

Federal Court



Cour fédérale

Date: 20120705

Docket: IMM-3702-11

Citation: 2012 FC 854

Ottawa, Ontario, July 5, 2012

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

SHOUPENG WEI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act) for judicial review of a decision of the Immigration and Refugee Board, Refugee Protection Division (the Board), dated May 9, 2011, wherein the applicant was determined to be neither a Convention refugee within the meaning of section 96 of the Act nor a person in need of protection as defined in subsection 97(1) of the Act.

[2] This conclusion was based on the Board's finding that the applicant was not credible and that it was not a serious possibility that the applicant would be persecuted for practicing his religion and worshipping in a Christian congregation if he returned to his home in the Fujian Province of China.

[3] The applicant requests that this Court order *certiorari* to quash the Board's decision and order *mandamus* compelling the Board to grant a new hearing.

Background

[4] The applicant, Shoupeng Wei, is a citizen of the People's Republic of China (China) and a practicing Christian from the Fujian Province. The applicant is married and has a son and a daughter. His family remains in China.

[5] In June 2005, the applicant's health began deteriorating. He sought medical help but doctors were unable to diagnose his sickness. The applicant confided in his friend Liu Zhong, who told him about the Christian faith. After both the applicant and his friend prayed for him, the applicant began recovering.

[6] On August 7, 2005, the applicant attended his first underground church service. The underground church, which comprised approximately thirteen members, was held in secret at the homes of two of the devotees. During the service, look-outs were assigned to watch for members of

the Public Security Bureau (PSB). On February 26, 2006, the applicant was baptized and the following month he successfully recruited his friend, Chen Jin to the church.

[7] On April 13, 2006, the underground church service was interrupted by a warning that members of the PSB were approaching. In fear of arrest, the applicant went into hiding at his sister-in-law's home. Two days later, members of the PSB visited and searched the applicant's home. They informed his wife that they were aware of his illegal religious activities and asked her about his whereabouts. The applicant's wife denied knowing anything. The PSB ordered the applicant's immediate surrender and demanded that his wife report any information she obtained about him. On April 18, 2006, the applicant discovered that three church members had been caught during the PSB raid.

[8] After nine months in hiding, the applicant found a smuggler with his sister-in-law's help. The smuggler provided him with a Canadian visa and accompanied him to Canada. On January 13, 2007, the applicant arrived in Canada. He filed a claim for refugee protection on January 26, 2007.

[9] In his Personal Information Form (PIF) dated March 2007, the applicant stated that the PSB continued to search for him and had visited his home on several occasions. In addition, the applicant stated that the three detained members of his church remained in detention awaiting sentencing.

[10] The applicant's claim was previously heard by a different board of the Refugee Protection Division. That Board denied the applicant's claim for lack of credibility. On judicial review, Mr. Justice Michel Beaudry overturned that decision finding that the Board made two reviewable errors

that were central to the applicant's claim (see *Wei v Canada (Minister of Citizenship and Immigration)*, 2010 FC 694, [2010] FCJ No 832).

[11] The new hearing of the applicant's refugee claim was held on January 25 and April 27, 2011.

Board's Decision

[12] The Board released its decision on May 9, 2011. It noted that the hearing was conducted *de novo* as ordered by the Federal Court in *Wei* above.

[13] The Board addressed two main issues in its decision: credibility and whether there was a serious possibility that the applicant would be persecuted for practicing Christianity in the Fujian Province. The Board's assessment of both these issues is described here. However, the Board's assessment of the applicant's credibility was not challenged in this application. This application is limited to the Board's assessment on the second issue.

Credibility

[14] The Board began by acknowledging that the evidence established the applicant's identity as a Chinese national. The Board noted that it was mindful of the applicant's age, education and background in assessing his credibility. This included the applicant's level of education (grade five), difficulties associated with the hearing room and stresses inherent in responding through an

interpreter. Recognizing these challenges, the Board explained that it granted the applicant repeated opportunities to answer questions throughout the hearing.

[15] The Board observed that the applicant frequently testified in a “vague, evasive and confusing manner” on material aspects of his claim. In addition, it found that the applicant’s testimony was “shifting, inconsistent and evasive”. The Board also found that significant details pertaining to key issues in the applicant’s refugee claim were omitted from his PIF and the accompanying narrative.

[16] The Board found that credibility was the determinative issue in this claim, specifically, the credibility of the applicant’s PIF narrative, his oral testimony on his membership in an underground church and his pursuit by the PSB.

[17] In coming to its negative credibility finding, the Board drew negative inferences from the applicant’s testimony and submissions on the following:

1. Information that the applicant’s friend had told him about Christianity;
2. The applicant’s illness;
3. Beginning of the applicant’s attendance at the underground church;
4. PSB search for the applicant;
5. PSB raid on the church;
6. Repercussions on the applicant’s family in China; and
7. Jail release notification, jail visiting card and sentence verification.

[18] The Board noted that the applicant was not forthcoming on the topics that he discussed with the friend that first told him about Christianity. However, when prompted with answers included in his PIF, the applicant responded affirmatively. The Board drew a negative inference from the applicant's inability to accurately recall information that had initiated his life changing experience.

[19] Secondly, the Board noted the discrepancy in the applicant's reported illness. In his PIF, he described his condition as undeterminable, whereas health records included with his claim indicated that he had been diagnosed with gastritis. Recognizing the applicant's level of education, the Board asked the applicant if he understood the meaning of diagnosis. The Board noted that the applicant responded with a clear definition and showed familiarity with other medical terms. On this basis, the Board found that the applicant did not provide a reasonable explanation for the inconsistency between his PIF and the documentary evidence.

[20] Turning to August 2005, when the applicant first began attending the underground church, the Board asked the applicant if he had been aware of the consequences associated with his involvement with the church. The applicant replied that he did not think about the consequences at that time and his friend did not indicate that there were any problems. The Board also questioned the applicant about other special events that occurred in his family at that time. After much unsuccessful probing, the Board asked the applicant about his father's death (in July 2005) and his son's birth (in August 2005). The applicant became emotional on being questioned about his father, and later confirmed that Christianity had helped him deal with his death. When asked why he did not include this information in his PIF, the applicant explained that the consultant had not asked him about it. The Board found the applicant's inability to recall significant emotional events in his life

and relate them to his introduction to Christianity unreasonable. In addition, his inability to acknowledge and verbalize the risks associated with participating in an alleged illegal activity led the Board to question his fear of the agent of persecution.

[21] The Board also found inconsistencies in the applicant's responses to questions regarding the PSB search for him. This included inconsistent statements in his PIF and his oral testimony on the PSB searching his home and showing his wife an arrest warrant.

[22] The Board then questioned whether the PSB raid of the underground church occurred as alleged. The Board asked the applicant about the events of the evening when the look-out had warned the church members that the PSB were approaching. The Board noted that the applicant had not seen anyone chasing him, had not heard anyone calling after him and had not seen flashing lights or heard sirens. When asked if the look-out could have made a mistake, the applicant answered affirmatively. Further, contrary to the applicant's testimony, his PIF did not indicate that the PSB had informed his wife of a raid of the church. The Board therefore found it questionable that the PSB raid on the church occurred as alleged.

[23] The Board also considered the alleged repercussions to the applicant's family in China. At the hearing, the applicant indicated that the PSB continued to visit his wife on a regular basis, most recently on January 15, 2011. The applicant testified that during these visits, the PSB threatened his wife by saying that they would sue her if she concealed information. In addition, neighbours allegedly made fun of his wife due to the frequent PSB visits and his children received "comments from school mates". However, the Board noted that no action had yet been taken against the

applicant's wife and his children had not been stopped from going to school. This limited interest by the PSB was contrary to documentary evidence that indicated that reprisals against family members were common where persons of interest to the PSB were unavailable for interrogation or detention.

[24] Finally, the Board considered the copies of jail release notification, jail visiting card and sentence verdict of individuals associated with the applicant's underground church. The Board noted that these documents were not originals, were of poor quality and were not notarized. The Board also noted documentary evidence indicating that although fake Chinese passports are rare, other documents are assumed to be fraudulent unless proven otherwise. In addition, no reporting of these alleged arrests was provided in the country evidence for 2006, 2007 or 2009. The Board therefore gave little evidentiary weight to these documents.

Serious Possibility of Persecution

[25] After assessing the applicant's credibility, the Board turned to the question of whether there was a serious possibility that the applicant would be persecuted for practicing Christianity in the Fujian Province. In assessing this question, the Board first considered the applicant's identity and found sufficient evidence on which to find that he was a Christian.

[26] The Board then noted country evidence that described Christians in the Fujian Province as "enjoy[ing] one of the most liberal polici[es] on religious freedom in China". It stated that it had reviewed all the documentary evidence submitted and had found no reported arrests or persecution of Christians in the Fujian Province in any of the reports from 2005 to 2009. The Board noted that

not all cases of persecution and religious oppression are reported, however, there was no persuasive evidence of recent arrests or incidents in the Fujian Province. The sole document pertaining to the destruction of churches in Fujian Province contained little detail on the reasons for destruction, what occurred and when. Therefore, the Board did not grant this document any weight as evidence of persecution of members of underground churches. Finally, the Board noted documentary evidence that explained that only gatherings of believers of forty or more people were required by law to register with the government.

[27] Having considered the applicant's description of the small membership of his underground church, the lack of evidence of religious persecution in the Fujian Province and the applicant's PIF and testimony, the Board found that on a balance of probabilities the underground church had never been raided. The applicant was therefore not wanted by the PSB for that reason. Further, the Board found that there was no serious possibility that the applicant would be persecuted if he returned home and sought to practice his religion in the Christian congregation of his choosing.

[28] For these reasons, the Board rejected the applicant's claims for Convention refugee status and as a person in need of protection.

[29] The applicant submits the following point at issue:

1. Was the Board's conclusion that the applicant could return to Fujian Province, China to continue to practice his Christian religion reasonable?

[30] I would rephrase the issues as follows:

1. What is the appropriate standard of review?
2. Did the Board err in its assessment of the evidence and more particularly, in its assessment of the objective risk that the applicant faced should he return to the Fujian Province and practice his faith openly there?

Applicant's Written Submissions

[31] This application is based on the Board's assessment of the objective risk faced by the applicant in the Fujian Province.

[32] The applicant submits that the Board erred in its conclusion on the objective risk element of his refugee claim. This error was based on the Board's unreasonable finding that there was no evidence of incidents of arrest or persecution for religious reasons in the Fujian Province.

Specifically, the Board failed to consider the evidence of house churches being destroyed in that province. The Board did acknowledge this evidence but refused to attach any weight to it because it found inadequate details regarding the event, reasons and timing of the destruction. The applicant submits that it was unreasonable for the Board to refuse to consider this evidence as evidence of religious persecution in the Fujian Province.

[33] The applicant submits that the title of the documentary evidence provides the context of the destruction of house churches in the Fujian Province. In addition, the applicant submits that the Board erred by relying on the China Aid Association (CAA) report for 2010. The destructions were reported in the CAA's 2007 report.

[34] In summary, the applicant submits that the Board erred by refusing to consider the documentary evidence of destruction of Christian churches in the Fujian Province. In support, the applicant refers to *Liang v Canada (Minister of Citizenship and Immigration)*, 2011 FC 65, [2011] FCJ No 74 in which it submits this Court held that the destruction of house churches in the Fujian Province constitutes an infringement on the right to freedom of religion.

Respondent's Written Submissions

[35] The respondent submits that the standard of review for questions of mixed fact and law are assessed on a reasonableness standard.

[36] The respondent submits that on refugee claims, applicants bear the onus of establishing a well-founded fear of persecution. In this case, the applicant's submissions rely on the Board's weighing of the evidence.

[37] In its decision, the Board considered the documentary evidence but found no persuasive evidence of recent arrests or persecutions of Christians in the Fujian Province. The Board did consider both the CAA 2007 report and *Liang* above. However, more recent evidence did not mention church destructions in the Fujian Province. Had these incidents continued in this province, they would likely have been included in the recent reports.

[38] In summary, the respondent submits that the Board's decision was reasonable.

Analysis and Decision

[39] **Issue 1**

What is the appropriate standard of review?

Where previous jurisprudence has determined the standard of review applicable to a particular issue before the court, the reviewing court may adopt that standard (see *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paragraph 57).

[40] It is established jurisprudence that the treatment of evidence is a question of fact that is within the expertise of the Board. In considering whether the Board ignored material evidence or incorrectly dismissed the probative value of certain documents, the applicable standard of review is therefore reasonableness (see *Dunsmuir* above, at paragraphs 51 and 53; *Yang v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1274, [2010] FCJ No 1577 at paragraph 13; and *Shu v Canada (Minister of Citizenship and Immigration)*, 2011 FC 958, [2011] FCJ No 1174 at paragraph 21).

[41] In reviewing the Board's decision on the standard of reasonableness, the Court should not intervene unless the Board came to a conclusion that is not transparent, justifiable and intelligible and within the range of acceptable outcomes based on the evidence before it (see *Dunsmuir* above, at paragraph 47; and *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] SCJ No 12 at paragraph 59). As the Supreme Court held in *Khosa* above, it is not up to a reviewing court to substitute its own view of a preferable outcome, nor is it the function of the reviewing court to reweigh the evidence (at paragraphs 59 and 61).

[42] **Issue 2**

Did the Board err in its assessment of the evidence, and more particularly, in its assessment of the objective risk that the applicant faced should he return to the Fujian Province and practice his faith openly there?

In this case, the applicant submits that the Board erred in its assessment of the objective risk faced by the applicant should he return to the Fujian Province and openly practice his Christian faith there. The task before the Court is assessing this question and was recently explained by Mr. Justice Robert Mainville in *Cao v Canada (Minister of Citizenship and Immigration)*, 2010 FC 349, [2010] FCJ No 409 at paragraph 22:

Concerning the conditions for the practice of the Christian faith in small house churches in China, it is not the function of this Court to reassesses the available documentation on country conditions. This Court must rather ensure that the Panel has examined whether the Applicant might encounter religious persecution if sent back to China, and second, it must also ensure that the Panel's conclusions in this regard are reasonable, i.e. fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[43] In support of its argument, the applicant relies on the Board's treatment of evidence documenting arrests or persecution in the Fujian Province.

[44] In its decision, the Board stated that it reviewed all the documentary evidence submitted for the applicant's claim. It cited a number of documents, noting differential treatment of religious freedom across China. With regards to the applicant's home province, the Board found no reported arrests or persecution of Christians in the Fujian Province in any of the reports from 2005 to 2009. Nevertheless, it did acknowledge that not all cases of persecution and religious oppression that

occur in China are reported. However, the Board found no persuasive evidence of recent arrests or incidents in the Fujian Province in any of the documentation.

[45] The applicant submits that the Board erred in its treatment of the following documents:

1. RIR12.5: *China: Reports of raids on Protestant house churches; frequency and location of raids (2005 – 2007)*, Response to Information Request, Item 12.5, CHN102492.E. 22 June 2007; and

2. RIR12.10: *Annual Report of Persecution by the Government on Christian House Churches Within Mainland China: January 2009 – December 2009*, Response to Information Request, Item 12.10, CAA. January 2010.

[46] The applicant submits that the Board erred by not giving any weight to RIR12.5 solely because that report did not mention the reasons for destruction of the church or what occurred and when. The applicant submits that the document's title alone provides the necessary context, namely, the destruction of house churches in the Fujian Province. In addition, the applicant submits that the Board erred in not finding any mention of church destructions in the Fujian Province in RIR12.10. The title of this report and its inclusion under the heading of Religion in the Board's own country evidence negates the Board's speculation that the churches may have been destroyed due to zoning, planning or permitting issues. Further, although the destruction of house churches in the Fujian Province was not mentioned in RIR12.10, it was mentioned in the earlier RIR12.5 report.

[47] These documents must be reviewed to assess the applicant's allegations. However, it is important to bear in mind that this Court's role is not to re-weigh the evidence and substitute its own

view (see *Chen v Canada (Minister of Citizenship and Immigration)*, 2009 FC 677, [2009] FCJ No 1391 at paragraph 23; and *Yao v Canada (Minister of Citizenship and Immigration)*, 2011 FC 902, [2011] F.C.J. No. 1129 at paragraph 18). As I explained in *Yao* above, “[i]t is the Board's prerogative to rely on some evidence over others” (at paragraph 18).

[48] In RIR12.5 it was noted that following the introduction of China's *Regulations on Religious Affairs* in March 2005, there was a crackdown on house churches in parts of the country. The general focus of the raids was on large-scale house church meetings, however, small gatherings with a handful of members were also targeted in some areas. Arrests were noted in several provinces, but the treatment of house churches by government officials was found to vary significantly by region. In the Fujian Province, the report noted that “[t]here were also reports of house churches being destroyed”. This statement was based on CAA's *Annual Report on Persecution of Chinese House Churches by Province: From January 2006 to December 2006*. The sole incident reported for Fujian Province in this latter report was the destruction of one house church in Pingtan in 2006.

[49] In the RIR12.10 report, CAA noted that the Chinese government pursued more intense and strategic persecution of Christians in the house church movement in 2009, changing its policy to terminating church worship meetings and harshly punishing church leaders (pages 8 and 11). As in past years, persecution of Christians and churches was mostly directed against the house church movement and was more serious in urban than in rural areas (pages 9 and 11). The government began forcing churches to quit holding meetings by, amongst other means, destroying church buildings (page 12). Incidents of persecution were noted in numerous provinces and municipalities, however, none were mentioned for the Fujian Province (pages 30 and 31).

[50] In considering the documentary country evidence before it, the Board noted that there was little reporting of recent arrests or incidents of persecution of Christians in the Fujian Province. The Board acknowledged the destruction of churches in the Fujian Province reported in RIR12.5 but refused to place any weight on this document because it did not mention the reason for the destruction and provided no detail as to what occurred and when. The Board found that the destruction could therefore have been for a “zoning, planning or permitting” reason. The Board also noted that there had been no mention of church destruction in the Fujian Province in CAA’s more recent report for 2009 (i.e. RIR12.10).

[51] Although no details on the 2006 church destruction in the Fujian Province were provided in the 2006 CAA report, I find the Board’s questioning of the reason for this incident somewhat puzzling. The close timeline between the incident and the enactment of China’s *Regulations on Religious Affairs* in 2005, coupled with the number of other incidents reported across the country at that time, all of which were reported in the documentary evidence before the Board, suggests that the church destruction was more likely caused by religious persecution than by “zoning, planning or permitting” issues. Nevertheless, the Board did consider more recent evidence including RIR12.10 that reported on incidents of persecution in 2009 and found no evidence of recent incidents in Fujian Province.

[52] It is notable that the applicant relies on the Board’s treatment of only two documents. However, along with these reports, the Board also referred to many other documents in its finding of no evidence of recent religious persecutions in the Fujian Province. As in *Yu v Canada (Minister of Citizenship and Immigration)*, 2010 FC 310, [2010] FCJ No 363, the Board noted both the

paucity of documentary evidence on religious persecution in the Fujian Province and that the recognized factors placing people at greater risk of persecution were not present in the applicant's case (at paragraph 34).

[53] I therefore find that when read as a whole, the Board's questioning of the details of the 2006 incident does not render its decision unreasonable. The Board carried out a detailed assessment of the available documentation and issued reasonable reasons in support of its findings. I do not find that the Board selectively relied on evidence to support its negative determination, rather, it provided adequate justification for rejecting the older evidence. As in *Yu* above, the absence of reported incidents of church raids in the Fujian Province can reasonably lead to an inference that an applicant's church was never raided (at paragraph 32).

[54] Reviewed as a whole, I find that the Board's decision falls within the range of possible acceptable outcomes that are defensible in respect of the facts and the law. For these reasons, I would dismiss this judicial review.

[55] Neither party wished to submit a proposed serious question of general importance for my consideration for certification.

JUDGMENT

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

“John A. O’Keefe”

Judge

ANNEX

Relevant Statutory Provisions*Immigration and Refugee Protection Act, SC 2001, c 27*

72. (1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is commenced by making an application for leave to the Court.

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,

(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

(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.

97. (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

(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

72. (1) Le contrôle judiciaire par la Cour fédérale de toute mesure — décision, ordonnance, question ou affaire — prise dans le cadre de la présente loi est subordonné au dépôt d'une demande d'autorisation.

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 :

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;

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.

97. (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 :

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) 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,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(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,

(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) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3702-11

STYLE OF CAUSE: SHOUPENG WEI

- and -

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 9, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT OF:** O'KEEFE J.

DATED: July 5, 2012

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