

Federal Court



Cour fédérale

Date: 20150508

Docket: IMM-2635-14

Citation: 2015 FC 606

Ottawa, Ontario, May 8, 2015

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

CHENGLIN BAO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review brought under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. Chenglin Bao challenges the decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada which denied her refugee claim. For the reasons below, the application is granted.

I. **Background**

[2] The applicant is a citizen of the People's Republic of China. She was raised in Shandong Province. Her English tutor, Juan Liu, introduced her to Christianity in 2007. She began to attend an underground Protestant church and was eventually baptized.

[3] In 2008, Ms Bao came to study in Canada. She has been an active member of a Christian church in Canada ever since. She visited her parents in China from March to August 2010. She then returned to Canada to continue her studies.

[4] Ms Bao claims that she received a phone call from her parents on November 9, 2010. They informed her that officers from the Public Security Bureau [PSB] had attended their home to ask where she was and when she would return to China. The officers would not say what they wanted. Ms Bao suspected that the PSB was interested in her religious activity. She tried to contact several of her fellow worshippers in China but could not reach them.

[5] On May 15, 2012, Ms Bao received another troubling phone call from her parents. They had just discovered that Ms Liu and her husband had been arrested back in November 2010 and sentenced to one and a half years in prison. They had just been released. On the strength of this information, Ms Bao applied for refugee protection.

[6] By decision dated March 3, 2014, the Board rejected Ms Bao's claim. This is the decision under review.

[7] In essence, the Board found that the claimant did not provide sufficient credible and trustworthy evidence to justify her fear of returning to China. On the balance of probabilities, the Board did not accept her allegations with respect to what had occurred in China.

[8] The claimant testified that her house church in Shandong was raided by the police in November 2010. She alleged that at least two members were arrested and sentenced to prison terms. The Board observed that the China Aid Association gathers data on the treatment of Christians in China with an emphasis on Protestant house churches. Its annual report for 2010 makes no mention of a police raid in Shandong in November 2010.

[9] The Board explained that it understood that China Aid might not be aware of every incident in China. Yet Ms Bao said that her associates were arrested, tried and sentenced. Moreover, she provided the purported release certificates they received after they had served their sentences. Since the applicant did not assert that the government acted secretly in this case, the Board assumed that its actions should have come to the attention of the China Aid Association.

[10] The Board then turned to the purported release certificates. They state that Ms Juan and her husband were sentenced for “use of cult organizations breaking the law”. According to the documentary evidence, the authorities in China label certain organizations “evil cults” or “cults”. However, Protestant house churches do not fall within the scope of this term. Organizations perceived as cults in China typically build up large followings. This was not the case for the claimant’s church, which had a membership of sixteen believers. The Board affirmed that,

although unregistered house churches and groups declared cults are all illegal, unregistered churches are “sometimes treated with a certain level of tolerance”, while the members of cults are “ruthlessly pursued”. Therefore, the mention of a cult in the certificates was inconsistent with the documentary evidence.

[11] Finally, the claimant alleged at the hearing that her parents told her that Ms Juan and her husband had been tortured during their detention. In the written narrative contained in her personal information form, there is no reference to torture. The claimant explained that she did not know that she had to include this information. According to the Board, this is not a reasonable explanation, since her four page description contained many other details.

[12] The Board then turned to the objective basis of the claim. It affirmed that there are tens of thousands of unregistered house churches in China, most of which carry on their business with little if any trouble from the authorities. The evidence indicates that church leaders, as opposed to lay members, are most commonly targeted. On the balance of probabilities, the Board found that Ms Bao would be able to practice her religion in China without a serious possibility of persecution.

II. Issues

[13] The applicant raised three issues in her written submissions:

1. Did the Board breach the duty of procedural fairness?
2. Did the Board err in assessing credibility?
3. Did the Board err in assessing objective risk?

[14] The applicant abandoned the first issue at the hearing. The Court agrees that there was no breach of the duty of fairness and so there is no need for further discussion.

[15] The Court has concluded that the second issue suffices to grant this application. Consequently, there is no need to discuss the third issue either.

[16] The law is settled that credibility findings are reviewable on the standard of reasonableness: *Triana Aguirre v Canada (Citizenship and Immigration)*, 2008 FC 571 at paras 13-14; *Kaur v Canada (Citizenship and Immigration)*, 2012 FC 1078 at para 51.

III. Analysis

[17] The allegations of a refugee claimant must be presumed to be true unless there are reasons to doubt their truthfulness: *Maldonado v Canada (Minister of Employment and Immigration)*, [1979] FCJ No 248 (FCA). The Court has concluded that the Board did not articulate defensible reasons for questioning the applicant's credibility in this case. The inconsistencies it identified were microscopic, irrelevant or speculative. Therefore, the Board committed a reviewable error by rejecting the applicant's testimony.

[18] It was unreasonable for the Board to doubt the applicant's story simply because it had not been reported by the China Aid Association. It is one thing to find that the objective evidence contradicts portions of a claimant's story. It is quite another to speculate that the claimant's story lacks credibility just because it was not picked up by an organization which reports incidents in a country with over one billion people. The second course of action is unreasonable. The Board is

not entitled to reject testimony solely because it is not corroborated by documentary evidence from a particular source. It bears repeating that sworn testimony is presumed to be true – whereas a report entered into evidence is not presumed to be infallible.

[19] The Court pauses to observe that there was some confusion at the hearing as to whether the China Aid Association report included in the Certified Tribunal Record was the one which the Board had referenced in its reasons. Nothing turns on this. For the reasons just given, the Board could not reasonably draw the inference which it did from any report prepared by the China Aid Association.

[20] The Court further observes that *Adu v Canada (Minister of Employment and Immigration)*, [1995] FCJ No 114 (FCA), an authority cited by the respondent, can be distinguished. In that case, the Board questioned the applicant's credibility because there was no objective evidence to corroborate the existence of a law which he claimed the authorities had used to persecute him. One may expect that statutes and official decrees issued by a state will be published by that state's organs. Yet there is no reason to expect that an activist organization has the ability to report every single incident which falls within its area of interest.

[21] The Board also drew an unreasonable negative inference from the release certificates. It must be kept in mind that the Board expressed no concern with the physical appearance of these documents or any other potential signs of forgery. The Board simply opined that this evidence was not credible because it stated that the applicant's friends had been sentenced for belonging to a "cult". The Board affirmed that this term is not applied to Christian churches in China because

such churches are “sometimes” treated with a certain level of tolerance” [emphasis added] – despite being illegal and despite the fact that their leaders can be imprisoned.

[22] The Board contradicted itself when reaching this conclusion. It is well-accepted that law enforcement practices vary by region in China: *Weng v Canada (Citizenship and Immigration)*, 2011 FC 422 at para 17. Moreover, the Board accepted that underground churches are illegal in China and that their leaders face imprisonment. The Board did not intelligibly explain why the Chinese authorities could not use the laws against cults to sentence and imprison two particular members of an illegal church. The fact that the authorities may have proceeded differently in other cases does not render implausible their conduct as described by the applicant.

[23] Finally, the applicant alleged that her friends had been tortured in jail at the hearing but not in her personal information form. The Board could reasonably infer that the applicant was attempting to embellish her claim and draw a negative inference. However, it is not clear to the Court that the Board would have rejected her entire testimony due to his inference alone. One reasonable finding cannot save an otherwise flawed decision. As a whole, the Board erred when evaluating the applicant’s credibility.

[24] The Board’s erroneous assessment of Ms Bao’s credibility suffices to quash its decision. There is no need for the Court to discuss the applicant’s concerns with the Board’s treatment of the objective basis of her claim.

[25] The parties did not propose any questions for certification and none will be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is granted. No questions are certified.

“Richard G. Mosley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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