

Federal Court



Cour fédérale

**Date: 20120206**

**Docket: IMM-4437-11**

**Citation: 2012 FC 157**

**Ottawa, Ontario, February 6, 2012**

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

**BETWEEN:**

**SHOU GUI LIN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**INTRODUCTION**

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 (Act) for judicial review of the decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated 8 June 2011 (Decision), which refused the Applicant's application to be deemed a Convention refugee or a person in need of protection under sections 96 and 97 of the Act.

## **BACKGROUND**

[2] The Applicant is a citizen of the People's Republic of China (PRC) who says he is a Christian. He is from Fujian province and says that he attended an underground house church there with his parents. He has also attended two Pentecostal churches in Canada and, on 15 February 2011, he married a permanent resident of Canada. He has a daughter, born in Canada, who lives with him and his wife in Toronto.

[3] On 7 October 2007, the Applicant says that his parents attended a service at their underground church; he did not attend because he had to work. Later that evening, a church member's mother telephoned him and told him his mother and father had been arrested when the Public Security Bureau (PSB) raided their church. The Applicant went to the PSB station where his parents were detained to try and bail them out. He knew his parents would not inform on him, so he thought he would be safe. When the Applicant was at the station, PSB officers detained him for three days, interrogated him, and accused him of being a Christian.

[4] On 11 October 2007, the Applicant was released by the PSB who demanded he pay 100,000 Yuan bail for his parents. The Applicant paid the bail money, but he and his parents were required to report to the PSB weekly, on Sundays. The Applicant obeyed the order to report and says that on some occasions when he reported he was interrogated and was sometimes required to report again during the week. The Applicant says he could not get a job because of the reporting requirement.

[5] After they were released, the Applicant and his parents continued to practise Christianity in their home, but they no longer attended services at their underground church. Together, they decided that the Applicant should leave the PRC. While preparations were being made for him to

leave, the Applicant stopped reporting to the PSB. Though PSB members came to their home looking for him, the Applicant's parents said they did not know where he was.

[6] The Applicant engaged a smuggler and fled the PRC in January 2008. He travelled first to Dubai, then to Israel. From Israel, the Applicant came to Canada, where he arrived in Toronto on 22 January 2008. He claimed protection on 25 January 2008.

[7] The Applicant says that, at the end of February 2008, he learned that his parents had gone into hiding from the PSB. In May 2008, he learned that they were arrested at the border between Vietnam and the PRC. His father was sentenced to three years' imprisonment and his mother was sentenced to a three-and-one-half year imprisonment. He says they are both currently held in the Baisha Prison in Fu Zhou City, in the PRC.

[8] To support his claim for protection, the Applicant provided the RPD with a receipt for transportation costs for his parents from the border where they were arrested, dated 21 May 2008, a Notice of Arrest regarding his parents, dated 16 May 2008, and two visiting cards from Baisha Prison showing visits between the Applicant's sister and his father and mother, both dated 10 December 2008. The Applicant also provided the RPD with his Resident Identity Card (RIC), Household Register Card (Hukou), a detention release card for him dated 11 October 2007, and detention release cards for his parents dated 12 October 2007. He also provided a letter from the Reverend David Ko, pastor of the Living Stone Assembly – a Christian church in Scarborough, Ontario – which confirms that the Applicant regularly attended that church. Finally, the Applicant provided the RPD with a baptism certificate which showed that he had been baptised on 27 September 2008.

[9] The RPD conducted a hearing into the Applicant's claim on 13 May 2010, at which the Applicant's counsel objected to the quality of interpretation. The RPD granted counsel's request for an audit of the translation and a *de novo* hearing. The *de novo* hearing was conducted on 24 February 2011 before a different RPD member. The Applicant, his lawyer, and an interpreter were present at this hearing. The hearing ran out of time and the RPD adjourned it to 24 May 2011. After the hearing was completed, the RPD considered the claim and made its Decision on 8 June 2011. The RPD found that the Applicant is neither a Convention refugee nor a person in need of protection and gave him notice of the Decision on 9 June 2011.

#### **DECISION UNDER REVIEW**

[10] The RPD determined that the Applicant is not a Convention refugee or a person in need of protection because he is not at risk of persecution in Fujian province. The RPD found that he had not established a serious possibility of persecution or a risk to his life or of cruel and unusual treatment or punishment if he were returned to the PRC.

[11] The RPD reviewed the Applicant's story of his and his parents' arrest, detention, bail, and requirement to report. It noted his allegation that he could not secure employment because the reporting requirement interfered with his ability to work.

#### **Identity**

[12] The PRD found that the Applicant had established his identity by certified true copies of his passport and RIC.

## Analysis

[13] The RPD focussed on the credibility of the Applicant's allegations of risk of harm in the PRC. It acknowledged that the Applicant may have faced difficulties at the hearing from cultural factors, the hearing room atmosphere, and the RPD's questioning but the RPD said that it had taken all these potential difficulties into account when reaching its Decision.

[14] The RPD found that the documentary evidence before it did not support the Applicant's story. Although he had knowledge of Christianity and had produced a letter from Rev. Ko, the documents he submitted only showed that he had participated in church activities; they did not show his motivation, so the RPD gave them little weight.

[15] The RPD found that the Applicant's testimony was not supported by documentary evidence on Fujian province but it also made the following finding:

[The] panel finds that a church in Fujian province would be discovered and that [the Applicant] would be detained for three days and his parents would have been sentenced to prison terms of three and three and a half years respectively.

[16] The RPD said that it was guided by the country condition documents before it. After noting that the Applicant was from Fujian province, it found that the IRB's Response to Information Request (RIR) CHN100386.E – *Situation of Catholics and treatment by authorities, particularly in Fujian and Guangdong (2001 – 2005)* established that Fujian and Guangdong provinces have the most liberal policy on religion of all the provinces in the PRC. It also found that, though arrests were documented in regions around Fujian, there was no documentary evidence of recent arrests of Christians in Fujian. Further, had there been arrests of Christians in Fujian, the RPD found that they would have been documented. The RPD noted that in *Nen Mei Lin v Canada (Minister of*

*Citizenship and Immigration*) IMM-5425-08, Justice Paul Crampton upheld a similar finding by the RPD.

[17] Based on a 2009 report from the United States Department of State, the *2009 International Religious Freedom Report*, the RPD also found that the situation in Fujian province does not reflect the situation in other provinces where ordinary Christians were arrested. The RPD also noted a report from the United Kingdom Home Office, which said that prayer meetings and Bible studies among families and close friends do not need to register with the authorities.

[18] The RPD found that the risk to the Applicant was low and that he would be able to practise his religion in any church in Fujian province. It found there was no serious possibility that he would be persecuted for practising Christianity. The RPD noted my decision in *Yang v Canada (Minister of Citizenship and Immigration)* 2010 FC 1274, where I held that it was reasonable for the RPD to conclude that incidents of persecution would be documented. The RPD also considered a decision from the Australian Refugee Review Tribunal, which the Applicant had submitted, but found that case was distinguishable and that the documents before it were not the same as those before the Australian tribunal.

### **Applicant's Documents**

[19] The RPD also considered the documents the Applicant had submitted but found that the Notice of Arrest, visiting cards, detention release certificates, and bail receipts did not support his story. These documents, the RPD found, did not enhance the plausibility of the raid on his house church and his parents' detention and prison sentences.

[20] The RPD adopted the following passage from RIR CHN103134.E - *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)* as its reasons for rejecting the Applicant's documents:

In 12 June 2009 correspondence, a professor of law at George Washington University Law School, who specializes in the Chinese legal system, stated that "just about any document can be forged in China, and many are." A 2007 briefing paper published by the Economist Intelligence Unit (EIU) indicates that a United States (US) consular official based in southern China reported that fake passports in China are rare, while the ability to screen other documents is inhibited by "widespread fraud" (Sept. 2007, 18). According to the official, "you can't trust any [personal] documents in China," and the market for fraudulent documents is rapidly expanding (EIU Sept. 2007, 18). The official further indicated that documents are assumed to be fraudulent unless proven otherwise, and that the verification of documents is a "labour-intensive and time-consuming process" (ibid.). A 2009 *Vancouver Sun* article reports that it is possible to "buy any kind of document you want" in China (19 Mar. 2009).

A 2005 *Jane's Intelligence Review* report suggests that Chinese and South Asian groups are "key players" in human smuggling and that providing forged documents is a "basic requirement" in this market (1 Feb. 2005). According to the report, migrants from China travel to Thailand as tourists using authentic passports and are provided with forged documents in Bangkok (*Jane's Intelligence Review* 1 Feb. 2005). The article further states that illegal migrants from China use altered Singaporean or Japanese passports due to visa-waiver provisions for travel to the US and the European Union (ibid.). A 2007 report written by the US National Institute of Justice (NIJ) indicates that Chinese nationals who are smuggled into Taiwan use fake IDs to acquire Taiwanese passports for travel to the US (Jan. 2007, 26). Agence France Presse indicates that an immigration ring in Spain was dismantled and over 50 Chinese nationals were arrested on suspicion of helping with the illegal entry of Chinese citizens, who were provided with fake documents (30 Mar. 2009).

[21] The RPD concluded that, based on all the evidence before it, its cumulative findings, and its negative inferences, the Applicant had not established his claim.

## STATUTORY PROVISIONS

[22] The following provisions of the Act are applicable in this proceeding:

<p><b>96.</b> 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,</p> <p>(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;</p> <p>[...]</p> <p><b>97.</b> (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 subject them personally</p> <p>(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or</p> <p>(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if</p> <p>(i) the person is unable or,</p>	<p><b>96.</b> 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 :</p> <p>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;</p> <p>[...]</p> <p><b>97.</b> (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 avait sa résidence habituelle, exposée :</p> <p>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;</p> <p>b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :</p> <p>(i) elle ne peut ou, de ce fait,</p>
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because of that risk, unwilling to avail themselves of the protection of that country,	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.

## ISSUES

[23] The Applicant raises the following issues:

- a. Whether the RPD's negative credibility finding was reasonable;
- b. Whether the RPD's conclusion on the risk he faced was reasonable.

## 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. Instead, where the standard of review applicable to a 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 a consideration of the four factors comprising the standard of review analysis.

[25] In *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (FCA) the Federal Court of Appeal held that the standard of review on a credibility finding is reasonableness. Further, in *Wu v Canada (Minister of Citizenship and Immigration)* 2009 FC 929, Justice Michael Kelen held at paragraph 17 that the standard of review on a credibility determination is reasonableness. Justice Richard Mosley made a similar finding in *Mejia v Canada (Minister of Citizenship and Immigration)* 2011 FC 851 at paragraph 7. The standard of review on the first issue is reasonableness.

[26] In *Sarmis v Canada (Minister of Citizenship and Immigration)* 2004 FC 110, at paragraph 11, Justice Michel Beaudry held that the standard of review on the assessment of persecution was patent unreasonableness. Also, in *Butt v Canada (Minister of Citizenship and Immigration)* 2010 FC 28, Justice Yvon Pinard held at paragraphs 6 and 7 that the standard of review applicable to the RPD's assessment of whether a claimant met the qualifications of section 96 of the Act was reasonableness. The standard of review on the second issue is reasonableness.

[27] When reviewing a decision on the 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 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’s Credibility Finding Was Unreasonable**

[28] The Applicant says that, when it found he was not credible, the RPD based its finding solely on the National Documentation Package before it. He says that the RPD did not consider his testimony that he is a Christian or the documents he submitted to show that he is a Christian. The RPD failed to make a determination that he is or is not a Christian, which renders the Decision unreasonable. The Applicant points to the RPD’s statement that

The panel finds that a church in Fujian province would be discovered and that he would be detained for three days and his parents would have been sentenced to prison terms of three and three and a half years respectively.

[29] Even if this statement was meant to be a negative inference, it is not clear what the RPD’s finding was on his Christian faith or what it based that finding, if any, on.

[30] The RPD also refused to actually consider the documents that the Applicant submitted to support his story of arrest, detention, and bail. Though the RPD’s National Documentation Package (NDP) contained evidence pointing to the availability of fraudulent documents in the PRC, this does not mean that every document from the PRC is fraudulent. At minimum, the RPD was required to consider the possibility that the documents the Applicant submitted were genuine, which it failed to

do. When it relied solely on the NDP to assess the credibility of his story and his Christianity, the RPD acted unreasonably.

### **The RPD's Conclusion on Risk was Unreasonable**

[31] The Applicant also argues that the RPD's conclusion on the risk he faces on return to the PRC, although it was based on information in the NDP, did not take into account relevant country condition documents he submitted. He points to a 2009 letter from Bob Fu, President of the China Aid Association (China Aid). This letter says, in part, that

It is naïve and incorrect to assume that house churches are able to operate without any risk or problems in Guangdong and Fujian province. My sources and history tell me otherwise.

[32] The RPD was bound to consider the documents the Applicant submitted which went against its conclusions.

[33] The Applicant also says that the RPD failed to consider evidence in the NDP which deals specifically with the risk in Fujian province. RIR CHN103500.E – *Situation of Protestants and treatment by authorities, particularly in Fujian and Guangdong (2005 – May 2010)* quotes a letter sent to the Immigration and Refugee Board's Research Directorate, which says that

With specific reference to the provinces Fujian and Guangdong, it is absolutely incorrect to find that there is religious freedom in these provinces. [...] [T]he persecution may come and go and not be totally predictable, but it is always present. Even the very threat of a government crackdown is a method of persecution. The house churches in Fujian and Guangdong, like all of China, face the constant and fearful risk of being closed and its members punished. Certainly, these provinces do not enjoy religious freedom while all other parts of China do not.

[34] The Applicant also refers to *Liang v Canada (Minister of Citizenship and Immigration)* 2011 FC 65, where Justice Michel Shore held at paragraph 2 that

The destruction of house churches in the Fujian province is evidence, in and of itself, that the Chinese authorities do not allow Christians to practice their faith freely. Freedom of religion encompasses the ability to espouse one's faith publicly, in a manner, individually or collectively, chosen in as much as not to interfere with the fundamental rights of others. By destroying house churches, the Chinese government is infringing on that right in a persecutory manner.

[35] It was an error for the RPD to rely on the lack of evidence of arrests in Fujian without looking at the whole picture before it. The Applicant relies on *Liu v Canada (Minister of Citizenship and Immigration)* 2010 FC 135, where Justice James O'Reilly held at paragraph 13 that

In light of the equivocal nature of the documentary evidence, it was important that the Board refer to and weigh both the evidence supporting Ms. Liu's claim and that which contradicted it. Looking at the Board's findings as a whole, I must conclude that its decision was unreasonable.

[36] The documentary evidence the Applicant submitted suggested a forward-looking risk of persecution, so it was unreasonable for the RPD to conclude otherwise based only on the NDP.

## **The Respondent**

### **The RPD's Conclusion on Credibility was Reasonable**

[37] The Respondent argues that the RPD's conclusion that the Applicant's story was not credible was supported by the preponderance of the evidence before it. The Respondent also says that the evidence the Applicant submitted was insufficient to establish a risk of persecution or harm in Fujian province.

[38] In *Zaree v Canada (Minister of Citizenship and Immigration)* 2011 FC 889, Justice Luc Martineau said at paragraph 6 that

It goes without saying that assessing the claimant's credibility is at the heart of the panel's expertise and that the Court owes substantial deference to such determinations (*Zheng v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 673 at paragraph 1).

[39] Based on *Zaree*, the Respondent says that the Court should defer to the RPD's conclusions on regarding credibility.

### **No Serious Possibility of Persecution**

[40] When it concluded that the risk the Applicant faced in Fujian province was low, the RPD preferred some pieces of evidence over others. *Awolaja v Canada (Minister of Citizenship and Immigration)* 2010 FC 1240, *Singh v Canada (Minister of Citizenship and Immigration)* 2002 FCT 1013, and *Zhou v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 1087 all establish that the RPD is justified in preferring reliable, independent evidence over a claimant's oral testimony. In this case, the RPD made five findings based on independent documentary evidence which demonstrated the risk the Applicant faced in Fujian Province:

- a. There were no reports of arrests of Christians in Fujian;
- b. The situation in Fujian does not reflect the situation in other provinces;
- c. Fujian and Guangdong have the most liberal policy on religion, including Christianity;
- d. Most unregistered churches in the PRC no longer operate in secret;
- e. 50 to 70 million Christians in the PRC practise without sanction.

[41] At the hearing, the Applicant was given an opportunity to address the contrary documentary evidence, but he only reiterated his position that what he said had happened to him actually had occurred. The documentary evidence was detailed with respect to the location of persecution in the PRC, so it was reasonable for the RPD to conclude that arrests or persecution in Fujian would be documented. This approach has been approved by the Court in several cases (see *Li v Canada (Minister of Citizenship and Immigration)* 2011 FC 941, *Wang v Canada (Minister of Citizenship and Immigration)* 2011 FC 636, and *Yang*, above).

[42] Although the RPD's statement at paragraph 8 of the Decision is confusing, the confusion results only from a typographical error. Looking at the Decision as a whole, the RPD's reasons are clear and reasonable.

### **The RPD did not Ignore Evidence**

[43] Although the Applicant has asserted that the RPD ignored the letter from Mr. Fu, the RPD clearly alluded to this letter in the Decision. As the RPD said at paragraph 15 of the Decision, China Aid, "stated in its report and letters that they have not documented all cases of persecution and religious repression occurring in every province in China, including Guangdong and Fujian." The RPD explained how the evidence from China Aid did not contradict its finding on risk. Further, this letter did not directly refute its conclusion, so the RPD was not required to address it specifically. The Respondent points to *Zhang v Canada (Minister of Citizenship and Immigration)* IMM-3500-11 (unreported) where Justice Robert Barnes said at page 3 that

The Board did not say that there was no risk of religious persecution for Roman Catholics in Fujian province. The Board simply observed that there was no specific evidence of recent arrests or incidents of persecution in that part of China. The country condition evidence relied upon by Ms. Zhang does not contradict that conclusion. The

China Aid letter dated February 21, 2009 and the Board's Response to Information Request from July 2010 said nothing about arrests or other forms of persecution in that part of China and there was, accordingly, no need to refer to those documents: see *Yang v Canada (MCI)*, 2010 FC 1274 at paras 39-40

[44] The Respondent also relies on *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 for the proposition that the RPD is presumed to have considered all the evidence before it. He says that this presumption applies to RIR CHN103500.E, which the Applicant says that the RPD ignored. The Respondent also notes that the passage from this document, which the Applicant has highlighted in his argument, is from the Director of China Aid and simply reiterates the information in the China Aid letter the RPD explicitly referred to and rejected in the Decision.

[45] Although the Applicant relies on *Liang*, above, to show that Christians in Fujian province are at risk of persecution, the Respondent points to *He v Canada (Minister of Citizenship and Immigration)* 2011 FC 1199, where Justice David Near held at paragraph 14 that

The Respondent contends that the Applicant's reliance on *Liang*, above, is misplaced. Subsequent jurisprudence considering *Liang* has stressed that each case depends on its own facts and how they are assessed by the Board (see for example *Li v Canada (Minister of Citizenship and Immigration)*, 2011 FC 941, 2011 CarswellNat 2977 at para 47; *Yang*, above). It cannot be taken as a broad precedent for all Chinese applicants claiming persecution on religious grounds when the issue was whether sufficient weight was given to specific information on underground churches.

[46] The facts in this case are different from those in *Liang*, so it was reasonable for the RPD to conclude that the risk the Applicant faced was low. The RPD reasonably focussed on the documentary evidence which demonstrated the risk faced by Christians in Fujian province.



### **Documents on Arrests not Credible**

[47] The Respondent notes that the RPD's assessment of the evidence before it is to be given significant deference by the Court. This deference includes findings on the credibility of documents. When examining documents, it is acceptable for the RPD to rely on its knowledge of the availability of fraudulent documents to assess credibility. As Justice Near held in *Lin v Canada (Minister of Citizenship and Immigration)* 2010 FC 183 at paragraph 21,

While there is no presumption of fraud if no further evidence of a document's authenticity is produced, the Board is entitled to rely upon its knowledge regarding the availability of forged documents in a particular region to question their probative value (see *Gasparyan v. Canada (Minister of Citizenship & Immigration)*, [2003] F.C.J. No. 1103, 2003 FC 863 (F.C.) at paragraph 7). The onus is on the applicant to justify his claim for refugee status and provide the appropriate documentation (see *Wang v. Canada (Minister of Citizenship & Immigration)*, [2001] F.C.J. No. 911, 2001 FCT 590 (Fed. T.D.) at paragraph 21; *Gasparyan*, above, at paragraph 9). Therefore, the Board's decision in this area will be shown deference and considered reasonable.

[48] In the present case, the RPD based its conclusion that the documents the Applicant had submitted to prove his story were fraudulent on three facts:

- a. Any document can be forged in the PRC;
- b. Documents from the PRC cannot be trusted and are assumed to be fraudulent;
- c. Any document in can be purchased in the PRC.

[49] These facts formed a reasonable basis for the RPD to find that the Applicant's documents were fraudulent, so the RPD's findings should not be disturbed.

### **Insufficient Evidence of Personal Risk**

[50] The only evidence before the RPD which showed the risk of persecution the Applicant faced in Fujian province was a detention certificate from Fu Zhou city which said that the case against him had been dismissed. At the hearing, the Applicant testified that this meant he was free to leave, but still had to report to the PSB every week. When the RPD asked the Applicant how he knew the PSB was still looking for him, he said that his sister had told him, but he was unable to produce a document or summons for his arrest. The evidence he provided to demonstrate the risk he faced in Fujian province was insufficient, so the RPD's conclusion that the Applicant did not face a serious possibility of persecution was reasonable.

### **ANALYSIS**

[51] A number of extremely puzzling things are said in this Decision. I find paragraphs 8 and 22 difficult to understand. Even if I were to accept the Respondent's position that paragraph 8 contains nothing more than typographical errors that require the word "not" to be inserted three times, I still do not understand why the documents referred to in paragraph 22 "do not enhance the plausibility of the raid and the subsequent detainment of the claimant and the sentencing of his parents" other than that they are rejected because fraudulent documents are readily available in China. I share the Applicant's concern that, when read as a whole, the Decision reads as though it is based entirely upon the RPD's own information package and the evidence submitted by the Applicant is never really assessed on its merits.

[52] I find the RPD's treatment of the documentary evidence adduced by the Applicant to support his story was unreasonable.

[53] The Applicant's story about being detained, interrogated, forced to pay bail money, and to report to the authorities was central to his claim. To support this story, he provided several documents, but the RPD rejected them out of hand because one of the RIRs before it showed that fraudulent documents are readily available in the PRC. Just because fraudulent documents are readily available in the PRC does not, for that reason alone, mean that the Applicant's documents were fraudulent. As Justice Konrad von Finckenstein said in *Cheema v Canada (Minister of Citizenship and Immigration)* 2004 FC 224 at paragraph 7

The documents may well be forgeries, however evidence of widespread forgery in a country is not, by itself, sufficient to reject foreign documents as forgeries. As the Respondent noted evidence of widespread forgery merely demonstrates that false documentation could be available to the Applicant.

[54] The RPD's reasoning would mean that even genuine documents would not be acceptable. The fact that inauthentic documents are available does not relieve the RPD of the duty to determine whether particular documents presented by a claimant are genuine or not. The Respondent argues that the "fraudulent documents" ground merely supports the RPD's earlier finding that the Applicant's evidence is not acceptable because it is not supported by the objective evidence referred to by the RPD. In my view, this would mean that the RPD excluded evidence on the sole basis that it contradicts its own information package, and not because it has any inherent defects.

[55] I am concerned that the RPD does not seem to have looked at the documents the Applicant submitted at all. The RPD must analyze all of the evidence before and weigh the positive against the negative (see *Liu*, above, at paragraph 13). It may be that fraudulent documents are widely available in the PRC. However, this does not mean that every document that comes out of the PRC is

necessarily fraudulent. The RPD was obliged to examine and weigh the actual documents in front of it, rather than simply rejecting them out of hand.

[56] The RPD's unreasonable approach to the documentary evidence the Applicant submitted becomes clear if one looks at two separate findings that it made about the Applicant's documents.

At paragraph 4 of the Decision, the RPD

finds that the [Applicant] is a citizen of the People's Republic of China. His citizenship is established by certified true copies of his passport and resident identity card.

[57] Later on in the Decision, the RPD finds that the documents the Applicant submitted to prove his allegations of arrest and detention are fraudulent and do not support his story because documents from the PRC are assumed fraudulent, any document can be forged in the PRC, and verification of documents is difficult. What is missing from the Decision is any kind of analysis to differentiate the two sets of documents.

[58] The Applicant's passport and RIC came out of the same PRC as did the documents which he submitted to prove his story. It may be that the RPD had good reason for accepting the identity documents while rejecting the other documents, but the Decision does not clearly disclose the reasons why. There is also nothing on the record with which the Court can use to supplement the RPD's reasons (see *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)* 2011 SCC 62 at paragraph 15). The Applicant and the Court are left wondering how the RPD arrived at its Decision on the genuineness of his documents, which renders it unsafe and requires that it be returned for reconsideration.

[59] The Applicant's narrative of arrest and detention was highly material to his claim for protection. If it is believable, then it brings into doubt the RPD's analysis that there is no evidence of the arrest and persecution of Christians in Fujian to support a positive determination under section 96. Alternatively, it could show a forward looking risk of harm under section 97.

[60] This issue is so central that it is not necessary to comment upon the other issues raised. The application for judicial review is allowed and the Decision is returned for reconsideration by a differently constituted panel of the RPD.

[61] Counsel agree that there is no question for certification and the Court concurs.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that**

1. The application is allowed. The decision is quashed and the matter is returned for reconsideration by a differently constituted RPD.
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-4437-11

**STYLE OF CAUSE:** **SHOU GUI LIN**  
- and -

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** January 10, 2012

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

**DATED:** February 6, 2012

**APPEARANCES:**

Lindsey Weppler  
Agent for Jacqueline Lewis

**APPLICANT**

Lucan Gregory

**RESPONDENT**

**SOLICITORS OF RECORD:**

Blanshay & Lewis  
Toronto, Ontario

**APPLICANT**

Myles J. Kirvan, Q.C.  
Deputy Attorney General of Canada

**RESPONDENT**