

Federal Court



Cour fédérale

**Date: 20130418**

**Docket: IMM-7137-12**

**Citation: 2013 FC 400**

**Toronto, Ontario, April 18, 2013**

**PRESENT: The Honourable Mr. Justice Campbell**

**BETWEEN:**

**FENGCUN GUO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The Applicant, a citizen of China, claims refugee protection in Canada as a Christian because of subjective and objective fear that should she be required to return to China she will suffer more than a mere possibility of persecution under s. 96 of the *IRPA*, or probable risk under s. 97. The present Application concerns the rejection of her claim on what is argued by the Applicant to be highly contentious factual findings with respect to the Applicant's credibility.

[2] In the decision under review the Applicant's evidence that she is a Christian is rejected on the basis of conclusions drawn with respect to two inextricably linked features: the validity of her identity documents; and the believability of her evidence that she is a widowed factory worker. In my opinion, if an erroneous finding is made on one of the features, the decision is made in reviewable error. As set out below, the decision fails on the first feature.

[3] The Applicant's identity documents in question are: passport; resident identity card; Hukou, marriage certificate; death certificate of her husband; and employment identity card. With respect to the first three principal means of identification, the RPD found the passport and resident identity card to be genuine, but came to the following conclusion on the Hukou:

The claimant provided a Hukou in support of her family composition and personal identity. The panel noted that a forensic examination did not reveal any problems on the face of the Hukou; however, based on the concerns with the claimant's testimony, and concerns with the provenance of the Hukou, the panel finds that it cannot place weight on the Hukou as a document in support of the claimant's identity as presented. The panel found that, while it has stamps on it, the Hukou does not contain security features. The panel noted that the documentary evidence indicates that fraudulent documents, including Hukous, are available throughout China. Chinese officials also issue genuine documents to individuals who obtain such documents in a fraudulent fashion. The claimant testified that the Hukou was sent to her separately at the end of August; however, she was not able to provide evidence such as an envelope to attest to when and how the Hukou was sent to Canada. The panel also noted that the claimant provided a marriage certificate that had been tampered with. As outlined above, submitting a false or irregular document can have an effect on the remaining documents submitted and the claimant's overall credibility. Given the arguments above, the panel finds that it cannot place significant weight on the Hukou in support of the claimant's personal identity.

(Decision, para. 12)

[4] In my opinion the paragraph quoted exposes four significant reviewable errors. First, the genuineness of the Hukou, and, indeed, all of the identity documents are placed under suspicion by the introduction of an extraneous consideration namely the possibility that fraud is connected to documents obtained in China. There is no evidentiary basis for applying this fact in the present case and, accordingly, I find that overriding suspicion was unfairly introduced into the hearing of the Applicant's claim.

[5] Second, the RPD appears to be introducing inadmissible specialized knowledge about what to expect on the face of a genuine Hukou.

[6] Third, the forensic analysis of the marriage certificate did not conclude that it had been tampered with; the finding was that because of "some misalignment...the photo may have been tampered with" (Tribunal Record, p. 511). This expert statement does not prove a fact on a balance of probabilities. Therefore, the RPD erroneously found that the marriage certificate was "fraudulent" (Decision, paras. 17 and 23).

[7] And fourth, in my opinion, the finding that identity documents found to be false or irregular can have an effect on a claimant's overall credibility must be cautiously approached. In light of the errors just described, the RPD certainly did not take this approach when it unfairly concluded that the Applicant is not a Christian:

For the reasons listed above, the panel finds that the claimant was not a wanted person in China. The panel also finds that the claimant was not a credible witness given her use of a fraudulent identity as the basis for her claim; and her submission of a fraudulent marriage certificate. Given this, the panel cannot place weight on the claimant's allegations that she was a practicing Christian in China.

[8] As a result, I find that the RPD's decision to be unreasonable.

**ORDER**

**THIS COURT ORDERS that** the decision under review is set aside and the matter is referred back to a differently constituted panel for redetermination.

There is no question to certify.

“Douglas R. Campbell”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-7137-12

**STYLE OF CAUSE:** FENG CUN GUO V THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** April 18, 2013

**REASONS FOR ORDER:** CAMPBELL J.

**DATED:** April 18, 2013

**APPEARANCES:**

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