

Date: 20080327

Docket: IMM-2505-07

Citation: 2008 FC 381

Ottawa, Ontario, March 27, 2008

PRESENT: The Honourable Madam Justice Dawson

BETWEEN:

HUI MIN LIN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Hui Min Lin is a 19 year old citizen of the People's Republic of China (China) who claimed refugee protection because she says she fears persecution by the Public Security Bureau (PSB). The Refugee Protection Division of the Immigration and Refugee Board (RPD or Board) dismissed Ms. Lin's claim because it found her evidence to be incredible and implausible. This application for judicial review is allowed because I find the majority of the Board's credibility findings were made in reviewable error.

Ms. Lin's Claim

[2] Ms. Lin testified that, on January 10, 2006, the local government sent a notice to her father indicating that the family's land would be confiscated and their home demolished because the land was needed for a new railway. The notice also indicated that full compensation would be paid for the land. However, the actual compensation received was only approximately one quarter of the value of the land. Complaints regarding the amount of compensation were unsuccessful. Ms. Lin's father then joined the Chinese Democratic Party (CDP) because he was convinced that the government was corrupt.

[3] On September 2, 2006, agents of the PSB raided a meeting of the CDP that Ms. Lin's father was attending. He managed to escape, but remained in hiding.

[4] On September 3, 2006, a PSB agent came to the family home and questioned Ms. Lin, her mother, her brother, and her sister. The agent was seeking information about the whereabouts of Ms. Lin's father.

[5] On September 5, 2006, a PSB agent returned to the family home. Ms. Lin was alone at the time, and she was questioned regarding her father's whereabouts and activities. Ms. Lin says that she argued with the PSB agent, saying that the government was unfair and pushed her father to join another party. Ms. Lin also says that the PSB agent responded by warning her that she might be considered an accomplice and should not attempt to flee.

[6] Upon learning of this exchange with the PSB agent, Ms. Lin's mother sent her to live with her aunt.

[7] On September 6, 2006, a PSB agent returned to the family home and indicated that Ms. Lin was considered to be an accomplice of her father. The agent ordered Ms. Lin to report to the PSB office.

[8] Ms. Lin's family arranged for her to leave China. Ms. Lin arrived in Canada on September 20, 2006.

The Decision of the Board

[9] The RPD wrote:

The claimant's narrative concerning the loss of family land, the inadequate compensation and the unwillingness of governments at a number of levels to respond to her father's demand for compensation increase was supported by numerous corroborative documents. There is no reason to doubt the truthfulness of the claimant's narrative in this regard.

Although the Chinese Democratic Party (CDP) is virtually non-existent in China as a result of government repression and because no corroborative evidence was disclosed by the claimant, the narrative of her father's decision to join the party, the alleged raid on a party meeting, her father's escape and his need to go into hiding, cannot be rebutted by any evidence available to the panel. However, the relationship of the claimant to her father's alleged troubles, and her alleged pursuit by agents of the PSB has not been supported by either documentary or oral evidence. [footnote omitted]

[10] The Board went on to make two principal implausibility findings:

- (1) First, the RPD concluded that it was reasonable to expect that the PSB would have arrested Ms. Lin on its second visit on September 5, 2006, if its officers believed, as Ms. Lin testified, that she might be an accomplice. In this regard, the RPD noted that the PSB had

a well-earned reputation for arresting persons believed to be involved in illegal activities. The RPD also noted that Ms. Lin had provided no corroborating evidence to support her claim.

- (2) Second, the RPD concluded that the PSB's lack of interest in Ms. Lin's other family members seriously undermined her allegation that she was being pursued by the PSB. The RPD noted that all the members of Ms. Lin's family had been interviewed by the PSB, that they all responded that they did not know the whereabouts of Ms. Lin's father, and that nothing had happened to them. The RPD also noted that the documentary evidence indicated that Chinese authorities sometimes arrested and harassed relatives of persons being pursued for illegal activities.

Standard of Review

[11] This case was argued before the Supreme Court of Canada released its reasons in *Dunsmuir v. New Brunswick*, 2008 SCC 9. Thus, the Court has not had the benefit of submissions as to whether the appropriate standard of review to be applied to the RPD's credibility findings is that set out in paragraph 18.1(4)(d) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, or is reasonableness, or whether the two standards are similar in this context.

[12] For the purpose of this application, I am satisfied that the majority of the RPD's credibility findings do not withstand scrutiny, even if reviewed on the standard of "perverse or capricious manner or without regard for the material before it."

[13] It follows that I need not decide this issue at this time.

Application of the Standard of Review to the Board's Decision

[14] It is settled law that the RPD cannot disbelieve sworn testimony when there exists no valid reason to doubt its truthfulness. The RPD errs when it finds an applicant to be incredible simply because he or she is not able to provide documentary evidence corroborating their claim. See, for example, *Ahortor v. Canada (Minister of Employment and Immigration)* (1993), 65 F.T.R. 137 (T.D.) at paragraph 45.

[15] Bearing those principles in mind, the two paragraphs of the RPD's analysis quoted above are troubling because they demonstrate that Ms. Lin's testimony about the expropriation of the land and the inadequate compensation was accepted because it was corroborated. Her testimony about her father's response was accepted because it could not be rebutted. However, Ms. Lin's testimony about her own difficulties was rejected because it was not corroborated.

[16] This articulation of the RPD's reasons shows that it erred in law with respect to the treatment of Ms. Lin's evidence.

[17] Turning to the Board's first implausibility finding, given the documentary evidence about the brutality of the PSB and its resort to arbitrary arrest and detention, this finding was supported by the evidence and therefore was open to the Board.

[18] However, the Board's second inference - that the PSB's lack of interest in Ms. Lin's family members undermined her claim - missed the important point that she was the only member of the family who spoke out against the government and was considered to be her father's accomplice. Further, the evidence did not establish that, in all cases, relatives of persons being pursued by the PSB were harassed. This implausibility finding was not supported by the evidence and is therefore perverse, capricious, and unreasonable.

[19] The RPD went on to suggest, albeit in passing, that, after Ms. Lin's mother chastised her for speaking out to the PSB, she and her mother could have gone to the PSB to explain that Ms. Lin's comments were simply a reflection of a daughter's loyalty to her father and her family's unhappiness about the loss of their land.

[20] With respect, this observation ignores the evidence before the Board regarding the reputation of the PSB. It is difficult to understand how the RPD could reasonably expect this type of behaviour. At the time, Ms. Lin was a 17½ year old girl with the equivalent of a grade 8 education. The PSB was a security force known to coerce victims, take persons into custody without due cause, and mentally and physically abuse victims and perpetrators.

Conclusion

[21] As a result of the RPD's error of law with respect to its treatment of Ms. Lin's evidence and its flawed implausibility finding, the application for judicial review is allowed.

[22] Counsel posed no question for certification, and I agree that no question arises on this record.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is allowed and the decision of the Refugee Protection Division dated June 6, 2007, is hereby set aside.
2. The matter is remitted to the Refugee Protection Division for redetermination by a differently constituted panel in accordance with these reasons.

“Eleanor R. Dawson”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:

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