

Federal Court



Cour fédérale

Date: 20181002

Docket: IMM-984-18

Citation: 2018 FC 982

Ottawa, Ontario, October 2, 2018

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

CHUN LI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Mr. Chun Li, is a citizen of China. He claims he would face persecution or a risk of torture or cruel or unusual treatment upon return to China based on his religious beliefs and his participation in an underground Christian church. The Refugee Protection Division [RPD] found he is neither a Convention refugee nor a person in need of protection. He now seeks

judicial review of that decision pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] Mr. Li submits the RPD erred by: (1) failing to make a definitive finding on his claim that he was a Christian; (2) concluding he could freely practice his faith in a state-sanctioned church; and (3) rendering unreasonable credibility findings. The parties agree that the RPD's conclusion that Mr. Li could freely practice his faith in a state-sanctioned church is determinative of the application. It is the only issue I need address.

[3] For the reasons that follow, the application is dismissed.

II. Style of Cause

[4] The applicant has named the Minister of Immigration, Refugees and Citizenship Canada as the respondent in this matter. The correct respondent is the Minister of Citizenship and Immigration (*Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, s 5(2) and *Immigration and Refugee Protection Act*, SC 2001, c 27, s 4(1)). Accordingly, the respondent in the style of cause is amended to the Minister of Citizenship and Immigration.

III. Background

[5] Mr. Li reports that in 2007, he was in a car being driven by a friend who was a member of an underground Christian church. A serious car accident was avoided, and he attributes his

survival to God's intervention. This event led him to develop an interest in Christianity. He began to attend underground church services, and he reports he was baptized in 2008.

[6] Mr. Li's underground church was reportedly raided by the Public Security Bureau [PSB] in July 2008, and he learned that some members had been arrested. He went into hiding and subsequently left China with the assistance of a smuggler. He reports the PSB has been to his house looking for him and has shown his wife an arrest warrant.

[7] The RPD denied Mr. Li refugee status in April 2011. That decision was set aside by this Court in May 2012. Following a *de novo* hearing, in a decision rendered on November 28, 2017, the RPD again denied his refugee claim. That decision is now the subject of this judicial review.

IV. The Decision under Review

[8] In oral reasons, the RPD found Mr. Li had not established that he faced a serious possibility of persecution or a risk of torture or cruel or unusual treatment in China. The RPD identified a number of credibility concerns and inconsistencies in his evidence, expressing concern with the sufficiency of the evidence respecting both risk and Mr. Li's "adherence to the particular sect of Christianity of which he is practicing right now."

[9] Despite these concerns, the RPD nonetheless addressed the "main question, which is why the claimant could not go back to China, and simply worship Christianity in a State church, given that Christianity, including Protestantism and Pentecostalism, is not illegal in China per se, rather it is regulated by the State."

[10] The RPD noted that Mr. Li's evidence was that state churches put the state above God, which violated the Ten Commandments. The RPD rejected this explanation for two reasons. First, it was based on second-hand information that the RPD had previously concluded was not credible. Second, the RPD found that there was insufficient objective evidence on the record to support the conclusion that a state church had to place the state or the Communist Party ahead of God. On this basis, the RPD found that Mr. Li would be able to practice Christianity in a state church without a serious possibility of persecution.

V. Standard of Review

[11] The determinative issue in this application involves the RPD member's assessment of evidence and the weight given to that evidence. It is well-established that these matters are to be reviewed against a standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 51 [*Dunsmuir*]; *Zhou v Canada (Citizenship and Immigration)*, 2009 FC 1210 at para 16 [*Zhou*]).

VI. Analysis

[12] Mr. Li argues that the RPD's finding that there was no credible explanation as to why he could not attend a state church was unreasonable. He further submits that there was evidence before the RPD, including the United States Department of State International Religious Freedom Report, demonstrating that the Chinese Communist Party [CCP] interferes in religious groups' doctrine, theology, and religious practice. He relies on the decision of Justice Yves de Montigny in *Zhou* to argue that: (1) his reason for not wanting to practice his faith in a state-sanctioned church was not contradicted by objective evidence; (2) the RPD's conclusion that he

could freely practice his faith in a state church was unreasonable; and (3) the RPD erred by effectively dictating how he was to practice his faith.

[13] The respondent submits that Mr. Li identified a single reason for not wanting to practice his faith in a state-sponsored church, a reason that the RPD held was based on a non-credible source and was not consistent with the objective documentary evidence. The respondent argues the RPD “did not dictate to the applicant what would be tolerable to him...[rather,] the applicant himself dictated to the panel what he would find intolerable” and distinguishes the decision from *Zhou* on this basis. [Emphasis in original.]

[14] Mr. Li submits that when or where he came to believe that state-sanctioned churches put the state before God is irrelevant. I agree; however, I am otherwise persuaded by the respondent’s submissions.

[15] The RPD acknowledged that the evidence disclosed state interference in the affairs of state-sanctioned churches. However, the member concluded that the evidence did not demonstrate that the interference rose to the level of requiring state-sanctioned churches to place the state ahead of God:

[W]hile there is some State interference in the officials in registered State churches in China, as pointed out by Counsel, there is insufficient evidence that the interference by the State goes to that level where the State church has to place the State or the Communist Party ahead of the...God itself, or Jesus himself.

Item CHN102494E, indicates that information on whether the Chinese Patriotic Churches (either Catholic or Protestant) pledge their loyalty to the Chinese Communist Party first, as opposed to God deals with this question, and that RIR indicates that they could

not find any corroborating information to corroborate this allegation.

[16] The conclusion reached by the RPD after reviewing the evidence may not be one that is shared by the Court, but that is not a basis upon which a reviewing Court should intervene. It is well recognized that questions that are reviewed against a standard of reasonableness do not lend themselves to one specific or particular result. Such matters may allow for a number of possible, reasonable conclusions, and a reviewing Court should exercise restraint where a tribunal's decision falls within the range of acceptable and rational solutions, even where the reviewing Court might disagree with the decision reached (*Dunsmuir* at para 47).

[17] The RPD actively identified and considered Mr. Li's stated reason for not wishing to pursue the practice of his faith in a state-sponsored church. In doing so, the RPD did not conclude that his concern was irrelevant or of no consequence. Instead, the RPD engaged in an analysis of that concern based on Mr. Li's oral and written evidence and the objective documentary evidence before it. On this basis, the RPD concluded the evidence was insufficient to support Mr. Li's stated reason.

[18] Although the RPD did adopt a narrow view of what it means to put the State above God, in doing so it neither ignored nor overlooked evidence. The RPD acknowledged and addressed the evidence of state interference in the affairs of state-sanctioned churches in China and it found that the evidence was insufficient to support a conclusion that a "State church has to place the State or the Communist Party ahead of the...God itself, or Jesus himself." This interpretation of

the evidence was reasonably available to the RPD and distinguishes the decision from the circumstances in *Zhou*, where the RPD was found to have ignored or overlooked evidence.

[19] I am satisfied that the RPD's decision reflects the required elements of justification, transparency, and intelligibility and falls within a range of possible, acceptable outcomes that are defensible in respect of the facts and law.

VII. Conclusion

[20] The application is dismissed. The parties have not identified a serious question of general importance for certification and none arises.

JUDGMENT IN IMM-984-18

THIS COURT'S JUDGMENT is that:

1. The application is dismissed;
2. No question is certified; and
3. The respondent in the style of cause is amended to the Minister of Citizenship and Immigration.

"Patrick Gleeson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-984-18

STYLE OF CAUSE: CHUN LI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

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