

Federal Court



Cour fédérale

Date: 20121218

Docket: IMM-3570-12

Citation: 2012 FC 1491

Toronto, Ontario, December 18, 2012

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

YONG KAI REN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The present Application challenges a decision of the Refugee Protection Division (RPD) in which the Applicant's claim for refugee protection as a citizen of China and a Falun Gong adherent was rejected on the basis that the Applicant had not established his personal identity, his nationality, and his country of reference. The RPD made no substantive findings with respect to the evidence tendered by the Applicant in support of the claim under s. 96 and s. 97 of the *IRPA*.

[2] To prove his identity, nationality and country of reference the Applicant submitted the following identify documents: birth registration; graduation certificate; employment card; Hukou; driver's licence; student visa; and passport. While the RCMP forensic analysis of the documents did not provide an opinion that any are fraudulent, with respect to the first three on the list some evidence was provided which caused the RPD to reach the conclusion that they are fraudulent (Tribunal Record, pp. 151 – 152), a finding which is highly contested in the present Application. With respect to the Hukou, driver's licence, student visa, and passport, in my opinion, the following passages from the decision under review constitute an acknowledgement by the RPD that no forensic evidence was provided that could ground a finding that they are fraudulent (Tribunal Record, pp. 229 – 230). But, nevertheless, the documents were not accepted by the RPD as identity documents on the following reasoning:

The claimant's Family Register (Hukou) and his Driver's License were found to be unaltered and to be printed using quality printing processes. As outlined above, the panel finds that the claimant provided at least three fraudulent documents in support of his personal identity. Given the concerns with the claimant's testimony related to his Hukou and Driver's License outlined above, and given the fact that fraudulent documents, including those which are genuine but which are illegally obtained, are available throughout China, the panel finds that it cannot place weight on these two documents in support of the claimant's personal identity and nationality.

The panel finds that the claimant's testimony related to his passport and the disclosure of the passport at the May 25, 2011 sitting undermined the claimant's credibility as a witness. A forensic analysis of the passport was inconclusive as no genuine specimen was available for comparison. The forensic report concluded, however, that the student visa was a genuine, unaltered document.

[Emphasis added]

(Decision, paras. 25 – 26)

[3] The “concerns with respect to the claimant’s testimony” expressed by the RPD with respect to the Hukou and drivers licence are that “the documents had no distinct odour and appeared to be in pristine condition”. The RPD used this observation to conclude that, since the Applicant testified that at a certain point in the past he had kept the documents in a box under his bed in his house heated by wood and coal, “it [is] implausible that a paper documents [sic] which was stored in a farm house where wood was used to cook and heat would not absorb any distinct odour of smoke or of the home”. The RPD member said that this conclusion was reached by “judicial notice of the documents and using his common sense and logic” (Decision, para. 22). In my opinion, the findings quoted above display reviewable error; the finding that the first three documents are fraudulent cannot be used to discredit the apparently genuine Hukou and driver’s licence; there is no evidence that the Hukou and driver’s licence were illegally obtained; the implausibility finding based on negative odour is unsupported on the evidence on the record; and in reaching the implausibility finding there was no notorious fact nor common sense or logic in play, only speculation.

[4] With respect to “the claimant’s testimony related to his passport” as undermining his “credibility”, the Applicant testified that he was issued a genuine passport through official channels and it took two months for it to be produced. However, relying on a Response to Information Request, the RPD found that Chinese passports “are generally ready within 15 business days of the date of application and are sometimes available on a priority basis sooner”. The Applicant was asked to provide an explanation for the perceived discrepancy, which he could not do to the RPD’s satisfaction (Decision, para. 27). I find that there was no factual basis upon which to require the Applicant to give any explanation: he could not know why he waited two months when the publicized issuance expectation is 15 days; and further, by the use of the word “generally”, there are

exceptions to the expectation. In my opinion, the RPD dismissed the Applicant's "genuine" passport on the basis of unfounded suspicion and unfair questioning.

[5] For the reasons provided, I find that the RPD's decision is unreasonable.

ORDER

THIS COURT ORDERS that

The decision under review is set aside and the matter is referred back for redetermination before a differently constituted panel.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-3570-12

STYLE OF CAUSE: YONG KAI REN V THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: December 17, 2012

**REASONS FOR ORDER
AND ORDER BY:** CAMPBELL J.

DATED: December 18, 2012

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