

Federal Court



Cour fédérale

Date: 20130521

Docket: IMM-7032-12

Citation: 2013 FC 523

Vancouver, British Columbia, May 21, 2013

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

ZONG JIE CHEN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The Applicant seeks judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act) of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated June 12, 2012, wherein the Board determined that the Applicant is neither a Convention refugee nor a person in need of protection (the Decision).

[2] For the following reasons, the application will be allowed.

Background

[3] The Applicant is a 26-year-old male and a citizen of the People's Republic of China from Fujian province. His claim under sections 96 and 97 of the Act is based on his identity as a Roman Catholic.

[4] The Applicant's parents are Roman Catholics who attended a registered Catholic church and raised the Applicant in that church. However, he started attending an unregistered illegal Catholic church on January 31, 2010 after being introduced to it by a friend.

[5] The underground church was raided by the Public Service Bureau (the PSB) during a service on April 25, 2010. The Applicant was not present but was later contacted by his friend and told that at least four of the church members had been arrested. The Applicant immediately went into hiding.

[6] The Applicant learned from his father that the PSB had come to his house on April 26, 2010, and asked about his whereabouts. His family was told that he was wanted for participating in an illegal church. The PSB appeared at his home again on April 30, 2010, and demanded to know why the Applicant had not surrendered. His family was told that he would be arrested and charged.

[7] Fearing arrest and torture, the Applicant fled China and came to Canada with the help of a smuggler on October 31, 2010.

[8] The Applicant claims that the PSB attended his home again on November 22, 2010, this time with a warrant for his arrest. They searched his home and seized his passport, leaving with the family a seized item receipt, dated November 22, 2010 (the Receipt). The Receipt has been translated and indicates that the reason for the passport's seizure is the Applicant's involvement in illegal religious services.

The Decision

[9] The Board identified the Applicant's credibility as the determinative issue and dismissed the claim.

Discussion

[10] One adverse credibility finding is particularly problematic and in my view, it determines the outcome of this application.

[11] The Board stated that the Applicant's passport was allegedly seized by the PSB in November 2011. The Board found it implausible that the PSB would have waited one year and seven months to seize his passport if it had actually been seeking the Applicant in April 2010.

On this basis, the Receipt was found to be fraudulent.

[12] However, the Board misstated the facts. The Applicant's Personal Information Form and his testimony at the hearing made it clear that his passport was seized in November 2010. The English translation of the Receipt erroneously stated "2011" but the numerical form of "2010" is found on the original Chinese document. This translation error was pointed out to the Board at the hearing by

counsel for the Applicant and the correct date was noted. However, it appears that the correction was overlooked by the Board when it prepared the Decision.

[13] Counsel for the Applicant argues that the Board's mistake led it to ignore the Receipt which is an important corroborating document. Counsel for the Respondent agrees that the Receipt is dated November 2010 and not November 2011. However, the Respondent submits that the Board's credibility finding is reasonable because even a seven-month delay in seizing the passport would not be plausible if the Applicant was actually being sought by the PSB in April 2010.

[14] In my view, the Board's error is material and warrants setting the Decision aside. The error led it to dismiss the only piece of corroborating evidence submitted by the Applicant.

[15] I also accept the Applicant's submission that, had the Board not discounted the Receipt, it might have reached a different conclusion about the documents dealing with the Applicant's risk of persecution in Fujian. In particular, it might have given more weight to a document at paragraph 17 of the Decision which the Board understood to indicate that local officials in Fujian continue to arrest Catholic priests and parishioners [emphasis added].

[16] In these circumstances, the Applicant's allegations must be reassessed.

[17] No question was posed for certification pursuant to section 74(d) of the Act.

ORDER

THIS COURT ORDERS that the Decision is hereby set aside and sent back for reconsideration by a differently constituted panel of the Board.

“Sandra J. Simpson”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-7032-12

STYLE OF CAUSE: ZONG JIE CHEN v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, ON

DATE OF HEARING: May 1, 2013

**REASONS FOR ORDER
AND ORDER:** SIMPSON J.

DATED: May 21, 2013

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