

Federal Court



Cour fédérale

Date: 20120417

Docket: IMM-5601-11

Citation: 2012 FC 440

Ottawa, Ontario, April 17, 2012

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

GUIKUN LIU

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant, Guikun Liu, seeks judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated July 28, 2011. The Board determined that he was not a Convention refugee or person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA).

[2] For the following reasons, the application is dismissed.

I. Facts

[3] The Applicant is a citizen of China. He arrived in Canada on November 30, 2008. He filed a refugee claim based on his alleged involvement with underground Christian churches. He claimed his sister convinced him to attend her church in Fujian province in 2003 before it was discovered by the government and she was forced to leave in 2004. He also asserted that he was introduced to another church in January 2008 and detained for this activity.

II. Decision under Review

[4] The Board identified inconsistencies as to the location of the Applicant's alleged arrest and number of those arrested with him. His explanations for these inconsistencies were not considered "reasonable or persuasive." The Board questioned, based on specialized knowledge, why his sister's experience did not become an issue during his arrest and detention. He neglected to mention his sister's problems with the government in his Declaration. The Board also drew a negative inference from the omission of information in his Personal Information Form (PIF) that the Public Security Bureau (PSB) went to his home to re-arrest him after he left China and his inability to remember the number of times his mother told him that they had come to his home to look for him. According to the Board, it was reasonable to expect that an arrest warrant or summons would have been left with his family.

[5] The Board summarized its assessment as follows:

On the basis of cumulative and important concerns noted above, I conclude that I have insufficient credible or persuasive evidence to demonstrate that the claimant was ever a member of an underground house church in China or was ever detained or sought by the authorities in that country. I find, on a balance of probabilities that he was not a genuine Christian in China, and that he was not a credible witness.

[6] Since the Board was not persuaded that the Applicant was a genuine Christian, it also found, on a balance of probabilities, that the Applicant participated in Christian activities in Toronto to substantiate a manufactured claim to be a Convention refugee.

[7] The Board considered the documentary evidence that while persecution occurs with Christian house churches, based on factors such as links with the West or if an individual is a church leader; it is not general in nature. The Applicant could “return to his home in Fujian province and practice his alleged faith freely and openly.”

III. Issues

[8] The issues raised by this application can be addressed as follows:

- (a) Did the Board err in its assessment of the Applicant’s credibility?
- (b) Did the Board err in its analysis of the Applicant’s *sur place* claim?
- (c) Did the Board err in its consideration of documentary evidence?

IV. Standard of Review

[9] All of these issues necessitate the reasonableness standard of review (see for example *Aguirre v Canada (Minister of Citizenship and Immigration)*, 2008 FC 571, [2008] FCJ no 732 at paras 13-14; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 46).

[10] Reasonableness is concerned with “the existence of justification, transparency and intelligibility” as well as whether the decision “falls within a range of possible, acceptable outcomes defensible in respect of the facts and law” (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47)

V. Analysis

A. *Credibility*

[11] The Applicant asserts that the Board conducted a microscopic analysis of his arrest and unreasonably drew adverse inferences from inconsistencies. In particular, he amended his PIF to reflect that he was arrested on his way home from church as opposed to while he was attending the service. His explanation for doing so was that he initially relied on his own definition of what constituted the “service.” According to the Applicant, the Board should also have considered his

statement at the Port of Entry (POE) referring to other individuals who were arrested with him before focusing on an omission in his PIF.

[12] The Respondent maintains that the Board was entitled to rely on these inconsistencies and omissions in reaching negative conclusions regarding the Applicant's credibility and rejecting major elements of his story. I agree.

[13] The nature of the alleged arrest was a critical component of the claim made by the Applicant that government authorities would target him for his religious beliefs. This Court has accepted that a PIF amendment will not always address credibility concerns (*Aragon v Canada (Minister of Citizenship and Immigration)*, 2008 FC 144, [2008] FCJ no 173 at para 19). The Board expressly referred to the Applicant's explanation that he considered making his way home from service part of church activities, but found it was inadequate, stating "[o]ne is either at service or not." Having considered the explanation, it was reasonably open to the Board to doubt whether the arrest occurred based in part on the inconsistency and related amendment.

[14] Similarly, it is well established that the Board can rely on inconsistencies, contradictions or omissions in statements at the POE, in the PIF and oral testimony to assess credibility as in this case (see for example *Eustace v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1553, [2005] FCJ no 1929 at para 6). While the POE suggested that others were arrested with the Applicant and this was alluded to later in oral testimony, the PIF failed to do so. The Board reasonably considered that this omission was significant as it dealt with the nature of the arrest and

government interest in their church. The failure to include these details in the PIF led to further uncertainty as to the credibility of his story.

[15] In addition, the Applicant contends the Board engaged in speculation when finding that he was lying about an interrogation by the PSB since testimony suggested he was not questioned as to his sister's religious activities. He also takes issue with the relevancy of the documentation referred to by the Board in this portion of its reasons.

[16] I cannot accept the characterization of the Board's analysis on this issue as speculative as it was based on specialized knowledge. Section 170(i) of the IRPA enables the Board to rely on this type of knowledge.

[17] As the Respondent highlights, the Board expressly put this issue to the Applicant during the hearing giving him the opportunity to address it. This is consistent with the notice required in relying on specialized knowledge as described in *Liu v Canada (Minister of Citizenship and Immigration)*, 2007 FC 595, [2007] FCJ no 807 at paras 9-10.

[18] I also fail to see how the Board's findings are at odds with the discussion from *Mahmood v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1526, [2005] FCJ no 1883 at para 16 as cited by the Applicant. The case merely reiterates that credibility and implausibility findings must clearly identify the facts serving as the basis for a negative conclusion. The Board met that requirement in the present case by specifying, in light of the Applicant's testimony, it was

relying on specialized knowledge that the PSB would normally engage in further questioning on his family background.

[19] The Board's findings in this regard were also supported by a brief reference to documentary evidence. Although mentioning Falun Gong Practitioners as opposed to Chinese Christian churches, it provided some indication of the methods employed by the PSB in addressing religious groups. In combination with the Board's reliance on specialized knowledge, the approach was justifiable.

[20] Regarding the Board's negative conclusions from a lack of summons left with his family, the Applicant once again suggests that the approach is speculative and fails to acknowledge contradictory evidence that there is disrespect for the rule of law in China.

[21] I am nonetheless convinced that the Board gave sufficient consideration to contradictory evidence. Indeed, it expressly acknowledged the mixed nature of the evidence before it. The Board was entitled to weigh that evidence and conclude as it did that it is reasonable to expect a summons to have been left with the Applicant's family.

[22] In general, the Board provided clear reasons for its negative credibility findings in this case. It also stressed that the conclusions reached were based on the "cumulative and important concerns raised" in assessing the Applicant's evidence. For these reasons, I must find the Board's approach within the range of possible, acceptable outcomes.

[23] As the Supreme Court recently confirmed in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708 at para 16, “if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.”

B. *Sur Place Claim*

[24] I also have difficulty accepting the Applicant’s position that the Board allowed its conclusions as to the credibility of his religious identity on arrival to taint a distinct assessment on the central issue of the Applicant as a genuine Christian at the time of the hearing.

[25] The Board turned its mind to this issue and the relevant evidence. Since it was convinced that the Applicant was not a genuine Christian, however, the Board attached little weight to photographs and documents from the church in Toronto. The Applicant was seen as participating in these activities and obtaining the documents to bolster his claim. As the Board reasonably concluded “they alone do not corroborate that the claimant actually is or ever was a genuine Christian.”

[26] The Applicant relies on the conclusion of Justice James O’Reilly in *Huang v Canada (Minister of Citizenship and Immigration)*, 2008 FC 132, [2008] FCJ no 164 at para 8. In that case, the Board was faulted for not making a definitive finding that the applicant was not a genuine Christian. It had “failed to consider whether Mr. Huang might encounter religious persecution if

sent back to China, whether or not he had previously been a member of an underground church.”

However, that is not what occurred in this instance. The Board proceeded to conduct an analysis of documentary evidence related to persecution in Fujian province as considered below.

C. *Documentary Evidence*

[27] The Applicant argues that the Board was selective in its treatment of the documentary evidence and points to what would be considered contradictory passages ignored in the reasons.

[28] I consider the Board’s detailed assessment of this evidence reasonable in the circumstances. It weighed the evidence to find that although incidents of persecution occur based on various factors, it is not general in nature. For example, it was suggested that the Applicant could openly practice the faith in Fujian province as documentation indicated that Christian groups no longer operate in secrecy. The Applicant’s arguments amount to a disagreement with the Board’s weighing of this evidence, an issue which is not a basis for this Court’s intervention.

[29] I must stress that the Board is presumed to have considered all of the evidence before it unless the contrary is shown (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ no 598 (CA)). There is no requirement to specifically mention every piece of documentary evidence (*Hassan v Canada (Minister of Employment and Immigration)* (1992), 147 NR 317, [1992] FCJ no 946 (CA)). The weighing of evidence must simply reflect justification, transparency and intelligibility.

VI. Conclusion

[30] The Board was reasonable in its assessments of credibility, the *sur place* claim and documentary evidence. As a consequence, I must dismiss this application for judicial review.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

“ D. G. Near ”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5601-11
STYLE OF CAUSE: GUIKUN LIU v MCI

PLACE OF HEARING: TORONTO
DATE OF HEARING: MARCH 20, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** NEAR J.

DATED: APRIL 17, 2012

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