

Federal Court



Cour fédérale

Date: 20120417

Docket: IMM-4997-11

Citation: 2012 FC 444

Ottawa, Ontario, April 17, 2012

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

**BETWEEN:**

**SHU AN JIA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Introduction**

[1] This is an application by Shu An Jia (the Applicant), pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act* (SC 2001, c 27) [IRPA], for judicial review of the decision of the Immigration and Refugee Board (the Board), rendered on June 15, 2011, where the Board concluded that the Applicant is neither a Convention refugee nor a person in need of protection as contemplated by section 96 and subsection 97(1) of the IRPA.

[2] For the following reasons, this application for judicial review is dismissed.

## **II. Facts**

[3] The Applicant is a citizen of China.

[4] In 2003, the Applicant invested RMB100, 000 to open a convenience store in Xu Chang County. He alleges that his business was very prosperous. However, on September 12, 2007, the Applicant was informed that he would be expropriated by the Demolition Office of Xu Chang County. The office agreed to compensate the Applicant for his investment of RMB 100, 000.

[5] The Applicant felt this compensation was unfair. He petitioned the local government office but to no avail.

[6] As a result the Applicant fell into a depression. In March 2008, Mr. Zhang Guang Jun suggested the Applicant should attend an underground church. He cautioned the Applicant that underground churches were illegal in China but reassured him that his congregation was very careful and took necessary precautions to avoid the Chinese authorities.

[7] On March 9, 2008, the Applicant went to the underground church. He gradually started feeling better and attended the service every Sunday. He also found work at Xu Chang County Shang Cheng Logistics Company at the end of March 2008.

[8] On July 6, 2008, the Applicant attended a wedding and therefore missed the church service that Sunday. He received a phone call from his mother-in-law. The Public Security Bureau [PSB] was searching for him because of his religious practices. The Applicant immediately took his family to his cousin's house.

[9] While in hiding, he inquired about the other eight church members and learned they had all been detained.

[10] Feeling unsafe, his cousin contacted a smuggler on his behalf to obtain a visa. On December 10, 2008, the Applicant was informed that his visa had been issued on December 3, 2008.

Unfortunately, his cousin was not able to gather the money to pay the smuggler until March 2009.

[11] While preparations were being made for the Applicant's departure, the PSB continued searching for him.

[12] On April 20, 2009, the smuggler called the Applicant's cousin and told him that he could take the plane from Beijing to Canada on April 30, 2009.

[13] The Applicant arrived in Canada on April 30, 2009. He applied for refugee protection on May 7, 2009. To this day, he alleges that his church members are still in detention and that the PSB is looking for him in China.

[14] In its decision, the Board concluded that the Applicant was neither a Convention refugee nor a person in need of protection due to his general lack of credibility as a witness. For this reason only, his refugee claim was dismissed.

### III. Legislation

[15] Sections 96 and 97 of the *IRPA* provide as follows:

<p>Convention refugee</p> <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 style="padding-left: 40px;"><i>(a)</i> 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</p> <p style="padding-left: 40px;"><i>(b)</i> 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.</p>	<p>Définition de « réfugié »</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 style="padding-left: 40px;"><i>a)</i> 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 style="padding-left: 40px;"><i>b)</i> 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.</p>
<p>Person in need of protection</p> <p><b>97.</b> (1) A person in need of protection is a person in Canada</p>	<p>Personne à protéger</p> <p><b>97.</b> (1) A qualité de personne à protéger la personne qui se</p>

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

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 :

(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 sens de l'article premier de la Convention contre la torture;

(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.

Person in need of protection

Personne à protéger

(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 qualité 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.

#### **IV. Issues and standard of review**

##### **A. Issues**

[16] This application raises the following issues:

1. *Did the Board err in determining that the Applicant was not credible?*
2. *Did the Board err in its assessment of the Applicant's sur place claim?*

##### **B. Standard of review**

[17] A credibility finding is a question of fact that is reviewable on a standard of reasonableness (see *Lawal v Canada (Minister of Citizenship and Immigration)*, 2010 FC 558, [2010] FCJ No 673 at para 11).

[18] The assessment of the evidence regarding the Applicant's *sur place* claim is also reviewable on a standard of reasonableness (see *Li v Canada (Minister of Citizenship and Immigration)*, 2011 FC 941 at para 15; *Aleziri v Canada (Minister of Citizenship and Immigration)*, 2009 FC 38 at paragraph 38). The Court must determine “whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (see *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] SCJ No 9 at para 47 [*Dunsmuir*]).

## **V. Parties’ submissions**

### **A. Applicant’s submissions**

[19] The Board concluded that credibility is determinative in this case and found the Applicant was not a credible witness. The Applicant alleges that the Board misconstrued and ignored the evidence adduced. He also claims that the Board made a line of unsupported and speculative reasoning based on illogic and contradictory speculation (see *Magham v Canada (Minister of Citizenship and Immigration)*, [2001] FCJ No 439, 2001 FCT 117; *B’Ghiel v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1023, 43 Imm LR (2d) 198; *Giron v Canada (Minister of Employment and Immigration)*, [1992] FCJ No 481, 143 NR 238; *Divsalar v Canada (Minister of Citizenship and Immigration)*, [2002] FCJ No 875, 2002 FCT 653; *Sadique v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 1325, 71 FTR 37).

[20] According to the Applicant, the Board asked overly narrow questions without regard to procedural fairness (see *Valverde v Canada (Minister of Citizenship and Immigration)*, 2008 FC

1418 at paras 6-11). The failure to ask further questions resulted in perceived problems where none existed. The Applicant alleges that his counsel's interventions and questions were valid as they permitted to clarify and dissipate some of the perceived inconsistencies and the Board's erroneous findings.

## **B. Respondent's submissions**

[21] The Respondent underlines that the Board made several credibility findings. The Board is entitled to draw adverse findings of credibility from the Applicant's testimony by assessing vagueness, hesitations, inconsistencies, contradictions and demeanor, for which deference is entitled when judicially reviewed (see *Zheng v Canada (Minister of Citizenship and Immigration)*, 2007 FC 673 at para 17).

[22] In his memorandum, the Applicant argues that the Board made unsupported speculative inferences, made illogical and contradictory finding, posed narrow questions and misconstrued and ignored the evidence. In response, the Respondent alleges that the Board did not accept the Applicant's explanations for the numerous inconsistencies, contradictions and omissions in his written and oral evidence. It is the Board's role to weigh the evidence (see *Ma v Canada (Minister of Citizenship and Immigration)*, 2011 FC 417 at para 39).

[23] As for the *sur place* claim, the Respondent submits that given the Applicant's general lack of credibility and his Christian knowledge, it was open to the Board to conclude that the Applicant



joined a Christian church in Canada primarily for the purpose of supporting a fraudulent refugee claim.

[24] According to the Respondent, none of the Applicant's submissions demonstrate any reviewable error. The Respondent affirms that the Board's findings were reasonable.

## **VI. Analysis**

### ***1. Did the Board err in determining that the Applicant was not credible?***

[25] The Board did not err in determining that the Applicant was not credible.

[26] Determining the credibility of an Applicant is factual in nature. "The jurisprudence is clear in stating that the Board's credibility and plausibility analysis is central to its role as trier of facts and that, accordingly, its findings in this regard should be given significant deference" (see *Lin v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1052, [2008] FCJ No 1329 at para 13). "There is no longer any doubt that the Refugee Division, which is a specialized tribunal, has complete jurisdiction to determine the plausibility of testimony: who is in a better position than the Refugee Division to gauge the credibility of an account and to draw the necessary inferences? As long as the inferences drawn by the tribunal are not so unreasonable as to warrant our intervention, its findings are not open to judicial review" (see *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 at para 4 [*Aguebor*]).

[27] Furthermore, “the case law is consistent that assessing the evidence and the testimony, as well as attaching probative value to them, is up to the [Board]. The standard of review is reasonableness and a certain level of deference is owed to decisions by the specialized tribunal” (see *El Romhaine v Canada (Minister of Citizenship and Immigration)*, [2011] FCJ No 693 at para 21; *Aguebor* and *Dunsmuir* cited above).

[28] The Board determined that there were several discrepancies in the Applicant’s narrative. It found the Applicant had maintained inconsistent explanations concerning his Resident Identity Card and had tailored his answers and adopted his counsel’s explanations in order to evacuate these inconsistencies. It also drew a negative inference from the Applicant’s hesitations and explanations with respect to his Chinese passports.

[29] Moreover, the Board made cumulative credibility findings and negative inferences due to the lack of persuasive evidence with respect to the PSB and found that the Applicant was not credible. The Panel also found that the applicant had been given time to amend his Personal Information Form [PIF] in regards of his fear toward “government working staff” but failed to do so.

[30] The Board further determined that the Applicant was not a genuine Christian in China or in Canada. It noted that he had joined a church in Canada for the sole purpose of supporting a fraudulent refugee claim.

[31] It is the Court's view that the Board's findings in regards of the Applicant's passports were not central to the claim.

[32] The Court notes that the Board's conclusion in regards of the PSB's first visit to the Applicant's home is unreasonable (see pages 680 and 681 of the Tribunal record). During the hearing, the Tribunal Officer asked the Applicant the following questions:

Q. Did they search your house? Sorry. I was just going to pick up on a small point here, if I could. PSB had - - this conversation that you were just talking about that the PSB had with your wife, did this happen the first time they came to your home? Is that right?

A. No. No, not the first time. After several times they visited. They couldn't find me and then they said that.

Q. Okay. But I want to make sure that I understand what conversation took place between the police and your wife the first time they came to your home. The very first time.

A. The first time, they said, "you will - - your husband began to petition and also he joined the evil cot". They believe the underground church is evil cot. We wanted him - - we want him to come to PSB station to confess.

Q. Okay. But there's a problem with that, okay. And here's the problem. Your wife wasn't at home the first time the PSB came. Okay? According to your personal information form, you and your wife and children were at a wedding on July 6, 2008. But your mother-in-law - - just hold on. Your mother-in-law, who lived with you, called you to tell you that the PSB had come to your house to detain you and that they were aware of your underground church attendance.

...

So you've just told us about a conversation between the police and your wife which you said took place during the police's first visit, but your wife wasn't home. According to the narrative, your wife wasn't home the first time the police came, so please explain that apparent inconsistency.

A. I thought that just now you asked me about the first conversation between the PSB and my wife.

Q. Yes that is what we're talking about. Okay? But it was clearly in the context of what was said by the police to your wife the first time the police came to your home.

. . . But the problem is, you're saying the first time the police came to your home, they had this conversation with your wife. But she wasn't there, according to your narrative, so that's the inconsistency.

A. What I understood was just now that you were asking me the first time the PSB had a conversation with my wife

**COUNSEL FOR CLAIMANT:** I will come to more of this later, I'm sure (inaudible) but if you look at the questioning, I see the confusion because you're asking about the wife and the PSB and then about the first conversation. It's – you're going back and forth and then the wife is mentioned again back and forth on and off.

[33] On this matter, the Court agrees with the Applicant's counsel. The Officer's interrogation was conducted in a manner which forced the Applicant to respond inconsistently. This error is not determinative of this application for judicial review.

[34] The Board also made credibility findings with respect to the letter from the Applicant's wife, the Applicant's new allegations concerning government officials, his religious beliefs and fear of the PSB.

[35] Regarding the wife's letter, the Board found that it was impossible to corroborate who was the author of the letter because it was not notarized. It reasonably accorded little weight to this documentary evidence. The Board is in the best position to "weigh the evidence, its weaknesses and strengths, and to decide on its acceptability, and whether it contained or not trustworthy and credible

evidence to support a well-founded fear of persecution” (see *Olgin v Canada (Minister of Citizenship and Immigration)*, 2009 FC 193 at paras 10-11).

[36] The Board considered that the Applicant’s fear of government officials constituted an added allegation that was not included initially in the Applicant’s PIF. The Applicant appeared three times before the Board but never amended his narrative. The Board reasonably made a negative inference from this significant evidentiary omission. Counsel for the Applicant explained at the hearing that he never amended his PIF and that the purpose of a hearing was to further expand on the basic elements disclosed in the PIF. This explanation does not relieve the Applicant from having failed to mention an element so central to his claim (see *Lobo v Canada (Minister of Citizenship and Immigration)*, [1995] FCJ No 597).

[37] On the issue of the Applicant’s religious beliefs, the Board underlined his failure to provide any persuasive evidence that he was pursued by the PSB due to his Christian faith. In light of the Applicant’s narrative and insistence, it was also reasonable for the Board to presume that a summons would have been issued because the PSB had more than a mere interest in the Applicant.

[38] The Court is satisfied that the decision as a whole is reasonable with respect to the Applicant’s credibility. Some of the credibility findings can be disputed as we have indicated. It remains nonetheless that the accumulation of contradictions and inconsistencies supports the other negative credibility findings determined by the Board. Overall the Board’s decision is sound and falls within the range of possible acceptable outcomes which are defensible in view of the facts and

the law (see *Lin v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1235, [2011] FCJ No 1514 at para 59).

**2. *Did the Board err in its assessment of the Applicant's sur place claim?***

[39] This Court finds that the Board did not err in assessing the Applicant's *sur place* claim. In *Song v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1321 at para 71, the Court held that "there was ample evidence before the Board that religion is not practiced freely within registered churches in China and that members of underground churches are persecuted". Even if it would be a well-known fact that Christianity is not practiced freely in China, the Board reasonably determined that the Applicant's lack of credibility demonstrated that he was not a genuine Christian in his country of origin. As for his religious practice in Canada, the Board wrote, in paragraph 20 of its decision:

. . . The claimant was asked why he did not obtain corroboration of his attendance at Living Stone Assembly sooner. The claimant stated that he did not know he needed the religious documents until he was advised by his counsel at the first hearing in December, 2010. He added that by the time the second sitting took place in February, 2011 he was unable to obtain them. The panel rejects the claimant's explanation. The claimant has been represented by the same counsel since signing his PIF on June 25, 2009. The claimant's counsel is competent and experienced and the importance of providing corroboration of Canadian religious activities would be evident. In addition, a screening form was completed on May 29, 2009 and provided to counsel and the claimant. The screening form specifically states that the claimant was to provide documents to corroborate the claimant's religious affiliation" (see the Board's decision at para 20). . .

[40] The Board adds, in paragraph 22 of its decision:

The claimant was asked when he next attended church in Canada. The claimant testified that he next attended church when he joined the Living Stone Assembly in November 2010. The claimant provided no reason for his non-attendance. The panel draws a negative inference from the claimant failing to attend church from the end of December 2009 until November 2010. The panel further finds that his failure to attend church during this period undermines the claimant's alleged religious identity.

[41] In *Ejtehadian v Canada (Minister of Citizenship and Immigration)*, 2007 FC 158 at para 11

[*Ejtehadian*], Justice Blanchard stated:

...  
In a refugee *sur-place* claim, credible evidence of a claimant's activities while in Canada that are likely to substantiate any potential harm upon return must be expressly considered by the IRB even if the motivation behind the activities is non-genuine: *Mbokoso v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 1806 (QL). The IRB's negative decision is based on a finding that the Applicant's conversion is not genuine, and "nothing more than an alternative means to remain in Canada and claim refugee status". The IRB accepted that the Applicant had converted and that he was even ordained as a priest in the Mormon faith. The IRB also accepted the documentary evidence to the effect that apostates are persecuted in Iran. In assessing the Applicant's risks of return, in the context of a *sur-place* claim, it is necessary to consider the credible evidence of his activities while in Canada, independently from his motives for conversion. Even if the Applicant's motives for conversion are not genuine, as found by the IRB here, the consequential imputation of apostasy to the Applicant by the authorities in Iran may nonetheless be sufficient to bring him within the scope of the convention definition. . .

[42] According to Justice Blanchard, the Board should not consider the genuineness of the Applicant's faith but rather look at the consequences of the Applicant's beliefs acquired in Canada, based on credible evidence and the possibility of persecution in his country of origin.

[43] In the present case, the Applicant provided a certificate of baptism, pictures of the baptism ceremony and a letter of reverend David Ko dated May 1, 2011. He also adduced documentary evidence to demonstrate that Christians are being persecuted in China. However, the Board reasonably determined that the Applicant failed to meet the burden of establishing a serious possibility that he would be persecuted or that he would be personally subjected to a risk to his life or a risk of cruel and unusual treatment in China. The evidence adduced was insufficient for the Board to conclude that the Applicant would be at risk upon his return to China. In *Alfaro v Canada (Minister of Citizenship and Immigration)*, 2011 FC 912, [2011] FCJ No 1152 at para 25, Justice Rennie wrote:

[25] The second ground upon which this application is granted is the failure of the Board to consider the claim as a *sur place* claim. The *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status* describes two situations in which a *sur place* claim may arise. The first, due to a change in circumstances in the country of origin while the claimant is abroad, is not germane. The second circumstance however, is:

A person may become a refugee "sur place" as a result of this own actions, such as associating with refugees already recognized, or expressing his political views in his country of residence. Whether such actions are sufficient to justify a well-founded fear of persecution must be determined by a careful examination of the circumstances. Regard should be had in particular to whether such actions may have come to the notice of the authorities of the person's country of origin and how they are likely to be viewed by those authorities.

[44] In the present case, the Board's credibility findings were reasonable. Consequently, the Board did not err in determining that Chinese authorities were not searching for the Applicant. Hence, it is more than unlikely that his limited religious practice in Canada would have come to the attention of the authorities in China. The Applicant is therefore not a *sur place* refugee claimant.



## **VII. Conclusion**

[45] The Board reasonably determined that the Applicant was neither a Convention refugee nor a person in need of protection due to his lack of credibility. It was also reasonable to conclude that the Applicant was not a *sur place* refugee claimant. This application is hereby dismissed.

**JUDGMENT**

**THIS COURT'S JUDGMENT IS THAT:**

1. This application for judicial review is dismissed; and
2. There is no question of general importance to certify.

"André F.J. Scott"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4997-11

**STYLE OF CAUSE:** SHU AN JIA  
v  
THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** March 21, 2012

**REASONS FOR JUDGMENT  
AND JUDGMENT:** SCOTT J.

**DATED:** April 17, 2012

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