Date: 20081003

Docket: IMM-445-08

Citation: 2008 FC 1109

Ottawa, Ontario, October 3, 2008

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

GIN LIN PUR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION and THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] Like Saul on the road to Damascus, the Applicant saw the light and acknowledged that her previous story of her activities in China was just that – a story. Is the Minister correct that her confession came too late?

BACKGROUND

[2] Gin Lin Pur is a 44 year old Chinese national. She came to Canada in 1999 and sought refugee protection shortly thereafter. Her claim was based on religious persecution on account of

her membership in an underground church, and her opposition to China's one-child policy. Her application for Convention refugee status was refused on the basis that she was excluded from protection owing to her involvement in enforcing the one-child policy. She has nonetheless remained in Canada with no status for the past eight and a half years. She was married to a Mr. Raymond Ho, a permanent resident, in December of 2007.

[3] In June of 2003, Gin Lin Pur applied for permanent residence from within Canada on humanitarian and compassionate grounds, which application was updated in September of 2007 by her former counsel. The covering letter to this update emphasizes that Gin Lin Pur is learning English, is gainfully employed, and attends church, while reiterating that she would face a risk of persecution for the reasons invoked in her failed refugee claim, were she to be returned to China.

[4] The PRRA officer assigned to the case wrote a detailed case history, dated December 10, 2007, describing Gin Lin Pur's degree of establishment in Canada and the alleged risk she would face in China. As to the former, while acknowledging that she has established herself, the officer found that this establishment was only to a level that would be naturally expected, and that the disruption of employment and community ties in Canada entailed by her return to China cannot alone be considered to amount to unusual or disproportionate hardship.

[5] With respect to the alleged risks Gin Lin Pur faces in China, the officer reviewed the documentation she had submitted in connection with her pre-removal risk assessment regarding persecution on religious grounds (as she had not submitted anything on this topic in the H&C

application itself), as well as internal reports. Noting that the reports attest to a wide variance in religious freedom in different parts of China and the absence of any accounts of persecution or repression on the Applicant's native province of Guangdong, as well as indications that it is underground church leaders as opposed to the laity that are chiefly at risk, the officer determined that Gin Lin Pur would not likely face a risk of detention or imprisonment were she to be deported to China.

[6] With respect to the allegation that Gin Lin Pur would face a risk in connection with her refusal to participate in the implementation of the one-child policy, the officer reviewed a 1996 Amnesty International document submitted by the Applicant (*Women in China: Detained, Victimized, Mobilized*), as well as more recent evidence, and concluded that at this point in time, while government officials who do not strictly enforce the one-child policy may expose themselves to administrative sanctions and disciplinary measures, they are not "targeted by the authorities" per se.

[7] The officer determined that the Applicant's circumstances were not such that the hardships she would face by having to apply for permanent residency from outside Canada would be unusual, undeserved, or disproportionate, and accordingly, declined to grant an exemption to allow her to make an in-country application. The decision letter is dated December 10, 2007.

[8] Gin Lin Pur was advised that a decision had been rendered on her application for protection by letter dated December 24, 2007, and was instructed to attend at the Greater Toronto Enforcement Centre on January 14, 2008, to receive the decision.

[9] On January 8, 2008, Gin Lin Pur filed further submissions through a new lawyer claiming that the previous submissions contained "serious and multiple errors" and asking that they be disregarded. The new submissions disavow the previous story, and claimed that her account of involvement in the administration of China's one-child policy was a fabrication. This aspect of her story was allegedly concocted by an immigration consultant. As it turned out, the story backfired when Ms. Pur was excluded on this very basis.

[10] A further letter requesting that Gin Lin Pur's H&C application be re-opened was sent by counsel on January 24, 2008.

ISSUES

[11] The Applicant raises three issues:

(a) Whether the officer breached the duty of fairness by failing to consider the information provided in the submissions of January 8, 2008;

(b) Whether the officer failed to conduct a proper hardship assessment; and

(c) Whether the officer ignored evidence, insofar as the documentation canvassed does not support a conclusion that risks of persecution on account of religious observance are limited to religious leaders.

ANALYSIS

Did the officer err in failing to consider January 8, 2008 submissions?

[12] On December 24, 2007, the Applicant was sent a "call-in notice". The letter – a form letter – reads: "This is to advise you that a decision has been rendered with respect to your application to the Minister for protection … to receive this decision you are required to attend in person as indicated below…". At that time the Applicant had two applications pending – an H&C application and a PRRA application.

[13] Both parties rely on the decision in *Chudal v. Canada (Minister of Citizenship and Immigration),* 2005 FC 1073. In *Chudal* the applicant completed and submitted his PRRA application. He submitted further documents in August, September and on October 8, 2004. On October 15, 2004, the Applicant received notice by facsimile that her application was refused on September 23, 2004, and the further documents sent on October 8, 2004, were not considered. Actual reasons for refusal were not received by the applicant until November 10, 2004. The Court quashed the PRRA decision on the basis that there was a breach of procedural fairness by the PRRA officer not receiving and considering the further submissions. Justice Hughes held that the decision was not made until it had been written and signed and notice of the decision, even if not its contents, had been delivered to the Applicant. Accordingly, the decision was made as of October 15, 2004, the date that its existence was communicated to the Applicant by facsimile.

[14] The Respondent submits that in this case, notice was communicated by letter dated December 24, 2007, which would have been received prior to January 8, 2008. It is submitted that the officer was *functus* at this point and could not consider the evidence forwarded under cover of January 8, 2008.

[15] The Applicant submits that the Respondent may be correct insofar as the H&C application is concerned but not insofar as the PRRA application is concerned. The Applicant places great emphasis on the precise wording of the call-in letter: specifically its reference to a decision on the "application for protection" and use of the word "decision", in the singular.

[16] Unlike the applicant in *Chudal*, Ms. Pur was provided with notification that a decision had been reached well prior to submitting her recantation of many of the material facts in January through new counsel. In my view, the call-in letter ought not to be read in the strict manner advocated by Applicant's counsel. In this case the Applicant was aware that both the H&C and the PRRA applications were being dealt with by the same officer. Both decisions bear the same December date. As was noted by Justice Hughes "in the case of a PRRA Officer's decision, the procedure is less formal than that of the Refugee Board". Just as some latitude was granted when the Court held that a decision is not made until it is written, signed and notice provided to the applicant, I am of the view that the PRRA officer is also entitled to some latitude in the wording of the notification. I find that the letter dated December 24, 2007, provided the Applicant with notice of both the H&C and the PRRA decision and that the submissions filed in January 2008, recanting the story she had advanced for many years, did not need to be considered by the PRRA officer.

Did the officer fail to conduct a proper hardship assessment?

[17] The Applicant submits that the officer failed to conduct a proper hardship assessment; the officer is alleged to have applied "PRRA standards to H&C considerations" by focusing on risk of persecution rather than hardship in a broader sense. This is said to go against the position expressed in *Pinter v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 296, to the effect that the assessment of risk in an H&C application will not necessarily be coextensive with the assessment of risk in a pre-removal risk assessment.

[18] I cannot agree with that submission. First, the officer makes a statement that "[i]n this application, I will consider the applicant's risk allegation in the broader context of their degree of hardship." More importantly, the decision read as a whole indicates that the officer does indeed look at the broader context. Lastly, the facts at hand are substantially different than those in *Pinter* where the officer said that she did not need to deal with the risk factors as they had been dealt with by the PRRA officer, thus making it certain that the same test was applied to both.

Did the officer ignore evidence?

[19] The principle submission of the Applicant was that the officer erred in stating that the extent of religious freedom varies in China and that the reports "do not indicate that Guangdong (Zengcheng city of Guangdong), the province from which the applicant is from, has experienced religious abuses…" The Applicant points to a passage on one page of the hundreds submitted on

country conditions where reference is made to two unregistered priests being detained in Shenzhen upon their return from Europe. The Applicant points out that this is in the Applicant's province and thus asserts that the officer was in error in asserting that that area has not experienced religious abuses. The report referenced by the Applicant actually goes on to indicate that these two priests were detained and later imprisoned for 9 and 11 month sentences for reportedly falsifying documents to facilitate travel to Rome. In my view, imprisonment for falsification of travel documents is not religious persecution. Further, even if it were, these were religious leasders, not merely religious believers such as the Applicant. In my view, even if this submission had merit, it would not have resulted in a different decision and it is not a sufficient basis to make a finding of unreasonableness.

[20] For all of these reasons, this application is dismissed.

[21] It was proposed that a question be certified as to whether the notice to the Applicant was sufficient to constitute notice of both the H&C and the PRRA decision. In my view, that is not a serious question of general importance. No question will be certified.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed; and

2. No question is certified.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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