

Federal Court



Cour fédérale

Date: 20100512

Docket: IMM-4982-09

Citation: 2010 FC 523

Toronto, Ontario, May 12, 2010

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

DAOJIAN LIN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The present Application concerns a citizen of China whose request for humanitarian and compassionate relief under s.25 of the *IRPA* was rejected by the same person (the H&C Officer)

who decided both his pre-removal risk assessment and his humanitarian and compassionate application.

[2] In the decision under review, the H&C Officer examined the Applicant's case history, including his establishment and ties in Canada but, importantly, also the risks he would face should he return to China. There is no disagreement that the risk considerations stated in the Applicant's PRRA assessment are duplicated in the H&C consideration. The primary risk considerations are the Applicant's loss of his hukou, and also the fact that, since he left China illegally, he would be subject to a criminal offence possibly punishable by up to one year's imprisonment upon his return. The facts related to these considerations were quoted extensively in the decision under review with the single statement of conclusion being as follows:

Consequently, I do not find that the applicant has demonstrated that he would face unusual and undeserved or disproportionate hardship in the event of a return to his country of origin.

(Decision, p.5)

[3] Counsel for the Applicant argues that the facts related to the risk have no essential meaning without an analysis of how they relate to whether the Applicant should receive humanitarian and compassionate relief. I agree with this argument.

[4] It is agreed that all humanitarian and compassionate factors, including risk, must be considered together in a contextual manner in order to arrive at a reasonable decision as to whether a particular person should be granted humanitarian and compassionate relief. In my opinion, to arrive at a reasonable decision, it is necessary for an H&C officer to exhibit an empathetic understanding of the problems that a particular person would face should he or she be required to

return to his or her country of origin. In the present case, the significant problems that Mr. Lin will face due to the loss of his hukou, and the possibility that he will be imprisoned upon his return were required to be addressed by the H&C Officer in an empathetic way. No such analysis is provided in the present decision. Indeed, apart from the identification of the risk considerations, and statements of fact with respect to those considerations, there is no analysis as to why the Applicant would not suffer undeserved or disproportionate hardship should he return to China. As a result, I find that the decision under review is unreasonable.

ORDER

THIS COURT ORDERS that:

The decision under review is set aside and the matter is referred back to a differently constituted panel for re-determination.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4982-09

STYLE OF CAUSE: DAOJIAN LIN v. THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: May 12, 2010

**REASONS FOR ORDER
AND ORDER:** CAMPBELL J.

DATED: MAY 12, 2010

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