

Date: 20080918

Docket: IMM-989-08

Citation: 2008 FC 1043

OTTAWA, Ontario, September 18, 2008

PRESENT: The Honourable Max M. Teitelbaum

BETWEEN:

DA HUA LIAO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant seeks judicial review of a decision of the Refugee Protection Division (RPD), dated January 18, 2008, that he is neither a Convention refugee nor a person in need of protection.

[2] Mr. Liao is a Chinese citizen who claims to fear persecution at the hands of the Public Safety Bureau (PSB) due to his membership in an underground Christian church. He asserts that he joined the church on March 27, 2005 and was a regular attendee. He states that he was able to escape a raid by the PSB on May 21, 2006 because he was acting as lookout at the time. Two church members were allegedly arrested and the applicant went into hiding. He fled China and arrived in Canada on June 15, 2006, making a claim for refugee protection shortly thereafter.

[3] The RPD accepted that Mr. Liao was a citizen of China but found his story not to be credible on the basis of implausibilities and inconsistencies between the applicant's personal information form (PIF) and his testimony. The Board member found that the applicant was not a member of an underground church and that the authorities were not seeking him.

[4] The applicant asserts that the RPD came to unreasonable conclusions on the basis of the evidence before it or on a misapprehension of that evidence.

[5] I accept that the standard of reasonableness described in *Dunsmuir v. New Brunswick*, 2008 SCC 9, is to be applied, for the purposes of judicial review of findings of fact.

[6] The applicant points to a number of specific findings in the Panel's decision which he asserts are based on a misapprehension of the facts of his case. These include the reasons he provided for refusing to practice his Christianity at the churches registered with the government, which were that those churches put the Communist party first, not that their members were required to pledge loyalty to the party first as opposed to God, as described by the Panel member in the decision. The applicant submits that this misapprehension on the part of the Panel results in a fatal error as the applicant's right to practice his religion openly and freely forms a mutually exclusive basis for his claim.

[7] The applicant also questions the negative inferences drawn by the RPD from his leaving certain details out of his PIF, claiming that he believed he could provide the additional evidence at

the hearing. He submits that neither the second visit of the police to his house nor his follow-up phone call to verify whether the car which caused him to warn his colleagues was, in fact, a PSB vehicle was an event which caused him to make his refugee claim. The negative inference drawn by the Panel from his failure to include these details on his PIF was therefore erroneous. The Panel member should also have accepted the applicant's evidence that he believed he could provide these details at the hearing.

[8] The respondent counters that the Court should show due deference to the expertise of the RPD and that the applicant simply failed to establish his claim to the satisfaction of the Board. The respondent holds that the conclusion drawn by the Board was one open to it and within the range of reasonable answers available. Given the many reasons on which the Panel found the applicant not to be credible, no single factor was determinative. The respondent submits that even if the RPD was in error in its conclusion that the applicant could worship at a government church, this finding is not central to the ultimate decision that the applicant was not a member of an underground church which was raided by the PSB. The respondent argues, however, that it was not so much an error of the RPD as a failure of the applicant to meet his onus of establishing his claim.

[9] The respondent also asserts that the RPD is permitted to consider the failure of an applicant to mention all important facts of his or her claim in the PIF, which goes to credibility. This is especially true where the applicant's explanation for the omission was contradictory, as in the instant case, where the applicant said first that he did not include the details because he forgot them then that he thought he could give more detailed evidence in his oral testimony.

[10] I agree with the respondent that there are no findings in the decision of the RPD which are perverse, capricious or based on a misapprehension of the evidence before it. The applicant asks this Court to reweigh the evidence and come to an opposite conclusion. This is a judicial review, not an appeal. The decision of the RPD was open to it on the evidence before it and I am satisfied that the Court should not intervene.

[11] I would also note that the Panel found that it could not accept that the claimant would be prevented from practicing his religion should he be returned to China as the only evidence which was provided to that effect was “third-hand hearsay evidence”. The applicant claimed to have been told about the practices of the registered churches by members of the underground church to which he claimed to belong, but had not done any independent investigation on his own. The Panel member was free to prefer the documentary evidence to the unsupported allegations of the claimant.

[12] The applicant has pointed to specific passages within the documentary evidence which run contrary to the Panel member’s finding, but it is trite law that a tribunal is presumed to have considered all the evidence before it absent significant indicia that this is not the case. I do not see that the passage highlighted by the applicant, which refers to doctrinal restrictions on the leaders of registered churches in China, is a full answer to the finding of the Panel that he would be prevented from practicing Christianity in China. I do not agree with the applicant that the Panel’s decision is based on a misapprehension of the facts.

[13] The application for judicial review is denied. No question was submitted for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed.

"Max M. Teitelbaum"

Deputy Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-989-08

STYLE OF CAUSE: Da Hua Liao v. The Minister of Citizenship and Immigration

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 2, 2008

REASONS FOR JUDGMENT AND JUDGMENT: TEITELBAUM D.J.

DATED: September 18, 2008

APPEARANCES:

Shelly Levine FOR THE APPLICANT

Eleanor Elstub FOR THE RESPONDENT

SOLICITORS OF RECORD:

Levine Associates FOR THE APPLICANT
Toronto, Ontario

John H. Sims, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada