

Federal Court



Cour fédérale

Date: 20120518

Docket: IMM-5988-11

Citation: 2012 FC 609

Ottawa, Ontario, May 18, 2012

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

KUAN JING

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant, Kuan Jing, seeks judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated August 15, 2011. The Board found 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.

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

I. Facts

[3] The Applicant is from Shenyang City, Liaoning Province in the People's Republic of China (China). He filed a refugee claim in Canada alleging that the Public Security Bureau (PSB) is looking for him because he attended an underground Christian church.

II. Decision Under Review

[4] The Board found the Applicant had not provided sufficient credible or trustworthy evidence to demonstrate that he was a member of an underground church in China. This was based on inconsistencies in his testimony as to who broached the subject of attending church as well as the omissions of his sister's suicide as a reason for his decision to attend and any reference to punishment he would receive for his involvement.

[5] Turning to the Applicant's claim of being a wanted man in China, the Board found it unreasonable that he would put himself and family at risk by having his father mail relevant documents on two occasions. Chinese government authorities monitor communications. The Board also attributed little weight to the summons provided by the Applicant, given the availability of fraudulent documents in China and that the allegation of a raid on a church in Liaoning Province in 2009 was not supported by documentary evidence.

[6] The Board also questioned the Applicant's motivation for attending a church while in Canada. There was no "evidence of a conversion-type experience between the time he arrived in Canada and the time he attended church." It considered documents related to his participation in church activities, but found they did not address his motivation and concluded any knowledge of Christianity was acquired to bolster his claim.

[7] As an alternative finding, the Board addressed whether the Applicant could return to Liaoning Province and practice his faith freely and openly. Documentary evidence showed that the treatment of underground church members depends on local authorities. As a regular church member, the Applicant's participation in these activities was modest. The Board ultimately determined that he could return to worship in Liaoning Province.

III. Issues

[8] The Applicant asks this Court to address several issues with the Board's decision as to:

- (a) its assessment of his credibility;
- (b) the *sur place* analysis; and
- (c) consideration of documentary evidence regarding the situation in Liaoning Province.

IV. Standard of Review

[9] Questions of fact, discretion and policy as well as questions where the legal issues cannot be easily separated from the factual issues generally attract a standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 51). In particular, findings of fact and credibility are reviewed based on reasonableness (see *Aguirre v Canada (Minister of Citizenship and Immigration)*, 2008 FC 571, [2008] FCJ no 732 at paras 13-14).

[10] Employing this standard, the Court should only interfere where the decision lacks justification, transparency and intelligibility or falls outside the range of possible, acceptable outcomes (*Dunsmuir*, above at para 47).

V. Analysis

A. *Credibility Assessment*

[11] The Applicant asserts that the Board relied on technical omissions in determining that he was not a practicing Christian in China based on the reasoning in *Li v Canada (Minister of Citizenship and Immigration)*, 2006 FC 868, [2008] FCJ no 1104 at paras 29-31).

[12] I do not see how that principle applies in this case as the Board clearly identified several issues with the Applicant's story that, taken together, were relevant to a determination of his claim.

[13] The Applicant was unclear in his testimony when describing how he was introduced to the church. He suggested that a friend thought he could pray for his sister's soul but had omitted any

reference to her suicide and Christianity assisting him to deal with that situation. His Personal Information Form (PIF) failed to mention any reassurances that he would not face serious consequences for his church attendance.

[14] Given that these omissions were directly related to his decision to participate in church activities as the basis of his claim, it was reasonable for the Board to place emphasis on them. The Board is permitted to draw negative inferences from the omission of significant facts (see for example *Sanchez v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ no 536, 98 ACWS (3d) 1265 at para 6 (CA); *Basseghi v Canada (Minister of Citizenship and Immigration)*, [1994] FCJ no 1867, 52 ACWS (3d) 165 at para 33; *Kaleja v Canada (Minister of Citizenship and Immigration)*, 2011 FC 668, [2011] FCJ no 840 at para 18).

[15] The Applicant's insistence that the Board engaged in speculation when finding it unreasonable for his father to send documents is similarly not persuasive. It is well established that the Board is entitled to base its credibility findings on common sense and rationality (see *Shahamati v Canada (Minister of Employment and Immigration)*, [1994] FCJ no 415 (CA); *Singh v Canada (Minister of Citizenship and Immigration)*, 2007 FC 62, [2007] FCJ no 97 at para 1). In this case, the conclusion was also reasonably supported by documentary evidence.

[16] Justice André Scott recently found in *Chen v Canada (Minister of Citizenship and Immigration)*, 2012 FC 95, [2012] FCJ no 101 at para 38 that it was reasonable for a panel of the Board to conclude "that receiving mail from China under her own name undermined the Applicant's allegations that she was wanted by the Chinese authority."

[17] Contrary to the Applicant's submissions, I consider the Board's decision to accord little weight to the summons provided reasonable in the circumstances. The conclusion was based both on the availability of fraudulent documents in China and lack of documentation of church raids in the region at issue.

[18] In light of the credibility concerns, this conclusion did not violate the presumption of truth in *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (CA) as the Applicant suggests. Rather, it is reflective of the Board's role in weighing the evidence (see confirmation of this principle in for example *Brar v Canada (Minister of Employment and Immigration)*, [1986] FCJ no 346 (CA)).

[19] More specifically, the Board can prefer its assessment of the documentary evidence to the Applicant's evidence as it did in this case (see for example *Lin v Canada (Minister of Citizenship and Immigration)*, 2010 FC 108; [2010] FCJ no 124 at paras 20, 25; *Aleshkina v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 589, [2002] FCJ no 784 at para 17; *Zhou v Canada (Minister of Employment and Immigration)*, [1994] FCJ no 1087 (CA)).

[20] The Board's negative credibility assessment as to the Applicant's participation in an underground church and being wanted by the PSB was based on several concerns associated with the evidence as presented. The findings were made in "clear and unmistakable terms" (*Hilo v Canada (Minister of Employment and Immigration)*, [1991] FCJ no 228, 15 Imm LR (2d) 199) and fall within the range of acceptable outcomes. The Applicant's dissatisfaction with the Board's

conclusions and weight assigned to various pieces of evidence is not a basis for the Court's intervention.

B. *Sur Place Analysis*

[21] For similar reasons, I cannot accept the Applicant's claims that the Board failed to conduct an independent assessment of his *sur place* claim to be a practicing Christian in Canada.

[22] The Board specifically addressed the Applicant's evidence of his attendance at church shortly after his arrival in Canada, including the letter provided from his pastor. It nonetheless concluded that this evidence referred neither to a conversion-type experience in Canada nor his motivation for participating in church activities. The Board simply did not assign the Applicant's preferred degree of weight to this evidence. It does not follow that the conclusions reached lack justification, transparency or intelligibility.

[23] Indeed, as the Respondent contends, it was reasonable for the Board to doubt the veracity of the Applicant's position in light of its previous credibility findings. Justice Donald Rennie upheld similar reasoning by the Board in *Ma v Canada (Minister of Citizenship and Immigration)*, 2011 FC 417, [2011] FCJ no 530 at paras 37-38). By contrast, the finding in *Huang v Canada (Minister of Citizenship and Immigration)*, 2008 FC 132, [2008] FCJ no 164 at para 8, as raised by the Applicant, does not apply in this instance as the Board proceeded to consider whether he would face persecution if returned to China.

C. *Documentary Evidence and Situation in Liaoning Province*

[24] I also find that the Board conducted a detailed assessment of the documentary evidence. Weighing all of this evidence, it stressed that the treatment of underground church members varied according to local conditions. With respect to Liaoning Province, there was “little evidence to persuade the panel that officials are interested in persecuting underground Protestant Christians as the claimant alleged” after 2007.

[25] The Applicant has not provided a legitimate basis for challenging this finding. The size of the church was one of several factors considered by the Board in its assessment. The finding in *Liang v Canada (Minister of Citizenship and Immigration)*, 2011 FC 65, [2011] FCJ no 74 based on its own unique documentary record and related to a different region of China is not applicable to the instant case.

[26] Although the Applicant takes issue with the conclusions reached on the situation in Liaoning, there is nothing to suggest they are unreasonable. The Board is not required to refer to every piece of documentary evidence (*Hassan v Canada (Minister of Employment and Immigration)*, [1992] FCJ no 946, 147 NR 317 (CA)). The consideration of all evidence is presumed unless the contrary is shown (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ no 598 (CA)).

VI. Conclusion

[27] The Applicant has not demonstrated the Board's findings were unreasonable in the circumstances. The application for judicial review is dismissed.

JUDGMENT

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

“ D. G. Near ”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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APPEARANCES:

Jayson Thomas FOR THE APPLICANT

Amy King FOR THE RESPONDENT

SOLICITORS OF RECORD:

Shelley Levine FOR THE APPLICANT

Levine Associates
Toronto, Ontario

Myles J. Kirvan FOR THE RESPONDENT

Deputy Attorney General Canada