

Federal Court



Cour fédérale

Date: 20120322

Docket: IMM-5187-11

Citation: 2012 FC 346

Ottawa, Ontario, March 22, 2012

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

ZHANG SHENG WANG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant seeks judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada (the Board), dated July 20, 2011, finding that the applicant was neither a Convention (United Nations' *Convention Relating to the Status of Refugees*, [1969] Can TS No 6) refugee nor a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). For the reasons that follow, the application is granted.

Facts

[2] The applicant is a citizen of China. He alleges fear of persecution based on his practice of Falun Gong. The applicant states that he began practicing Falun Gong in October 2007, to try and cure his insomnia. He began to feel the benefits after about three months and continued to practice with friends at a member's house.

[3] The applicant states that on October 19, 2008 he was practicing Falun Gong with other members at a house when a lookout warned them that the Public Security Bureau (PSB) was on its way. The applicant was able to escape and hid at a friend's house. The applicant learned that two practitioners had been arrested and the PSB were looking for the others. The applicant's father told him that the PSB had come looking for him at his father's house, leaving a summons accusing him of being involved in illegal Falun Gong practice.

[4] With the help of a smuggler the applicant fled to Canada on January 25, 2009 and made his claim for refugee protection on February 2, 2009.

Standard of Review and Issue

[5] The issue raised by this application is whether the Board's decision is reasonable: *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190.

Analysis

[6] The application must be granted solely due to the Board's treatment of the applicant's evidence regarding his practice of Falun Gong. While the Board made other credibility findings in

its decision, which were reasonably open to it, the Board identified the genuineness of the applicant's belief in Falun Gong as the "core" of the claim. Since the Board committed a reviewable error in its analysis of the genuineness of that belief, the decision must be set aside despite reasonable concerns with other parts of the applicant's evidence.

[7] The Board focused heavily on the applicant's testimony that he was initially motivated to join and practice Falun Gong as a result of his insomnia. The Board rejected the claim that his practice yielded positive results in this regard because the teachings of Falun Gong prohibit practicing out of pure self-interest. The respondent has characterized this as a finding of fact and therefore deserving of deference. If it is a finding of fact, it is undoubtedly a perverse one. It is not permissible for the Board to speculate on the plausibility of a claimant obtaining personal benefits from a religious or spiritual practice, much less base a negative credibility finding on such speculation.

[8] There are other examples in the Board's decision of this kind of scrutiny into the applicant's belief in Falun Gong. For example, the Board makes a negative credibility finding due to the applicant's testimony that he considers himself both a Buddhist and a Falun Gong practitioner. The Board states that the teachings of Falun Gong are "categorical" that practicing both Buddhism and Falun Gong will not bring about positive results. It is not open to the Board to opine on whether the manner in which a claimant engages in a spiritual practice is right or wrong according to its foundational texts.

[9] The Board is tasked with assessing the applicant's credibility and not the soundness of his theology. A claimant may have a poor understanding of the minutiae of the religious doctrine but that does not, necessarily, mean his faith is not genuine. While there is a logical correlation between the depth of religious knowledge and the credibility of a claim of persecution, here, the deviations from doctrine were, at best, minor and cannot safely sustain the finding that the applicant was not a genuine adherent.

[10] Thus, while acknowledging that there were several credibility problems in the applicant's evidence about his alleged persecution in China, the decision cannot stand in light of the Board's consideration of the applicant's spiritual belief.

[11] The application for judicial review is granted.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is granted. The matter is referred back to the Immigration Refugee Board for reconsideration before a different member of the Board's Refugee Protection Division. 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-5187-11

STYLE OF CAUSE: ZHANG SHENG WANG v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto

DATE OF HEARING: March 1, 2012

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

DATED: March 22, 2012

APPEARANCES:

Mr. Jayson Thomas FOR THE APPLICANT

Ms. Ladan Shahrooz FOR THE RESPONDENT

SOLICITORS OF RECORD:

Levine Associates FOR THE APPLICANT
Barristers & Solicitors
Toronto, Ontario

Myles J. Kirvan, FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario