prohibiting the use of intoxicants which

includes smoking tobacco. The RPD noted the Applicant was asked how he reconciled his smoking with the fifth precept to refrain from intoxicants. The RPD then recorded the response as, “The claimant admitted that Ching Hai says you should quit smoking and indicated, ‘Now I am almost quitting.’” The RPD did not accurately restate the Applicant’s answer (provided through a Mandarin interpreter). The transcript records the Applicant’s answer as, “According to the Master you should quit smoking eventually if you can. And now eventually, I am almost quitting.” The RPD may have misremembered the Applicant’s response or misconstrued it; either way, the RPD erred in assessing the Applicant’s answer when it misquoted the Applicant’s response.

[25] The RPD considered the Applicant was evasive when asked if followers of Guan Yin Fa Men are permitted to be involved in politics and observed the Applicant finally admitted he did not know that Ching Hai indicates her followers are not to involve themselves in politics. The Applicant’s imprecision is not necessarily evasive given the Applicant admitted he did not know.

[26] Finally the RPD decided that the Applicant did not make a concerted effort to practice Guan Yin Fa Men with a group without regard to any assessment of the small numbers of Guan Yin Fa Men practitioners in Canada.

[27] In contrast to the RPD’s narrow focus, the Applicant explained how he became involved in Guan Yin Fa Men, testified about his initiation, the tenets and methods of practicing the belief, and explained the relatively small numbers of practitioners in Canada. The Applicant’s knowledge and adherence, taken as a whole, is not perfect, but well within what would be expected of a relatively young man recently introduced to the practice of Guan Yin Fa Men.

[28] The RPD engaged in a narrow assessment of the Applicant's testimony focussing on shortcomings without having regard to the whole of the evidence. It misstated the Applicant's response on smoking. It made much of the Applicant's lack of knowledge about non-involvement in politics and it assumed it is a simple matter to find adherents in Canada.

Conclusion

[29] Both the RPD's flawed analysis of the summons leading it to conclude that the Applicant was not credible and its narrow assessment of the Applicant's testimony about being a practitioner of Guan Yin Fa Men is unreasonable. The application for judicial review succeeds.

[30] The RPD's decision is quashed and the matter is remitted to another member for redetermination.

[31] Neither party proposes a question of general importance for certification and none is certified.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. The matter is to be returned for redetermination by a differently constituted panel.
3. No question of general importance is certified

“Leonard S. Mandamin”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7597-10

STYLE OF CAUSE: GUANG CHEN and THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: AUGUST 30, 2011

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

DATED: SEPTEMBER 8, 2011

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