Federal Court  Cour fédérale

Date: 20120524

Docket: IMM-6696-11

Citation: 2012 FC 594

Ottawa, Ontario, this 24th day of May 2012

Before: The Honourable Mr. Justice Pinard

BETWEEN:

WEI ZHENG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] On September 29, 2011, Wei Zheng (the "applicant"), a citizen of China, filed the present application for judicial review of the decision of Linda Hart, member of the Refugee Protection Division of the Immigration and Refugee Board (the "Board"), pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act"). The Board dismissed the

applicant's claim for refugee protection, concluding the applicant was not a Convention refugee or a person in need of protection under sections 96 and 97 of the Act.

[2] The applicant attacks the Board's assessment of her credibility and its conclusion as to the lack of religious persecution in the Fujian region. Such determinations are findings of fact. Therefore, the issue raised by the present application for judicial review is whether the Board erred, basing its decision on erroneous findings of fact made in a perverse or capricious manner or without regard to the evidence before it; specifically

1. *Did the Board err in its assessment of the applicant's credibility?*

2. *Did the Board err in finding that the applicant would not face a risk of religious persecution in the Fujian province?*

[3] Such determinations are to be reviewed on a standard of reasonableness (*Lin v. Minister of Citizenship and Immigration*, 2009 FC 254 at para 12 [*Lin*]; *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 [*Dunsmuir*]; *Aguebor v. Minister of Employment and Immigration* (1993), 160 N.R. 315 at para 4 [*Aguebor*]; *Yang v. Minister of Citizenship and Immigration*, 2010 FC 1274 at para 13 [*Yang*]; *He v. Minister of Citizenship and Immigration*, 2010 FC 525 at para 7 [*He*]; *Sun v. Minister of Citizenship and Immigration*, 2008 FC 1255 at para 3 [*Sun*]; *Yao v. Minister of Citizenship and Immigration*, 2011 FC 902 at para 20 [*Yao*]). Thus, this Court must determine whether the Board's decision is justified, transparent and intelligible, falling within the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, at para 47).

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1. Did the Board err in its assessment of the applicant's credibility?

[4] The Board had complete jurisdiction to assess the applicant's credibility and evaluate the plausibility of her testimony (*Aguebor*, above, at para 4; *Gonzalez v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 805 (F.C.T.D.) (QL) at paragraphs 28-29 [*Gonzalez*]). While the applicant relies on *Ilyas v. Minister of Citizenship and Immigration*, 2004 FC 1270, in the present case, the Board properly addressed the evidence and the applicant's testimony, basing its conclusion on inconsistencies in the applicant's evidence and various implausibilities. The Board did not merely consider the applicant to lack credibility because of what it considered someone should have done in the applicant's situation. Rather, the Board considered the applicant's explanations as to why she would have willingly returned to China and the discrepancies in her United States and Canadian asylum claims, but considered them insufficient, as it was entitled to do (*He*, above, at para 12). As stated by my colleague Madam Justice Judith Snider at paragraph 10 of her decision in *Sinan v. Minister of Citizenship and Immigration*, 2004 FC 87:

> . . . Just because an applicant gives an explanation does not mean that the explanation must be accepted by the Board. It is open to the Board to consider the response or explanation and determine whether it was sufficient.

[5] Significant deference is owed to the Board's credibility findings and a few well established principles should be kept in mind, as stated by Justice Snider in *Sun*, *supra*, at paragraph 5:

> 1. The Board, who has heard the oral testimony, is in the best position to gauge the credibility or plausibility of a claimant's account.
>
> 2. A lack of credibility finding can be based on implausibilities, contradictions, irrationality and common sense.

> 3. The Board may draw an adverse inference with respect to credibility based on omissions of significant information from a claimant's Personal Information Form (PIF).
>
> 4. The Board has discretion to decide what weight to give to the evidence.

[6] The Board clearly explained why it did not consider the applicant to be credible. Firstly, it considered it implausible that someone wanted by the police would willingly return to their country of persecution, which is reasonable. Moreover, the Board was entitled to rely on omissions in the applicant's claims as a basis for its adverse finding of credibility (*Gonzalez*, above, at para 39). There are significant differences between both refugee claims. The Board's credibility finding is therefore reasonable, being justified and falling within the range of possible, acceptable outcomes which are defensible in respect of the facts and the law and it is not the role of this Court to substitute its findings for those of the Board (*Dunsmuir*, above).

> *2. Did the Board err in finding that the applicant would not face a risk of religious persecution in the Fujian province?*

[7] The applicant is right in that the Board did not specifically comment on the supposed church raid of 2009. However, in *Lin*, above, the Court held that the Board's decision was unreasonable for it did not consider the applicant's particular circumstances nor did it make specific findings as to the truthfulness of her story. In the case before this Court, the Board did not find the applicant credible and she did not provide any evidence as to the church raids, or any outstanding warrants that were issued against her as a result. The Board disbelieved the applicant's entire story, but believed she truly was Christian. Thus, *Lin* is of no relevance.

[8] It should be noted at this point that case law is of limited utility in determining the risk of religious persecution faced by an applicant, as stated by Justice David Near in *He*, above, at para 26:

> Each case is different and is composed of a unique documentary record and one should be cautious in applying country findings from one decision of this Court to another (see *Yu* [2010 FC 310] at paragraph 22).

[9] Thus, the approach taken by both parties in citing various cases where there was or was not found to be a risk of religious persecution in the Fujian province is inappropriate. At times, the Court has concluded that there is a risk of persecution in the Fujian province and at other times it has not: the case law is not determinative, nor can it solely be relied on to prove a risk. Members of the Board should also be weary of basing their assessment of country conditions on jurisprudence.

[10] Rather, what this Court must determine is whether the Board's conclusion as to a lack of religious persecution in the Fujian province is reasonable. It is. The Board thoroughly supported its conclusion, having regard to the evidence before it, relying specifically on the documentary evidence. It did not ignore incidents of persecution: such incidents are mentioned, but did not occur in the region in which the applicant would return to, persecution greatly varying across China. Moreover, it has been recognized that the Board is allowed to conclude based on a lack of reported arrests that there is little persecution, one example of persecution being insufficient (see *Yang*, above, at para 38). Such a conclusion can also be based on a lack of reported incidents: it is reasonable for the Board to assume, in these circumstances, that if incidents of persecution had occurred in the Fujian province, they would have been documented (see *Yang*, above, at para 41).

Furthermore, the Board explained why it gave little weight to certain documents, much like in *Yao*, above, at paragraphs 26 and 27.

[11] For these reasons, the intervention of this Court is not warranted. The Board's decision and findings are reasonable: the Board provided ample explanations and based its findings on the entirety of the evidence before it.

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[12] Therefore, the present application for judicial review is dismissed.

[13] There is no question for certification.

JUDGMENT

The application for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada determining that the applicant was not a Convention refugee or a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, is dismissed.

"Yvon Pinard"

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

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