

Federal Court



Cour fédérale

**Date: 20111031**

**Docket: IMM-645-11**

**Citation: 2011 FC 1235**

**Ottawa, Ontario, October 31, 2011**

**PRESENT: The Honourable Mr. Justice Russell**

**BETWEEN:**

**JIAN BIN LIN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001 c. 23 (Act) for judicial review of the decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated 30 November 2011 (Decision), which denied the Applicant's application to be determined a Convention refugee or person in need of protection under sections 96 and 97 of the Act.

## **BACKGROUND**

[2] Jian Bin Lin, the Applicant, claims to be a citizen of the People's Republic of China. He says he joined the Jehovah's Witnesses, a Christian sect, in 2007.

[3] The Applicant alleges that, after his conversion to Christianity, he was arrested and detained by the Public Security Bureau (PSB) on 21 March 2008. After his arrest and detention, the Applicant claims he was released on the condition that he not practise his religion. Following a raid on the Applicant's church on 26 April 2008 when the Applicant was acting as a lookout, the Applicant claims he went into hiding to avoid being re-arrested by the PSB.

[4] Subsequently, because he felt he could not hide in China, the Applicant engaged the services of a smuggler to bring him to Canada. En route to Canada, the Applicant travelled first to Hong Kong. He then came to Canada through Germany on a German passport, bearing a name and photo that were not his own. He arrived in Canada on 1 July 2008 and made his claim for refugee protection on 2 July 2008. The RPD held hearings in his case on 9 February 2010, 18 May 2010, and 16 September 2010. Present at the hearings were a Refugee Protection Officer (RPO), the RPD panel, a translator, the Applicant and his counsel. After the last oral hearing concluded, the RPD asked the RPO to provide her observations and the Applicant to provide written submissions. The Applicant provided written submissions by fax on 1 November 2010.

[5] In support of his application for refugee protection the Applicant provided the RPD with the following nine documents from the Peoples Republic of China: a Resident Identity Card (RIC); a

Household Register (Hukou); an Occupational Qualification Certificate; a Graduation Certificate; a Detention Certificate; a receipt; Baptism Certificate; Church letter; and photographs. He also provided an amendment to his PIF on 29 January 2010. After the initial hearing on 9 February 2010, the RIC, Hukou, Occupational Certificate, and Graduation Certificate were sent to the RCMP Forensic Laboratory for authenticity analysis.

[6] Because the RCMP laboratory lacked genuine specimens with which to compare the documents submitted, the analysis as to authenticity was inconclusive. The laboratory did, however, report that the RIC has “damage on the edges of the lamina (cut and taped back together).” The laboratory further reported that there “are no signs of alterations” on the Hukou, Occupational Certificate, and Graduation Certificate.

## **DECISION UNDER REVIEW**

[7] Based on concerns with both his testimony and the documents presented, the RPD rejected the Applicant’s claim for refugee protection because he failed to establish his identity. As required under section 106 of the Act, the RPD considered the Applicant’s possession of acceptable documents and his explanations for non-possession when evaluating his credibility.

### **The Resident Identity Card**

[8] For several reasons, the RPD found the Applicant’s RIC was not an authentic document.

[9] First, the RPD found that it was unreasonable that the Applicant could not, at the hearing, recall his RIC number, though he testified that it contained 18 digits. When presented with documentary evidence that the RIC number actually contained 15 digits, the Applicant could not explain the difference between the length he recalled and the actual length of the RIC number. The RPD also found it unreasonable that the Applicant could not say that the 18 digit RIC number added 19 to his year of birth. Because he could not provide his RIC number in a consistent manner, the RPD found that this undermined the RIC as an identity document.

[10] Second, the RPD found that the RIC was faded only in the areas which contained the Applicant's personal information and that it had been cut and re-taped. The RPD rejected the Applicant's explanation that the RIC had been folded and taped to prevent water from getting on it. The RPD found that it was implausible that the RIC would have faded if, as the Applicant testified, he had always kept the card in his wallet.

[11] Third, the RPD found that the Applicant's testimony about when he was issued the RIC did not conform to the documentary evidence. The RPD considered evidence that RICs are issued to citizens of the People's Republic of China at the age of 16. When presented with this evidence, the Applicant testified that, when he was 16, he had been attending school and so was prevented from getting a RIC. The RPD rejected this explanation and found that being at school would not prevent the Applicant from getting a RIC.

[12] The RPD also considered evidence that fraudulent RICs of the same generation as that tendered in support of the Applicant's identity were easy to obtain at relatively low cost. Based on

all the above evidence, the RPD concluded that the RIC was not an authentic document and so did not establish the Applicant's identity.

### **The Hukou**

[13] The RPD also considered the Hukou in determining the Applicant's identity. Like the RIC, the RPD found that the Hukou was not an authentic document. In part, this conclusion was based upon the Applicant's inability to identify key information contained in the Hukou, including his occupation. When confronted with evidence that the Hukou listed his occupation as a farmer, even though his PIF indicated that he had worked in restaurants, the Applicant testified that the occupation on a Hukou follows that of the father. The RPD could not reconcile the Applicant's initial inability to state whether the Hukou contained information on occupation with his later testimony that the occupation listed followed the father, so it drew an adverse inference of credibility.

[14] The Applicant alleged he was unsophisticated to explain his lack of knowledge of the contents of the Hukou. The RPD rejected this explanation, as the Applicant stated that he had nine years of formal schooling and ten years of employment.

[15] Given the concerns about the RIC and the Hukou, the RPD found that the Applicant had not provided sufficient documentation to establish his identity.

### **Other Documents**

[16] The RPD also had concerns about the Occupational and Graduation Certificates provided by the Applicant. The RPD said that the Applicant testified at the hearing that he passed his exam in Chinese Cuisine in 2005 and was working at a Seafood Restaurant in Chang Le. The PIF, the RPD wrote, did not say the name of the restaurant was Chang Le Seafood Restaurant, though there was an entry for Wan Long Seafood Restaurant for 2004 and not 2005. The RPD said that the Applicant testified he made a mistake when asked to explain the discrepancy between his testimony and the evidence he presented. The RPD found it implausible that the Applicant would not accurately remember when he had passed his examination. Given these concerns, the RPD placed little weight on the Occupational Certificate in support of the Applicant's identity.

### **Detention Certificate**

[17] Having found that the RIC, Hukou, and Occupational Certificate did not establish the Applicant's identity, the RPD placed little weight on the Detention Certificate and Receipt. The Detention Certificate did not contain his RIC number, address, or Hukou number to identify him, so the RPD found that this document did not support the Applicant's identity or claim of persecution.

### **Other Evidence**

[18] The RPD found that the Applicant had not proven he was in China from 2007 to 2008, when he claimed he was persecuted. The RPD found there were no documents to prove he was in China at that time, and also found that it was unreasonable that he had not obtained relevant documents.

[19] The RPD further found that the Applicant's allegation he was wanted by the PSB was not credible. It said that when his father mailed the Applicant's documents under his own name this undermined the allegation, given that the Chinese government is known to monitor mail. Mailing documents to a known fugitive would put him at further risk. In addition, the RPD found that his story of travel through Germany on a German passport was not credible. It was implausible that an ethnic Asian traveling on a German passport would not be stopped or questioned, as the Applicant had said. This cast doubt on the Applicant's country of reference, and his credibility.

### **Conclusion**

[20] The RPD concluded that the Applicant had failed to provide acceptable documents and testimony proving his identity and had not adequately explained that failure. The RPD therefore found that he had not established his identity, so his claim failed.

### **ISSUES**

[21] The Applicant raises the following issue:

Whether the RPD's conclusion on identity was reasonable.

## STATUTORY PROVISIONS

[22] The following provisions of the Act are applicable in these proceedings:

### Convention Refugee

**96.** A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

*(a)* is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

*(b)* not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

**97.** (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would

### Définition de « réfugié »

**96.** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

*a)* soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

*b)* soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

**97.** (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle



subject them personally	avait sa résidence habituelle, exposée:
(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or	a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au
(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if	b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant:
(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,	(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,	(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and	(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.
(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.	(2) A également qualifié de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de

protection

...

...

### **Credibility**

### **Crédibilité**

**106.** The Refugee Protection Division must take into account, with respect to the credibility of a claimant, whether the claimant possesses acceptable documentation establishing identity, and if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain the documentation.

**106.** La Section de la protection des réfugiés prend en compte, s'agissant de crédibilité, le fait que, n'étant pas muni de papiers d'identité acceptables, le demandeur ne peut raisonnablement en justifier la raison et n'a pas pris les mesures voulues pour s'en procurer.

[23] The following provision of the *Refugee Protection Division Rules* SOR/2002-228 is also applicable in these proceedings:

#### **Documents establishing identity and other elements of the claim**

#### **Documents d'identité et autres éléments de la demande**

**7.** The claimant must provide acceptable documents establishing identity and other elements of the claim. A claimant who does not provide acceptable documents must explain why they were not provided and what steps were taken to obtain them.

**7.** Le demandeur d'asile transmet à la Section des documents acceptables pour établir son identité et les autres éléments de sa demande. S'il ne peut le faire, il en donne la raison et indique quelles mesures il a prises pour s'en procurer.

## STANDARD OF REVIEW

[24] The Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9 held that a standard of review analysis need not be conducted in every instance. Indeed, where the standard of review applicable to the particular question before the court is well settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake consideration of the four factors comprising the standard of review analysis.

[25] Findings of credibility are central to the RPD's findings of fact and are thus reviewable on a standard of reasonableness. See *Elmi v Minister of Citizenship and Immigration*, 2008 FC 773, at paragraph 21. Further, in *Umba v Canada (Minister of Citizenship and Immigration)* 2004 FC 25, Justice Luc Martineau considered an immigration officer's assessment of a claimant's identity and conclusions on the acceptability of documentation. After analysing the four contextual factors set out by the Supreme Court of Canada in *Dr. Q. v College of Physicians and Surgeons of British Columbia*, 2003 SCC 19, Justice Martineau found, at paragraph 31, that the standard of review of analysis of documentary evidence and the assessment of credibility was patent unreasonableness. He also found that assessment of the proof of identity submitted by an applicant was reasonableness *simpliciter*. The Supreme Court of Canada collapsed these two standards into a single reasonableness standard in *Dunsmuir*, above, at paragraph 45. The standard of review in this case is reasonableness. See also *Andryanov v Canada (Minister of Citizenship and Immigration)*, 2007 FC 186 at paragraph 14 and *Najam v Canada (Minister of Citizenship and Immigration)*, 2004 FC 425 at paragraphs 13 and 14.

[26] When reviewing a decision on a standard of reasonableness, the analysis will be concerned with “the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law.” See *Dunsmuir*, above, at paragraph 47; and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraph 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the “range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

## **ARGUMENTS**

### **The Applicant**

#### **The RPD Was Unreasonable in Determining The RIC Was Not Authentic**

[27] The Applicant argues that, by requiring him to recall all 15 digits of his RIC number, the RPD imposed an unreasonably high burden on him. He says that he is unsophisticated and could not reasonably be expected to recall all 15 digits of his RIC number because he has only nine years of formal education and ten years of work experience.

[28] The Applicant further argues that the RPD’s conclusion that the RIC was not authentic because the document was faded and taped was unreasonable. He says that the RPD’s findings that it was implausible that the document had been taped to prevent water damage, and that the taping could indicate the document had been tampered with, were “speculative, specious, and unreasonable.”

[29] The Applicant also asserts that, because the document was 14 years old at the time of the hearing, it is possible that the document might have faded naturally. Further, he says it is possible that the RIC was taped to avoid water damage. The Applicant argues that the RPD's conclusion that the RIC was not authentic was unreasonable because there are other plausible explanations for the fading and damage to the RIC.

[30] The Applicant also argues that the RPD's conclusions on credibility arising from his testimony as to when he received the RIC were unreasonable. He says that, although the fact that he was studying would not preclude him from applying for and receiving his RIC, it would not be unreasonable to find that the Applicant had not applied for the RIC because he was studying. The RPD's conclusion to the contrary must be unreasonable.

#### **The RPD Was Unreasonable in Determining the Hukou Was Not Authentic**

[31] On this document, the Applicant argues that the RPD's consideration of his education and experience was unreasonable. He asserts that the RPD's conclusion that his nine years of education and ten years of work experience meant he is neither uneducated nor unsophisticated "simply defied the facts." It was unreasonable for the RPD to conclude that the Applicant's inability to identify the information contained in the Hukou undermined his credibility based on this erroneous conclusion as to his sophistication.

### **The RPD Was Unreasonable in Giving No Weight to the Other Documents Submitted**

[32] The Applicant says it was unreasonable for the RPD to give no weight to the Detention Certificate, having determined that the other identity documents were not authentic. He argues that the RPD placed no weight on the Detention Certificate only because it had previously found the other documents to be inauthentic. It was unreasonable for the RPD to find the Detention Certificate untrustworthy solely based on its conclusions regarding the other documents. The RPD ought to have examined the Detention Certificate on its own merits and its failure to do so renders the Decision unreasonable.

### **The RPD's Determination That Travel Through Germany on a German Passport Undermined Credibility**

[33] Finally, the Applicant argues that it was not reasonable for the RPD to draw an adverse inference from his testimony that he travelled through Germany on a German passport without being asked any questions or speaking to any customs or airline agents. The Applicant points out that it was possible the smuggler he hired to get him to Canada would have had contacts that would allow him free passage through the German airport. Because of this alternate explanation, the Applicant argues that it was unreasonable for the RPD to conclude that his story was implausible. Further, the Applicant argues that the adverse finding of credibility made by the RPD based on its finding that the story was implausible was unreasonable.

### **The Respondent**

[34] The Respondent says that, because there was evidence before the RPD on which to base its conclusions, those conclusions were reasonable. Because the RPD's findings were reasonable, the Decision to deny the Applicant's refugee claim should stand.

### **The RIC**

[35] The Respondent argues that, having regard to the Applicant's inability to remember the RIC number and his inability to explain his testimony that the RIC had 18 digits when it in fact has 15 digits, the RPD was reasonable in concluding that the RIC was not an authentic document. Because the RPD found as a fact that the RIC was faded in the area containing the Applicant's personal information and the RCMP forensic report indicated that the RIC had been cut and taped, it was reasonable to for the RPD to conclude that the RIC was not an authentic document and did not support the Applicant's identity.

[36] The Respondent relies on *Kommissarov v Canada* 2002 FCT 75, and *Merja v Canada* 2005 FC 73 to further argue that the RPD was entitled to consider the availability of forged documents in the region when considering the probative value of the documents before it. As it was open to the RPD to consider the availability of forged documents in the region, and given the RPD's findings regarding the damage to the RIC and the Applicant's testimony regarding the number on the RIC, the Respondent says that the RPD's conclusions with respect to the authenticity of the RIC were reasonable and should not be disturbed.

[37] In addition, the Respondent argues that the RPD's assigning little weight to the Applicant's explanation was reasonable. The Applicant testified that he received the RIC when he was 17, contrary to documentary evidence showing that the RIC is given to citizens of the People's Republic of China when they turn 16. Based on the documentary evidence before it, the RPD was reasonable in rejecting the Applicant's explanation that his being in school prevented him from obtaining the RIC.

### **The Hukou**

[38] The Respondent says that it was reasonable for the RPD to conclude that the Applicant did not actually have knowledge of the contents of the Hukou. He was not able to provide correct information regarding either the contents or uses of the Hukou and it was reasonable for the RPD to expect a person having nine years of formal education and ten years of work experience to have knowledge of the contents of the Hukou. There was evidence before the RPD on which it could reasonably base its conclusions about this document.

### **Other Evidence**

[39] The Respondent further argues that, although the Applicant presented an Occupational Certificate, a Detention Certificate, and is able to speak Mandarin, the RPD's conclusion that the Applicant had failed to establish his identity was reasonable.



[40] Based on *Alizadeh v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 11 (CA) and *Aguebor v Canada (Minister of Employment and Immigration)*, (1993) 160 NR 315 (FCA), the Respondent argues that it was open to the RPD to make findings based on implausibilities. It was open to the RPD to find that the Applicant was not credible with regard to his identity because of the implausibility of his story of travelling through Germany on a German passport, without ever speaking to a customs, border, or airline agent. Looking at the evidence of identity as a whole, which the RPD largely found was not credible, it was reasonable for the RPD to conclude that the Applicant had failed to establish his identity.

### **The Respondent's Further Memorandum**

[41] The Respondent argues further that the RPD's conclusion on identity should stand. Identity was critical to this claim and the RPD made reasonable conclusions from the evidence that was before it. The Applicant failed to provide acceptable documents to establish his identity and, by tendering a false document, cast doubt on his entire claim. It was reasonable for the RPD to find that the Applicant had not established his identity and that the claim should fail.

### **Further Concerns About the RIC**

[42] The Respondent says that, based on *Yang v Canada (Minister of Citizenship and Immigration)* 2009 FC 1280, and given the inconclusive forensic report from the RCMP laboratory, it was open to the RPD to question the Applicant and reach its own conclusions regarding the authenticity of the RIC. The Respondent notes that the RPD's conclusion on the RIC was based not

only on the fading of the document, but also on the forensic report, the Applicant's knowledge about the RIC, and documentary evidence as to the availability of forged documents in China.

### **The RPD's Other Conclusions Were Reasonable**

[43] The Respondent also argues that the RPD's conclusions regarding the Occupational Certificate were reasonable. Because of the discrepancy between the Applicant's testimony as to when he worked in seafood restaurants and the issue date of the Graduation Certificate, it was reasonable for the RPD to put little weight on this document in establishing the Applicant's identity. Further, it was reasonable for the RPD to put little weight on the Applicant's ability to speak Mandarin, as there are many Mandarin speakers who are not from the People's Republic of China. In addition, the Respondent says the RPD was reasonable in assigning little weight to the Detention Certificate in establishing the Applicant's identity, as this document did not contain an address for the Applicant, his RIC number, his Hukou number, or the address of the detention center from which he claimed to have been released.

### **The Hukou**

[44] Although the Applicant argues that the amount of his education and experience explain his lack of knowledge of the Hukou's contents, the Respondent disagrees. Rather than being explained by the lack of sophistication, the lack of knowledge is simply because the Applicant did not know what information the Hukou contained. Since the Hukou is an important identity document in the

life of all citizens of the People's Republic of China, the RPD's conclusion that the Applicant was not credible because he did not know what the Hukou contained was reasonable.

### **Concerns Regarding the Alleged Persecution**

[45] Although the RPD disposed of the application solely on the basis that the Applicant had failed to prove his identity, the Respondent points out that the Applicant also failed to prove he had been present in China during the period for which he alleges persecution. He did not have any documents to prove this. The Respondent further points out that, because the Applicant's father mailed him documents under the Applicant's own name, it was reasonable for the RPD to conclude that the Applicant was not a credible witness. The RPD was thus reasonable in concluding that the credibility of the Applicant's identity and his allegations of persecution were undermined.

### **ANALYSIS**

[46] The Respondent is right to caution the Court that it cannot substitute its own views of the evidence for those of the RPD even where it might have drawn an inference different from that drawn by the RPD. See *Su v Canada (Minister of Citizenship and Immigration)*, 2007 FC 680 at paragraph 13. However, a number of issues in this case give rise to a concern that the RPD may have pushed its reasons beyond what the evidence can reasonably support and the Court needs to examine them to ascertain whether they render the Decision unreasonable.

[47] For example, the RPD, in paragraph 19 of the Decision, relies upon documentary evidence which it says “indicates that fraudulent documents are readily accessible throughout China, including in Fujian from where the claimant alleged he came.” The document in question actually does refer to the general situation in China as regards fraudulent documents but, on Fujian, it says that [“information on the manufacturer, procurement, distribution and use of fraudulent passports, Hukou, resident identity cards and summonses in Guangdong and Fujian, in particular, could not be found among the sources consulted by the Research Directorate.” The specific reference to Fujian, however, is immediately qualified:

However, according to a South China Morning Post article, Shenzhen “is the center of the mainlands bogus degree certificate industry.”

[48] It is noteworthy that Shenzhen is only referred to for purposes of the “degree certificate industry.” The Research Directorate had been asked to research the “manufacture, procurement, distribution and use of fraudulent documents, including passports, Hukou, resident identity cards and summonses in Guangdong and Fujian in particular (2005 - May 2009).”

[49] Although information was not available from Guangdong and Fujian in particular, this does not mean that fraudulent documents are not available there. The general message of the report is that the market for fraudulent documents is both long-standing and expanding throughout the whole of China.

[50] In other words, there is nothing in the report which says that Guangdong and Fujian are any different from anywhere else in China when it comes to fraudulent documents, and a lot to suggest that they are available everywhere in China. I cannot say that the RPD has materially misread the

documentation regarding the ready availability of fraudulent documents in China, including in Guangdong and Fujian.

[51] In relation to the Occupational Certificate, the RPD gives the following reasons for not giving it significant weight in support of the Applicant's identity and employment:

The panel finds the claimant's inconsistent testimony related to when he passed his exam and received his Occupational Certificate undermined the document in support of his identity and also undermined his credibility. The claimant testified that he passed his exam in Chinese Cuisine in 2005 and that he was working at a seafood restaurant in ChangLe. The panel found this testimony concerning for several reasons. Firstly, the employment section in the claimant's PIF did not indicate the name of a restaurant as ChangLe Seafood Restaurant. There was a listing for Wan Long Seafood Restaurant; however this was for 2004 and not for 2005 when the claimant alleged he passed the course. Secondly, the claimant's Graduation Certificate indicated that he passed in 2002. When asked to explain the difference between his testimony and the evidence he presented the claimant indicated that he made a mistake. The panel finds it unreasonable that the claimant was not able to remember when he passed his professional exam, and not even to remember where he was working when he passed the exam. Given the inconsistent testimony, the panel finds that it cannot place significant weight on the Occupational Certificate in support of the claimant's identity and employment.

[52] Applicant's counsel says that the exchange outlined in this paragraph does not appear in the Certified Tribunal Record so that "it never happened" and "there are no grounds whatsoever for dismissing the [Occupational Certificate]."

[53] First of all, I have no evidence from the Applicant that the exchange in question never happened. Counsel is inviting the Court to conclude that it never happened based upon what appears in the transcript of the hearing. The point was not raised in written submissions and the Applicant

has not provided evidence to the Court that the exchange never happened. Counsel for the Respondent was clearly surprised by the assertion at the judicial review hearing and had not been given an opportunity to investigate the issue and provide an explanation. In the circumstances, I do not think that the Court can simply assume that the RPD is making up the exchange or that it is mistaken about what was said. There is too much detail in paragraph 24 of the Decision to suggest that the RPD is mistaken about testimony and, in the absence of any evidence from the Applicant that he did not testify as stated, the Court cannot say that a material error occurs in the Decision on the issue of the Occupation Certificate. It is, in any event, only one factor relied upon for a general, cumulative finding that the Applicant was unable to establish his identity.

[54] In addition, the RPO who was present at the hearing wrote in her observations at page 467 of the CTR that

[The Applicant] offered a Chef's certificate awarded after three classes. In oral testimony he claims that he passed these courses in 2005. The certificate says 2002

[55] According to the transcript of the 16 September 2010 hearing, the RPO was to have her observations to Counsel by the 1 October 2010. The observations appearing in the CTR are not signed or dated. Though the Applicant filed written submissions on 1 November 2010, he does not mention the missing exchange or the RPO's comment in those submissions. While it is unclear when at the hearing the exchange in question occurred, both the RPD Member and the RPO agree that it occurred.

[56] There is potentially a problem with the RPD's statement in the Decision that

...the employment section in the claimant's PIF did not indicate the name of the restaurant as ChangLe [*sic*] Seafood Restaurant. There was a listing for Wan Long Seafood Restaurant; however this was for 2004 and not for 2005 when the [Applicant] alleged he passed the course.

[57] What the un-amended PIF actually says is that the Applicant was working as a chef at the Wan Long Seafood Restaurant in Chang Le, Fujian Province from February 2004 to December 2004. The un-amended PIF also indicates that he was working as a chef at the Bu Jian Bu San restaurant, also in Chang Le, from February 2005 to February 2006. The amendment to his PIF, which the Applicant filed on 29 January 2010, indicates that the Wan Long Seafood Restaurant is in Guang Ze, Fujian Province and the Bu Jian Bu San restaurant is in Fuzhou, Fujian province.

[58] Also, in the Applicant's Schedule 1 – Background Information, which he signed on 1 July 2008, he indicated that from February 2004 to December 2004 he was employed at Wang Long Lai Xiem in Guan Zhe Xian. Schedule 1 indicates he was unemployed from December 2004 to February 2005 and from February 2005 to February 2006 he was employed as a chef at Bu Jian Bu San Restaurant in Bu Fuzhon Shi. Given the uncertainty in these documents around his employment at the time the Applicant says he graduated, I cannot say that the RPD's conclusions about his Occupational Certificate were unreasonable.

[59] Even if the RPD's conclusion that the Occupational Certificate undermines the Applicant's credibility was a mistake, I am satisfied that the Decision as a whole is reasonable given the RPD's other findings on credibility. In *Stelco Inc v British Steel Canada Inc.*, [2000] FCJ No 286, Justice Evans said at paragraph 22 that

even if the Tribunal committed a reviewable error on some of its findings of fact, its decision to rescind will still be upheld if there were other facts on which it could reasonably base its ultimate conclusion.

[60] Justice Evans's guidance has been followed several times by this Court in the context of immigration decisions. See for example *Zazay v Canada (Minister of Citizenship and Immigration)* 2008 FC 182; *Ogiriki v Canada (Minister of Citizenship and Immigration)* 2006 FC 342, and *Agbon v Canada (Minister of Citizenship and Immigration)* 2005 FC 1573. In the present case, the RPD found that the Applicant was not credible on the basis of several factors other than the Occupational Certificate. There was enough other evidence to support the conclusion that he was not credible and had not established his identity.

[61] The Applicant also questions the RPD's assessment of the RIC on the basis that the RCMP forensic report specifically says that there are no signs of alteration. On this point, the RCMP report says in full:

Exhibit Q - 2 [the RIC] is well printed, using a combination of letterpress and rotogranure printing and a photographic emulsion (that is partially faded and yellowed). There are no signs on (*sic*) alterations on Q - 2, but there is damage on the edges of the lamina (cut and taped back together).

[62] It seems to me that this paragraph has to be read in conjunction with the RCMP's general conclusion about exhibits Q - 1 to Q - 4: "their authenticity remains 'Inconclusive.'"

[63] Because authenticity remained inconclusive, it was open to the RPD to embark upon the kind of inquiry that appears in the transcript and which is described in the Decision. I agree with the Applicant that, in its reasons, there are points at which the RPD becomes speculative but, read as a



whole, I do not think the Decision is unreasonable. The RPD provides a sufficient factual basis for its finding that the Applicant had not established his personal identity.

[64] The Applicant is, in effect, asking the Court to reweigh the evidence and reconsider the explanations he gave in answer to the RPD's concerns, and to reach a conclusion that is favourable to him. This is not the role of the Court. See *Su*, above, at paragraph 13.

[65] It is always possible to disagree with the RPD and argue that a different conclusion or outcome would have been reasonable. But this does not establish that the RPD reached an unreasonable decision that fell outside of the range described in *Dunsmuir*, above. The Applicant argues for different conclusions in this case, but his arguments do not take into account all of the factors at play (as set out in the RPD's reasons) and they do not convince the Court that the Decision falls outside of the *Dunsmuir* range.

[66] The RPD carefully explained the problems it had with each of the documents proffered by the Applicant. In addition, the RPD's conclusions that the Applicant had failed to establish identity and that he was not a credible witness were also supported by the following:

- The concerns regarding the RIC and Hukou;
- Inconsistency regarding the date of his examination;
- Lack of details from the detention certificate;
- Traveling through Germany on a German passport;
- Inability to prove that he was in China at the relevant time;
- The fact that the Applicant's father mailed him documents under his name.

[67] In addition, a lack of acceptable documents without a reasonable explanation for their absence, or the failure to take reasonable steps to obtain them, is a factor in assessing the credibility of any claimant. See *Rasheed v Canada (Minister of Citizenship and Immigration)* 2004 FC 587 at paragraph 13, *Narasingham v Canada (Minister of Citizenship and Immigration)* 2004 FC 294, at paragraphs 21 to 23 and *Umba*, above, at paragraph 45.

[68] In light of the Applicant's evidence, the RPD reasonably concluded that he had failed to provide sufficient credible or trustworthy evidence to establish his identity.

[69] The RPD is entitled to make reasonable findings based on implausibilities, common sense and rationality, and may reject evidence if it is not consistent with the probabilities affecting the case as a whole. The RPD does not necessarily have to accept a witness's testimony simply because it was not contradicted. See *Alizadeh*, above, and *Aguebor*, above.

[70] Questions of credibility and weight of evidence are within the jurisdiction of the RPD as the trier of fact. These questions afford no legal basis upon which the Court could intervene in this case. See *Brar v Canada (Minister of Employment and Immigration)*, [1986] FCJ No 346.

[71] Counsel concur that there is no question for certification and the Court agrees.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that**

1. The application is dismissed.
2. There is no question for certification.

“James Russell”

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Judge

**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** IMM-645-11

**STYLE OF CAUSE:** JIAN BIN LIN

- and -

THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** August 31, 2011

**REASONS FOR JUDGMENT  
AND JUDGMENT:** HON. MR. JUSTICE RUSSELL

**DATED:** October 31, 2011

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