

Federal Court



Cour fédérale

Date: 20120302

Docket: IMM-4301-11

Citation: 2012 FC 148

Ottawa, Ontario, February 3, 2012

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

XICAI HE

Applicant

and

**MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS
and
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant seeks judicial review of a decision, dated April 15, 2011, of a Pre-Removal Risk Assessment officer (PRRA Officer) of Citizenship and Immigration Canada. For the reasons that follow the application is granted.

Facts

[2] The applicant is a Chinese Christian who attended a house church in China. Before the Refugee Protection Division of the Immigration and Refugee Board of Canada (the Board) he claimed that while on business in Vancouver in January 2007, his family informed him that he was wanted by the Public Service Bureau (PSB) in China for participation in illegal religious activities. On that basis he made a claim for refugee protection on February 13, 2007.

[3] The applicant's refugee claim was rejected on March 3, 2009. The Board did not believe that he was a citizen of the People's Republic of China. As a result of this conclusion the Board did not consider the merits of his claim. The applicant's application for leave for judicial review to the Federal Court was dismissed on July 24, 2009.

[4] The applicant then filed a PRRA application. The PRRA Officer accepted that the applicant was in fact a Chinese citizen and went on to consider the substance of his claims of harassment and persecution under sections 96 and 97 of *Immigration and Refugee Protection Act, 2001, c. 27 (IRPA)*.

[5] The PRRA Officer believed the applicant to be a practicing Christian but found that the applicant had failed to provide sufficiently personalized evidence of the risks he would face in China. Specifically, the Officer concluded that the applicant had not put forth "objective documentary evidence to support that his profile in China is similar to those that currently face a danger of torture, or a risk to life, or of cruel and unusual treatment or punishment in that country."

The PRRA Officer further concluded that “the evidence before [him] does not support that the Chinese authorities are aware [that the applicant is a practicing Christian]”.

Issue

[6] The applicant raises two issues, both of which invite scrutiny of the reasons given by the PRRA Officer:

- a. Did the PRRA Officer fail to give reasons for his finding that there was no evidence that the Chinese were aware of the applicant or had an interest in him?
- b. Did the PRRA Officer fail to differentiate between the practice of religion within and outside of registered churches as well as fail to consider evidence of the limitations placed on the practice of religion in China either within or outside of the state sanctioned churches?

[7] I find that there is only one issue to be addressed: whether the PRRA Officer’s decision made clear the basis for his decision, and whether this decision was reasonable.

Analysis

Does the PRRA Officer’s decision make clear the basis for his decision, and was this decision reasonable?

[8] The adequacy of reasons is not a separate basis for judicial review nor a question of procedural fairness. Rather, reasons must be read organically with the record before the decision maker as part of the reasonableness review. In conducting the review the guiding principle is deference and a decision is not to be overturned simply because the reasons provided are not as

fulsome as the reviewing court may have desired: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 14, 16, 18, 21-22.

[9] The applicant cites two problems with the PRRA Officer's decision: a lack of reasons for the Officer's finding that there was no evidence that the Chinese were aware of the applicant or had an interest in him; and, secondly that the Officer failed to differentiate between the practice of religion within and outside of registered churches or consider evidence of the limitations placed on the practice of religion in China outside of the state sanctioned churches.

[10] This application will be granted on the latter argument only. The PRRA Officer's decision and treatment of the risks and limitations for practicing outside of registered or state sanctioned churches does not withstand scrutiny. The PRRA Officer did not differentiate between the practice of religion within a registered and non-registered church.

[11] It will generally be presumed that a decision-maker has taken into consideration all of the evidence before him or her: *Florea v Canada (MEI)*, [1993] FCJ No 598; *Pak v Canada (MCI)*, 2011 FC 381 at para 41. As Justice Abella stated in *Newfoundland and Labrador Nurses' Union*, at para 16: "A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion."

[12] However, in *Zhu v Canada (Citizenship and Immigration)*, 2008 FC 1066 Justice Russel Zinn of this Court held that it was a reviewable error not to take into account the doctrinal differences between the state sanctioned churches and unregistered churches:

Secondly, the RPD overlooks the principal conviction the Applicant articulated that the state-sanctioned church is beholden to government, whereas the underground church places God first. This was her stated reason for not wishing to attend a state-sanctioned church. That church fails to follow one of her principal beliefs. This is the conviction that should have been analyzed by the Board; it is entirely irrelevant whether state-sanctioned churches embrace conventional Protestant teachings.

[13] The PRRA Officer did not assess the risk as it was put before him, namely as a Christian practicing in an underground church. It was thus unreasonable for him to conclude on the basis of the evidence before him that the applicant had not “provided objective documentary evidence to support that his profile in China is similar to those persons that currently face a danger of torture, or risk to life, or of cruel and unusual treatment or punishment in that country.”

[14] All of the evidence upon which the Officer relied, some of which spoke of increasing religious tolerance, was in respect of state sanctioned churches. This case is, thus both on its facts and in respect of the error which warrants the decision being set aside, similar to that in *Yin v Canada (Citizenship and Immigration)*, 2010 FC 544, wherein Justice James Russell addressed the failure of the Board to consider the distinction between state sanctioned churches and unregistered churches:

The RPD’s findings in this regard are unreasonable and rife with error. There was ample evidence before the RPD that religion is not practised freely within registered churches, and that the members of unregistered churches may be persecuted. Indeed, there was specific evidence before the RPD with regard to the differences between the religious practices in registered churches versus those in unregistered churches, which could entice believers to turn to unregistered churches in order to freely practise their faith.

[15] The application for judicial review is granted. The matter is referred back to Citizenship and Immigration Canada for reconsideration before a different PRRA officer.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is granted. The matter is referred back to Citizenship and Immigration Canada for reconsideration before a different Pre-Removal Risk Assessment officer. No question for certification has been proposed and the Court finds that none arises.

"Donald J. Rennie"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4301-11

STYLE OF CAUSE: XICAI HE v MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS and THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto

DATE OF HEARING: January 17, 2012

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

DATED: February 3, 2012

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