

Federal Court



Cour fédérale

Date: 20130524

Docket: IMM-8046-12

Citation: 2013 FC 539

Toronto, Ontario, May 24, 2013

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

WEN HAO WEI

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 he be required to return to his home in Tianjin Province he will suffer more than a mere possibility of persecution under s. 96 of the *IRPA*, or probable risk under s. 97.

[2] While the Refugee Protection Division (RPD) found that the Applicant is a Christian, and wide-scale persecution of Christians exists in China, the Applicant's claim of prospective risk was

rejected on the basis of the following factual finding with respect to objective fear of risk upon return:

I have considered all of the documents submitted about the situation for Christians in China, specifically the articles and reports documenting arrests and persecution, I find, on a balance of probabilities, that if there were recent arrests or incidents of persecution of Christians in Tianjin, there would be some documentation of these arrests or incidents of persecution by reliable sources.

(Decision, para. 9)

[3] The import that the RPD gave to the factual finding is that, since there is no evidence in the documentation of recent arrests or incidents, there have been no recent arrests or incidents.

However, the finding is inconveniently in direct conflict with the Applicant's evidence that the event which caused him to flee China and claim protection in Canada was the Public Security Bureau's raid on the church gathering he attended on January 10, 2010. The RPD dealt with this evidence in the following manner:

The panel has carefully reviewed the documentary evidence and finds, on a balance of probabilities, that the house church the claimant attended was never raided by the authorities and consequently, the claimant is not wanted by the PSB for that reason. In assessing the documentary evidence, the panel has been guided by the Federal Court decisions in *Yu*, and *Li*. As has been discussed, the supporting documentary evidence for the claimant's home area of Tianjin indicates that the risk of persecution for practicing Christians is low.

[Emphasis added]

(Decision, para. 14)

Thus, the RPD found that the Applicant was lying about the event that brought him to Canada because it is in conflict with the factual finding. In my opinion, this reasoning is fundamentally flawed.

[4] The Applicant's evidence is presumed to be true unless there are reasons to doubt its truthfulness (*Maldonado v. M.E.I.*, [1980] 2 F.C. 302 (C.A.), p. 305) and the quality of the decision-making in reaching a credibility finding must be high:

In my view, the board was under a duty to give its reasons for casting doubt upon the appellant's credibility in clear and unmistakable terms. The board's credibility assessment, quoted supra, is defective because it is couched in vague and general terms (*Hilo v. Canada (Minister of Employment & Immigration)* (1991), 15 Imm. L.R. (2d) 199 (C.A.), para. 6).

[Emphasis added]

[5] In my opinion, the factual finding is speculative: there is no direct evidence on the record to establish and verify its truth. Rather than use a speculation to discredit the Applicant, the RPD was required to apply a proper analysis of the evidence according to the standards stated in *Maldonado* and *Hilo*. The reason this was important to accomplish is succinctly stated by Justice Russell in *Lin v. Canada (Minister of Citizenship & Immigration)*, 2012 FC 157 at paragraph 59:

The Applicant's narrative of arrest and detention was highly material to his claim for protection. If it is believable, then it brings into doubt the RPD's analysis that there is no evidence of the arrest and persecution of Christians in Fujian to support a positive determination under section 96. Alternatively, it could show a forward looking risk of harm under section 97.

[6] I find that the RPD's failure to determine the Applicant's credibility according to law renders the decision unreasonable.

ORDER

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

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-8046-12

STYLE OF CAUSE: WEN HAO WEI V THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 22, 2013

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

DATED: MAY 24, 2013

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