

Federal Court



Cour fédérale

Date: 20130104

Docket: IMM-2826-12

Citation: 2013 FC 4

Ottawa, Ontario, January 4, 2013

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

BO JIN SU

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Mr Bo Jin Su claims to be a practitioner of Falun Gong who is being sought by the Public Security Bureau (PSB) in China. He claimed refugee protection in Canada based on religious persecution in China.

[2] A panel of the Immigration and Refugee Board rejected Mr Su's claim finding that he is not a genuine Falun Gong practitioner. The Board examined Mr Su's knowledge of Falun Gong and determined that his understanding was somewhat rudimentary, not sufficient to show that he is a true believer. Because it did not accept that Mr Su was a genuine practitioner, the Board placed no weight on his supporting documents which purported to show that the PSB had issued a summons for him and confiscated some of his property. It also gave no weight to a document showing he had visited a fellow Falun Gong practitioner in prison.

[3] Mr Su argues that the Board's decision was unreasonable. It faulted him for a lack of knowledge of areas of Falun Gong he admitted he had trouble grasping. This, however, should not have led the Board to disbelieve the sincerity of his beliefs, or to reject documents showing the difficulties he will face if he returns to China. Mr Su asks me to quash the Board's decision and order another panel of the Board to reconsider his claim.

[4] I agree that the Board's decision was unreasonable and must, therefore, allow this application for judicial review.

[5] The sole issue is whether the Board's decision was unreasonable.

II. The Board's Decision

[6] The Board found that Mr Su was able to perform most aspects of the five exercises of Falun Gong. However, it concluded that that was not enough to show genuine belief. A practitioner must also understand the underlying philosophy of Falun Gong.

[7] Mr Su explained that he had performed weekly Falun Gong exercises with a group in China over the course of two years, but he did not read anything about the philosophy of Falun Gong until he came to Canada. He began reading Zhuan Falun, which contains nine lectures setting out Falun Gong philosophy. The Board asked him about the concepts explored in that book.

[8] The Board asked Mr Su where the concept of karma was covered in Zhuan Falun. Mr Su incorrectly stated that karma is in Lecture 5. It is in Lecture 4.

[9] The Board asked Mr Su about the concept of a "celestial eye". Mr Su hesitated in his answer but eventually described its five levels. Asked if his "celestial eye" was open, Mr Su first said yes then, after a break in the hearing, said no. The Board found Mr Su's knowledge to be inadequate.

[10] The Board found that Mr Su could perform most Falun Gong exercises and understood the principles underlying some of them. However, Master Li, the founder of Falun Gong, requires precision in the exercises and an understanding of the philosophy underlying them. Mr Su did not possess that level of proficiency.

[11] The Board concluded that Mr Su's knowledge and understanding of Falun Gong could have been acquired in Canada to support a fraudulent refugee claim. Accordingly, it gave no weight to photographs showing Mr Su practicing Falun Gong in Toronto, or documents from China supporting his claim to have been pursued by the PSB. Fraudulent documents, the Board noted, can easily be obtained in China.

[12] Therefore, the Board dismissed Mr Su's claim.

III. Was the Board's Decision Unreasonable?

[13] The Minister reminded me that the Board's findings are entitled to deference and that I should only intervene if the Board's conclusion is neither intelligible nor supported by the record. The Minister maintains that the Board's decision is reasonable as it is based on Mr Su's shaky testimony.

[14] I disagree. In my view, the Board went beyond determining whether Mr Su had a well-founded fear of persecution or other mistreatment in China. In addition, the Board's doubts, even if reasonable, should not have led it to give no weight to the documentary evidence that supported Mr Su's claim.

[15] The Board must obviously determine whether the basis for an applicant's claim is credible. Where the essence of the claim is an allegation of religious persecution, a question that naturally

arises is whether the person is actually an adherent of the named religion. Similar questions sometimes arise in respect of claims of political persecution, and claims based on sexual orientation.

[16] The Board is obviously entitled to explore whether the claimant's story is credible, which includes asking questions about the basic tenets of the religion in question (*Zhu v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1066, at para 17). A claimant whose knowledge does not correspond with the duration or depth of their religious activities may not be believed. But a claimant whose knowledge is flawed or even recently acquired may still be sincere, and the person may have a well-founded fear of persecution if removed from Canada. It is no easy task to make these determinations. Fortunately, the Court relies on, and defers to, the Board to make them, and hesitates to intervene except where the Board unreasonably expects more than the particular applicant can deliver. Often, the claimant's evidence about other aspects of the application will help the Board determine the credibility of his or her religious affiliation (*Hou v Canada (Minister of Citizenship and Immigration)*, 2012 FC 993, at para 54).

[17] In this case, the applicant, Mr Su, had a rudimentary education. He testified that he joined a group practising Falun Gong in China but did not have any exposure to its underlying philosophy. Based on their activities, he and his fellow practitioners were sought by the PSB. On arrival in Canada, Mr Su tried to learn more about the philosophy of Falun Gong but he had trouble understanding Master Li's lectures. He had studied them only for about six months at that point. This was not, in my view, a sufficient basis to conclude that Mr Su was not genuine about his involvement in Falun Gong. The Court has often counselled the Board to exercise care in these kinds of cases due to the difficulty of determining the genuineness of a person's religious beliefs

(Lin v Canada (Minister of Citizenship and Immigration), 2012 FC 288, at para 59-61; *Wang v Canada (Minister of Citizenship and Immigration)*, 2012 FC 346, at para 9).

[18] Here, the Board's questioning of Mr Su was not, in itself, objectionable. However, I cannot find in the record a justifiable basis for the Board's conclusion that Mr Su was not a genuine Falun Gong practitioner. He may well be a flawed follower of Master Li, but his knowledge was fairly extensive, and his understanding of the philosophy of Falun Gong, while perhaps not profound, was considerable. There were no other areas of his testimony where the Board doubted his credibility. Therefore, the Board's conclusion that Mr. Su was not a genuine Falun Gong practitioner is unreasonable.

[19] It follows, therefore, that the Board erred in discounting the documentary evidence supporting Mr Su's claim. The documents from China showed that the PSB was looking for him. The Board did not consider the possibility that, even if it did not regard Mr Su as a Falun Gong practitioner, the PSB might pursue him simply because he was performing the exercises. The PSB might not have been as concerned as the Board was about whether Mr Su could distinguish the contents of Lecture 5 from Lecture 4 in Zhuan Falun. The documentary evidence could have confirmed Mr Su's account of events and were obviously relevant to his claim.

[20] Overall, therefore, I find that the Board's decision was unreasonable, based both on its finding that Mr Su's beliefs were not genuine and its refusal to consider the documentary evidence supporting his application.

IV. Conclusion and Disposition

[21] The Board unreasonably concluded that Mr Su's shortcomings as a student of Falun Gong demonstrated that he was not a genuine practitioner. Further, the Board's finding caused it to unreasonably discount the evidence supporting Mr Su's claim to fear the PSB in China based on his involvement in a Falun Gong group. Accordingly, I find the Board's decision to be unreasonable and must allow this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is allowed. The matter is referred back to another panel of the Board for reconsideration.
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2826-12

STYLE OF CAUSE: BO JIN SU
v
MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 29, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: January 4, 2013

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