

Date: 20060605

Docket: IMM-2826-05

Citation: 2006 FC 695

Ottawa, Ontario, June 5, 2006

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

**WAN XING LIU
DE JIE SHEN
JIAN HONG SHEN (a minor)**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) of the decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated April 5, 2005, where the principal applicant was found not to be a refugee nor a person in need of protection.

ISSUES

[2] The only issue before this Court is whether the Board committed a reviewable error in its assessment of the principal applicant's credibility.

[3] For the following reasons, the present application for judicial review shall be dismissed.

FACTS

[4] The principal applicant, Mrs. Wan Xing Liu, is a citizen of China. She was born on May 1, 1963, in Guangzhou, in the province of Guangdong.

[5] She arrived in Canada on December 15, 2003, accompanied by her (now) adult daughter, De Jie Shen and her minor son, Jian Hong Shen.

[6] The facts alleged by the principal applicant are summarized in the following paragraphs.

[7] The principal applicant began to practice Falun Gong in March of 1999. In July 1999, Falun Gong was outlawed by the Chinese authorities. The principal applicant continued to practice secretly in a small underground group with five other persons.

[8] On October 5, 2003, the principal applicant was arrested by the Chinese police following a raid on her group's activities. She was interrogated and beaten during her detention.

[9] The principal applicant was released on October 20, 2003, after she signed an undertaking where she agreed to do the following:

- cease to practice Falun Gong;
- recognize that Falun Gong was an illegal cult;
- not leave the city of Guangzhou for the next two years;
- report to the local police station twice a week.

[10] The principal applicant had no intention to cease practicing Falun Gong, and her defiance of the Chinese government's policy toward her religion placed her in danger for the rest of her life if she remained in China. She also feared that her family would be subjected to reprisals and discrimination because of her religious beliefs.

[11] She fled China via Hong Kong with her daughter and son, leaving behind her husband and youngest son because the family was unable to borrow enough money to smuggle them out of the country.

[12] After her arrival in Canada, she learned that the police had come looking for her after she had failed to report to the police station, and that they are still actively looking for her.

DECISION UNDER REVIEW

[13] The Board rejected the applicants' claim because it did not find it credible.

[14] In its reasons, the Board stated that the principal applicant's narrative in her Personal Information File (PIF) bore an "improbable and remarkable" resemblance to that of six other claimants. Indeed, the Board found that "each narrative, including the one for this claim, is presented in a format and with content that is so strikingly similar to the other narratives with respect to [Falun Gong] that it is truly a "boilerplate" story.

[15] The Board even created a comparison chart listing the similarities between the seven claims, and included it in its reasons. With a few minor variations, these claims do seem to bear striking similarities.

[16] The evidence revealed that the same translator, Mr. Mike Yang, had acted on the behalf of all seven claimants, and had referred them all to Mr. John Savaglio, who acted as counsel for the applicants before the Board.

[17] Mr. Yang had done more than simply translate the claimants' statements. He helped prepare their PIFs by asking them questions, and had a list of prepared questions for Falun Gong claimants.

[18] Mr. Yang testified before the Board, and denied that he manufactured stories for the claimants. He also stated that he would not assist an economic migrant seeking to obtain asylum through the refugee protection process. However, he did admit to providing his clients with feedback regarding his opinion on merits of their claim.

[19] While the Board did not question Mr. Yang's integrity or credibility, it was not satisfied with his explanations for the similarities between these seven claims, nor was it convinced by the applicants' counsel's argument that the similarities were "simply the result of similarly-situated individuals having been treated in a consistent manner by the Chinese authorities".

[20] The Board noted that the documented evidence of mistreatment of Falun Gong practitioners by Chinese authorities is composed of many different and individual experiences, and that they had little to do with "the specifics of the strikingly similar seven cases".

[21] The principal applicant testified that she had no knowledge of the similarities between her PIF narrative and those of the six other claimants.

[22] While the Board noted that a claimant is presumed to be credible unless there is a reason to believe otherwise (*Maldonado v. Canada (Minister of Citizenship and Immigration)*, [1980] 2 F.C. 302 (F.C.A.)), it found that "seven such similar PIF narratives cannot credibly come independently from seven different claimants who did not know each other, who have no knowledge of why the PIF narratives are so similar, who in many cases lived in widely separated Chinese cities, and who all happen to have employed the same interpreter and counsel". The Board drew a negative inference from this fact, and concluded that the principal applicant's PIF narrative was insufficiently personal to be credible.

[23] The Board also found inconsistencies and implausibilities in the principal applicant's oral testimony on the following points:

- the timeframe of the restrictions placed upon her by the Chinese authorities;
- the fact that her children were not Falun Gong practitioners;
- her apparent lack of knowledge of the writings of Li Hongzhi, the founder of Falun Gong;
- her communications with her husband;
- her failure to tell the Immigration Officer that she had been arrested and detained in China;
- her demeanour during the hearing was “neither straightforward nor compelling”;
- her claims of discriminations or reprisals against her husband and her son who remained in China were exaggerated in light of the evidence before the Board.

[24] The Board concluded its reasons by stating that it found that the principal applicant had manufactured her claim, and that it did not believe she was wanted for arrest by the Chinese authorities.

[25] In light of the evidence of the absence of persecution suffered by the principal applicant’s son who remained in China, the Board found no reason to determine that his siblings would face persecution if they returned to China.

STANDARD OF REVIEW

[26] The applicants’ claim was dismissed because the board did not find the principal applicant’s allegations credible.

[27] It is settled law that findings of the Board regarding a claimant's credibility are findings of fact that are subject to judicial review according to the standard of patent unreasonableness (*Law Society of New Brunswick v. Ryan*, [2003] 1 S.C.R. 247, *Dr. Q. v. College of Physicians and Surgeons of British Columbia*, [2003] 1 S.C.R. 226, *Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315 (F.C.A.))

ANALYSIS

Did the Board commit a reviewable error in its assessment of the principal applicant's credibility?

[28] The applicants submit that while there were similarities in the principal applicant's PIF narrative and those in the six other claims, the Board erred in finding that they were "boilerplate" narratives.

[29] The applicants contend that since the Board has not questioned the interpreter's integrity or credibility, his testimony provides a reasonable explanation for the similarity of the other PIF narratives, and that the Board improperly rejected this testimony.

[30] The applicants further urge that the Board erred in dismissing counsel's argument that the similarities were "simply the result of similarly-situated individuals having been treated in a consistent manner by the Chinese authorities".

[31] The applicants also affirm that the Board erred in drawing negative credibility inferences from the alleged inconsistencies and implausibilities between her PIF narrative and her oral testimony:

- while the undertaking she signed forbade her to leave Guangzhou for two years, it did not mention for how long she had to report to the police station twice a week;
- while the Immigration Officer's notes may not mention the fact that the principal applicant had been detained and arrested in China, a form which the applicant had completed does mention this fact;
- the fact that the principal applicant's children do not practice Falun Gong does not detract from her own identity as a practitioner;
- considering that the applicant only has six years of formal education, it was unreasonable for the Board to expect her to have read and studied Li Hongzhi's writings.

[32] The applicants also note that the Board made no determination as to the credibility of the principal applicant's claim to be a Falun Gong practitioner.

[33] The applicants submit that this constitutes a reviewable error, in light of Justice O'Keefe's reasons in *Chen v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 480, [2002] F.C.J. No. 647 (T.D.) (QL). At paragraph 19, Justice O'Keefe wrote:

I have reviewed the Board's decision and I have come to the conclusion that the Board did not make any finding with respect to whether the applicant was a member of the Falun Gong group. The Board did not believe the applicant's story with respect to her persecution in China but it did not address whether she was a member of the group. This finding was necessary in order to

determine whether or not the applicant was a Convention refugee. The decision does not address the Falun Gong activities in Toronto. This evidence should have been considered (see *Jian Jiang v. M.C.I.* 2002 FCT 64; [2002] F.C.J. No. 84 (QL)). It was a reviewable error for the Board not to make this determination.

[34] The respondent submits that no overriding of palpable error has been demonstrated by the applicants, and that it is insufficient to state that the Board could have reasonably made other findings.

[35] The respondent states that it was open to the Board to consider the fact that six other PIF narratives presented striking similarities to the principal applicant's in assessing her claim's credibility (*Shi v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1088, [2003] F.C.J. No. 1368 (T.D.) (QL)).

[36] The respondent contends that the fact that the Board did not question the translator's integrity or credibility did not preclude it from drawing a negative inference from the similarities between the PIFs.

[37] The respondent further submits that the adverse credibility inferences the Board drew from the perceived inconsistencies and implausibilities in the principal applicant's testimony (timeframe of restrictions, enrolment of her children in Falun Gong, lack of knowledge of Li Hongzhi's writings, failure to tell the Immigration Officer she had been arrested and detained in China) were not patently unreasonable.

[38] After having carefully read the Board's reasons, I am not of the opinion that its decision to dismiss the applicants' claim was patently unreasonable.

[39] It was open to the Board to examine the striking similarities between the six other claims which had been filed through the services of the same translator and legal counsel, and to draw a negative inference as to the credibility of the allegations in the principal applicant's PIF narrative.

[40] The fact that the Board did not question the translator's integrity or credibility does not bar it from taking a critical view of his explanations for the similarities between the seven claims.

[41] This case is distinguishable from Justice Campbell's decision in *Bao v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 301, [2006] F.C.J. No. 411 (T.D.) (QL), in which he wrote at paragraphs 2 and 6:

A unique element of the decision by the RPD is the comparison of the Applicant's PIF narrative against the details of the PIF in six other Falun Gong claims. [...]

Given this result, I find that it was incumbent on the RPD to exclude the unsubstantiated suspicion from the decision-making process. This the RPD did not do. Indeed, the way the decision reads, the RPD proceeded to use the unsubstantiated suspicion to find that the Applicant's "PIF narrative is insufficiently personal to be credible". [...]

[42] In the case at bar, the Board gave "little weight" (page 9 of the decision) to Exhibit C-6 because of the specifics of the strikingly similar seven cases. It did not dismiss the applicants' claim only on the basis of these strikingly similarities. It found implausibility and inconsistencies in the principal applicant's story such as:

- the length of time the principal applicant had to report to the police;
- why the principal applicant's children were not Falun Gong practitioners;
- the principal applicant's ignorance of the Falun Gong Master Li Hongzhi's writings;
- contradictions in the written and oral statements made by the principal applicant on her questioning and beatings by the police;
- reasons to take photographs of the principal applicant in Toronto while practicing Falun Gong after the filing of her claim.

[43] While the applicants are correct in pointing out that the Board never made an explicit finding regarding the credibility of the principal applicant's claim to be a Falun Gong practitioner, I do not believe that this amounts to a patently unreasonable error, as it did in *Chen*, above.

[44] In this case, the Board did analyze evidence of the principal applicant's attendance of Falun Gong events in Toronto, but it came to the conclusion that its probative value was low, since the principal applicant admitted that the pictures were taken specifically for the purposes of the hearing, and that anyone could attend this event.

[45] The Board also repeatedly mentioned that it was taking the principal applicant's lack of formal education into account when considering her apparent lack of knowledge of the teachings of Li Hongzhi.

[46] In the absence of a patently unreasonable error in the Board's assessment of the credibility of the principal applicant, I do not think the intervention of this Court is justified in this case.

[47] The parties had the opportunity to raise questions of general importance and declined to do so. The Court is of the view that in this case, none arises.

JUDGMENT

THIS COURT ORDERS that the application for judicial review is dismissed. No question is certified.

“Michel Beaudry”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-2826-05

STYLE OF CAUSE: **WAN XING LIU**
DE JIE SHEN
JIAN HONG SHEN (a minor)
and
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

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**REASONS FOR JUDGMENT
AND JUDGMENT:** Beaudry J.

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