

Federal Court



Cour fédérale

Date: 20111215

Docket: IMM-7645-10

Citation: 2011 FC 1483

Ottawa, Ontario, December 15, 2011

PRESENT: The Honourable Mr. Justice Mandamin

BETWEEN:

QING QING WENG

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Ms. Qing Qing Weng applies for judicial review of the December 10, 2010 decision of the Immigration and Refugee Board's Refugee Protection Division (RPD) which found that the Applicant was not a Convention refugee and was not a person in need of protection.

[2] The RPD found that the determinative issue was the Applicant's credibility based on her oral testimony and Personal Information Form (PIF) narrative concerning her membership in a

house church in China and her identity as a genuine practicing Christian in Canada. The RPD found the Applicant was not a credible witness.

[3] I have concluded the application for judicial review should be granted for the reasons that follow.

Background

[4] The Applicant, Qing Qing Weng, is a citizen of the People's Republic of China (China).

[5] The Applicant says she joined the house church her grandfather belonged to in China in August 2006 shortly after the death of her grandmother. The Applicant was 17 years old at the time.

[6] In China, a house church is an unregistered, underground church, usually held in individuals' homes. They are illegal in China.

[7] In November 2007, the Applicant came to study in Canada on a student visa. The visa was to expire on February 28, 2009.

[8] Since December 2007, the Applicant has been regularly attending the church services of the Living Water Assembly in Toronto. According to her testimony, she attends the church three times a week.

[9] On December 28, 2008, the Applicant was informed by her parents that the Public Security Bureau (PSB) in China had raided the house church she attended with her grandfather. On December 31, 2008, the Applicant was informed that the PSB had come to her home and that the Applicant was wanted by them.

[10] In January 2009, the Applicant made a claim for refugee protection in Canada.

Decision Under Review

[11] The RPD found that the determinative issue was the credibility of the Applicant's oral testimony and her PIF narrative concerning her membership in a house church in China and her identity as a genuine practicing Christian in Canada.

In China

[12] The RPD reviewed the testimony of the Applicant regarding her introduction to Christianity from her grandfather and her decision to join the house church her grandfather attended. The RPD also reviewed the reaction and actions of the Applicant's parents regarding her choice to join the house church. The RPD discussed the alleged raid of the Applicant's house church while she was attending school in Canada and the possible reason why she was identified by the PSB as a church member even though the Applicant had been away from China for more than a year at the time of the alleged raid.

[13] The RPD found that the Applicant's testimony on these issues was neither plausible nor credible. The RPD stated that the Applicant's testimony regarding her grandfather's actions, her parents' actions and the actions of an alleged fellow Christian "simply did not ring true".

[14] The RPD also discussed the fact no summons had been left by the PSB. The RPD found that it was reasonable to assume that a summons would have been left by the PSB based on testimony that they had visited her home in China approximately eight times. The RPD drew a negative inference from the lack of a summons.

[15] The RPD then reviewed the country documentary evidence regarding China's response to underground church activity. The RPD noted that while there was evidence of raids and arrests of house churches and their members in China, there were no records of raids or arrests in Fujian province where the Applicant had lived. The RPD found that although country documentary information regarding China generally provided mixed messages concerning the suppression of underground church activity, the lack of any information regarding instances of arrests and other forms of persecution in Fujian province in any of the documents available to the panel was significant and convincing.

[16] For the RPD, the issue was not whether the Applicant was forced to be a silent Christian and practice her religion secretly. Rather, it was concerned whether the Applicant was ever a member of an underground church that was raided by the PSB and whether she was ever a practicing Christian in China.

[17] Based on the documentary evidence and the findings and negative inferences noted above, the RPD found that the Applicant's alleged underground church would not have been of any interest to the PSB in Fujian province. The RPD further found that the Applicant was not a member of an underground church in China, that no raid took place, that she was not a practicing Christian in China, and that she was not being pursued by the PSB. The RPD held that the Applicant's claim for protection was made on a fraudulent basis and that these findings raised a serious doubt regarding the Applicant's general credibility.

In Canada

[18] The RPD observed that the evidence, including a letter from a pastor in Toronto indicating she was a member of his Pentecostal church, confirmed the Applicant's church membership, but did not confirm her motivation when she joined the church. The RPD, having found that the Applicant was not a practicing Christian when she arrived in Canada and that her claim for protection was made on a fraudulent basis, determined that the Applicant joined the church in Toronto only to support a planned fraudulent claim for protection and held that the claimant was not now a genuine practicing Christian.

Relevant Legislation

[19] The *Federal Courts Act*, RSC 1985, c F-7 provides:

18.1 (4) The Federal Court may grant relief under subsection (3)	18.1 (4) Les mesures prévues au paragraphe (3) sont prises si
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if it is satisfied that the federal board, commission or other tribunal	la Cour fédérale est convaincue que l'office fédéral, selon le cas:
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...

...

(d) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it;	d) a rendu une décision ou une ordonnance fondée sur une conclusion de fait erronée, tirée de façon abusive ou arbitraire ou sans tenir compte des éléments dont il dispose;
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[20] The *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*) provides:

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,	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 :
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(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	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;
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(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.	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.
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97. (1) A person in need of protection is a person in Canada whose removal to their country	97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait
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or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(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...

personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(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,

Issues

[21] The issues arising in this case are:

1. *Was the RPD's decision that the Applicant was and is not a genuine Christian practitioner unreasonable?*
2. *Did the RPD take all of the relevant evidence into consideration in making its decision?*

Standard of Review

[22] The RPD's findings of fact and conclusions on questions of mixed fact and law are to be assessed on the standard of reasonableness: *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190. The credibility findings of the RPD are entitled to a high degree of deference: *Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315.

Analysis

[23] After reviewing the RPD's reasons, the transcript of the hearings, and the submissions of counsel for the parties, I find that the RPD's reasons are not reasonable and that judicial review should be granted.

1. *Was the RPD's decision that the Applicant was and is not a genuine Christian practitioner unreasonable?*

[24] The Applicant argues that the RPD made several conclusions regarding the plausibility and credibility of the Applicant's testimony without providing any analysis, and therefore, these conclusions were unreasonable.

[25] This Court has previously held that a recital of facts with the conclusion not based on any analysis does not constitute a reasoned decision: *Espino v Canada (Minister of Citizenship & Immigration)*, 2006 FC 1255, 301 FTR 155 at para 11.

[26] In its decision, the RPD makes several negative findings of credibility. After reviewing the RPD's decision, some of the RPD's conclusions are made after a recital of the facts without analysis. For example, the RPD stated:

The claimant was asked what her grandfather told her about his church. She responded that she was told it was an underground church, that it was illegal and that there was a risk of arrest and imprisonment by the PSB. The claimant was asked if she told her parents about her intention to join an underground church. She said 'yes' and they did not agree. She was asked if they sought to prevent her from joining this church. She said they subsequently indicated she was old enough to make her own decisions. The claimant testified that her grandfather encouraged her to join an illegal church and that both she and her grandfather believed that there was a risk of arrest and imprisonment. The claimant was only 17 years old at the time. In addition, the claimant testified that, although her parents were concerned about the risk and were opposed to her joining this church, they subsequently agreed and made no effort to stop her. I find, on a balance of probabilities, that the claimant's testimony in this regard is neither plausible nor credible.

[27] The RPD merely provides a summary of the facts and the testimony of the Applicant. The RPD, without any analysis or reasons, finds that the Applicant's testimony in this regard was neither plausible nor credible. The RPD did not refer to any internal inconsistency in the Applicant's testimony; nor did the RPD state that this evidence was inconsistent with the Applicant's PIF narrative. I find the RPD's conclusions in this regard are unreasonable.

[28] The Applicant submits the RPD relied on speculation to make a further finding that the Applicant's testimony was neither plausible nor credible. The Applicant submits the RPD invited the Applicant to speculate as to how the PSB were able to identify the Applicant as a member when she had been away from China for more than a year and then held this against her.

[29] The Respondent submits that the Applicant agreed at the hearing with the RPD's initial conclusion on this matter that it was probably another church member who turned her in. The Respondent submits that it was reasonable for the RPD to find that another member of the alleged church had probably informed on her.

[30] This Court has long held that findings of fact based on speculation are inherently unreasonable: *Ukleina v Canada (Minister of Citizenship & Immigration)*, 2009 FC 1292 at para 8. As Justice Harrington warned, "a question along the lines of why do you think someone else knew something is fraught with danger. It invites speculation": *ibid* at para 12.

[31] In this case, the RPD not only invited speculation by asking the Applicant how the PSB were able to identify her as a member when she had been away from China for more than a year, but also suggested the very answer that the RPD later found was neither plausible nor credible. This is evidenced from the following exchange found in the transcript:

Member: Why would the police have identified you as a member?

Claimant: I've always been one.

Member: Why would the police have identified you as a member of this underground church when you hadn't been there for more than a year?

Claimant: I don't understand – I don't know. I don't know.

Member: It's difficult to understand how they would do this. It's difficult to believe that a member of this congregation ... would identify a young person like yourself who hadn't been there for more than a year. Would you agree?

Claimant: But I maintained contact all this time with my grandfather. And I still – I still kept asking him – I still asked my grandfather about the things going on in the underground church.

Member: I don't understand. How would the police know you had been a member, if you know? How do you think they would know that you had been a member of this church?

Claimant: I think probably a member confessed to the police.

Member: I have difficulty understanding that, that anyone would identify a young person like you, you would have been 17 years old, when you hadn't been there for a year and there was no necessity to do this.

Claimant: I don't know.

[Emphasis added]

Initially, the Applicant, when asked how the PSB had identified her, stated she did not know. It was not until after the RPD suggested the possibility that another church member may have informed on her that the Applicant replied that this was what probably happened. The RPD concluded that the Applicant's testimony regarding the actions of an alleged fellow Christian "simply did not ring true". The testimony was based on speculation which was both invited and suggested by the RPD.

[32] It was unreasonable for the RPD to rely on the Applicant's speculation to conclude that the Applicant's testimony was neither plausible nor credible. These are exactly the unreasonable findings Justice Harrington warned against in *Ukleina*.

[33] The RPD's negative findings of credibility led the RPD to determine that the Applicant's claim for protection was made on a fraudulent basis. The RPD concluded this was determinative of whether the Applicant was a genuine practicing Christian in Canada.

[34] The RPD found that the Applicant was not a genuine practicing Christian in Canada despite the fact that the Applicant had a letter from a pastor in Toronto indicating she was a member of his Pentecostal church, as well as her own testimony and supporting documentary evidence. The RPD's conclusion that the Applicant was not a practicing Christian was based entirely on its previous findings, which I have concluded were unreasonable. I conclude the RPD's decision that the Applicant is not now in Canada a practicing Christian is also unreasonable.

2. *Did the RPD take relevant evidence into consideration in making its decision?*

[35] Section 18.1(4)(d) of the *Federal Courts Act* states that this Court may grant relief if it is satisfied that a federal board has based its decision on an erroneous finding of fact made without regard for the material before it. While it is well established the RPD is not required to mention every piece of evidence in its reasons, this Court has held:

The Court may infer that the administrative agency under review made the erroneous finding of fact “without regard to the evidence” from the agency's failure to mention in its reasons some evidence before it that was relevant to the finding, and pointed to a different conclusion from that reached by the agency: *Cepeda-Gutierrez v Canada (Minister of Citizenship & Immigration)* (1998), 157 FTR 35 at para 15.

[36] Here the RPD erred by not taking into consideration relevant evidence of arrests and other forms of persecution of house church members in the Applicant's home province of Fujian. The RPD, after reviewing the country documentary evidence, stated:

Although country documentary information regarding China generally provides mixed messages concerning the suppression of underground church activity, the lack of any information regarding instances of arrests and other forms of persecution for Fujian province in any of the documents available to the panel is significant and convincing. This does not mean that there is no possibility that an underground church community might be harassed by the PSB. However, there is information regarding suppression in a number of small provinces but none regarding this large and important province.

[Emphasis added]

[37] A review of the country documentary evidence shows that the RPD erred in making its conclusion. Several articles found in the tribunal record discuss police crackdowns on underground Catholics and other Christians in Fujian province. The record before the RPD also includes two letters from Bob Fu, President of China Aid Association, a Non-governmental Organization that monitors human rights and the rule of law issues in China. In the letters, Mr. Fu states that religious repression continues to occur in every province in China including Fujian province.

[38] The RPD's assertion that there was no information regarding suppression or persecution in Fujian is in error. The RPD relied on this erroneous finding in its reasons finding it significant and convincing. I conclude the RPD's determination is based on an erroneous finding of fact made without regard to the evidence before it and is therefore unreasonable.

Conclusion

[39] The application for judicial review is granted and the matter is remitted back for reconsideration by a differently constituted panel.

[40] The parties have not proposed and I do not certify any question of general importance.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted and the matter is remitted back for reconsideration by a differently constituted panel.
2. No question of general importance is certified.

“Leonard S. Mandamin”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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