

Federal Court



Cour fédérale

Date: 20111020

Docket: IMM-1120-11

Citation: 2011 FC 1199

Ottawa, Ontario, October 20, 2011

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

LING LING HE

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 the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated January 31, 2011. The Board determined that the Applicant was not a Convention refugee or person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA).

[2] For the following reasons, the application is dismissed.

I. Facts

[3] The Applicant, Ling Ling He, is a citizen of the People's Republic of China (PRC). In September 2009, she came to Canada and made a claim for refugee protection. She fears persecution in China based on her Roman Catholic faith.

[4] The Applicant resided in Fu Qing, Fujian province. Her grandmother introduced her to Catholicism in October 2007. She would initially read the rosary and pray at home. A month later, she began attending an underground church. She was baptized and confirmed in March 2008.

[5] The Applicant's church group was involved in hanging religious pamphlets in public places. On August 2, 2008, the Applicant acted as a lookout for members of the group placing leaflets in a park. She claimed that two members of her group were arrested and that the Public Security Bureau (PSB) came to look for her.

II. Decision

[6] The Board determined that the Applicant was a genuine Roman Catholic practitioner but she could return to Fujian province and continue to practice her religion.

[7] There was a credibility issue as to whether the authorities truly expressed interest in the Applicant. Given the alleged arrest of other group members and inquiries made by the PSB about the Applicant, it was reasonable to expect that an arrest warrant or summons would have been left with her family. There was no evidence that this was the case.

[8] In addition, the Board reviewed documentary evidence of the situation facing Catholics in the Fujian province and the relationship of the Chinese Government and the Holy See. It found that the Catholic Church was strong in Fujian province. Unregistered churches had numerous members and were well-organized, enabling the Applicant to return and freely participate in her religion. The Board acknowledged evidence of sporadic persecution of the church leadership, such as bishops and priests. This was, however, different from the situation of the Applicant who was only a member of the Church. As a consequence, the Applicant was found not to have satisfied the burden of establishing a serious possibility that she would be persecuted or face a risk to life or of cruel and unusual punishment if returned to the PRC.

III. Issue

[9] The Applicant raises the following issue:

- (a) Was the Board's assessment related to the objective basis of the Applicant's claim reasonable?

IV. Standard of Review

[10] The assessment of risk faced by the Applicant is a question of mixed fact and law reviewable on a standard of reasonableness (see for example *Yang v Canada (Minister of Citizenship and Immigration)*, 2011 FC 811, 2011 CarswellNat 2540 at paras 21-26).

[11] As articulated in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47, reasonableness is “concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process” as well as “whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

V. Analysis

[12] It appears that the Applicant has only provided a single submission based on the decision of Justice Michel Shore in *Liang v Canada (Minister of Citizenship and Immigration)*, 2011 FC 65, 2011 CarswellNat 129. In that case, it was found that the Board should not have relied on the size of the applicant’s church group, given evidence that churches were raided regardless of their size, to conclude there were insufficient grounds to establish a fear of persecution should an individual return to the PRC and practice in an underground church.

[13] The Applicant asserts that the decision of the Board in *Liang*, above, is almost identical to her case and is similarly unreasonable. In both cases, the Board accepted that the individuals were genuine Catholics from Fujian province. She notes that the Court made statements regarding the

challenges associated with practicing the religion in that region. There is also recent documentary evidence of the risk faced by underground churches. According to the Applicant, this implies more than a mere possibility that she would be persecuted on religious grounds. She was not able to freely practice her faith.

[14] The Respondent contends that the Applicant's reliance on *Liang*, above, is misplaced. Subsequent jurisprudence considering *Liang* has stressed that each case depends on its own facts and how they are assessed by the Board (see for example *Li v Canada (Minister of Citizenship and Immigration)*, 2011 FC 941, 2011 CarswellNat 2977 at para 47; *Yang*, above). It cannot be taken as a broad precedent for all Chinese applicants claiming persecution on religious grounds when the issue was whether sufficient weight was given to specific information on underground churches.

[15] I agree with the Respondent. The Applicant's circumstances were not identical to those in *Liang*, above. She does not claim that her church was destroyed by the PSB but suggests that two members of her group may have been arrested for hanging leaflets in public. There is no indication that the size of the Applicant's church was relevant to the Board's determination as was the critical finding in *Liang*.

[16] The Board was reasonable in its assessment of the Applicant's case. The Board considered documentary evidence from a range of sources and recognized mixed evidence regarding Catholics in Fujian province. The Board acknowledged that church leaders had been targeted by the authorities in the past but this was of less significance to the Applicant as simply a member of an underground church. It was also open to the Board to place greater emphasis on documentary

evidence, given concerns regarding the credibility of the Applicant's uncorroborated evidence of the arrest of members of her church group (see *Yu v Canada (Minister of Citizenship and Immigration)*, 2010 FC 310, 2010 CarswellNat 632 at paras 24-38).

[17] It must always be borne in mind that "every case is different and composed of a unique documentary record" and "[o]ne should be cautious in applying country findings from one decision of this Court to another" (*Yu*, above, para 22).

[18] Despite the Applicant's claims, the Board looked at the documentary evidence and assessed the particular risks she faced. This Court cannot reach the conclusion that the assessment of the objective basis of the claim was unreasonable based on the finding in *Liang*, above.

VI. Conclusion

[19] The Board reasonably concluded that the Applicant was not a Convention refugee or person in need of protection. She could return to Fujian province in the PRC and continue to practice her Roman Catholic faith.

[20] Accordingly, this application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

“ D. G. Near ”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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