

Federal Court



Cour fédérale

**Date: 20121015**

**Docket: IMM-9100-11**

**Citation: 2012 FC 1200**

**Ottawa, Ontario, October 15, 2012**

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

**BETWEEN:**

**BIZHU LIN  
JIAHAO ZHANG (a minor)**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Introduction**

[1] This is an application for judicial review of a decision of the Immigration and Refugee Board (the Board), rendered on August 30, 2011, wherein the Board determined that Ms. Bizhu Lin and her minor child, Jiahao Zhang (together the Applicants), are not Convention refugees or persons

in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

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

## **II. Facts**

[3] The Applicants are citizens of the People's Republic of China. They resided in the Province of Fujian.

[4] In July 2008, Ms. Lin's thyroid gland was ablated. At the same time, her boyfriend left her. Consequently, she became very distraught with her situation.

[5] Ms. Lin's friend, Jin Hua Chen, introduced her to Roman Catholicism and took her to an underground church. She attended the church for the first time on October 26, 2008, and continued thereafter until it was raided by the Public Security Bureau [PSB] on February 14, 2010. Ms. Lin was able to escape to her relatives' home.

[6] She subsequently learned that the PSB had been to her house and that she was accused of being involved in an illegal underground church. She also found out that two members of her congregation had been arrested. She left China with her son and arrived in Canada on April 7, 2010.

[7] Ms. Lin eventually learned that the PSB had issued a warrant for her arrest. Ms. Lin alleges that she is still wanted by the PSB. No arrest warrant was given by the PSB to Ms. Lin's family members.

### III. Legislation

[8] 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>(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</p> <p>(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.</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>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>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.</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

(iv) la menace ou le

by the inability of that country to provide adequate health or medical care.

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 qualifié 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**

- 1. Did the Board err in determining that the Applicants were not credible?*
- 2. Did the Board err in its assessment of the Applicants' sur place claim?*

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

[9] 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). The assessment of the evidence regarding the Applicant's *sur place* claim is 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 para 11). Therefore, 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. Applicants’ submissions**

[10] The Applicants allege that the Board erred in determining that the PSB would have left an arrest warrant with Ms. Lin’s brother while looking for her. In their memorandum of facts and law, the Applicants refer to items 9.1 and 9.3 of the Immigration Refugee Board of Canada [IRB]’s National Documentation Package, which read as follows:

“[I]n practice the “PSB [Public Security Bureau] has yet to arrive as a rule of law institution”. According to the associate professor, there can be substantial regional variances in law enforcement, in which some differences are written into policies . . . ” (application record, affidavit of Owen Dobson-Smith, Exhibit B, Item 9.1, Response to Information Requests CHN42444.E)

“[D]ue to “wide administrative discretion throughout the country”, there are discrepancies between legislation and its implementation in China . . .

. . .

[I]nterpreting Chinese police as a “monolithic entity”, or judging police activities as uniform, is a misconception, arguing that “national policy and priorities are not equally shared locally. . . . ”

. . . In terms of actual practice, however, arrest procedures differ from locale to locale, having to conform to local customs reflecting indigenous circumstances.” (application record, affidavit of Owen Dobson-Smith, Exhibit C, Item 9.1, Response to Information Requests CHN103401.E)

[11] The Applicants submit that the Board's decision does not conform to its own documentary evidence regarding criminal procedures in China. They claim that the Board's finding regarding the warrant is based on speculation and is not grounded on the evidence adduced before it.

[12] The Applicants refer the Court to *Liang v Canada (Minister of Citizenship and Immigration)*, 2011 FC 65 at paras 11-14 [*Liang*], where it is stated that:

[11] The Board found that on a balance of probabilities the PSB was not looking for the Applicant because no warrant/summons had been left at her home.

[12] According to the documentary evidence, the Applicant's testimony that no warrant/summons was left at her home, could have very well occurred. Negative findings of credibility could very well lack reasonableness where documentary evidence clearly indicates that which an applicant says occurred, could in fact have occurred.

[13] The documentary evidence indicated that it is not usual procedure to leave a summons/warrant with any other person other than the person to whom it is issued. Thus, the PSB in this case appears to have followed usual procedure.

[14] The documentary evidence also stated the procedures followed by the PSB vary from region to region; and, in most instances, routine procedures or rules give way to norms of the region. Therefore, if the norm in the Applicant's region is for the PSB not to leave a summons/warrant for anyone other than the person who is named, then presumably that norm is followed regardless of how many times the PSB visits the Applicant's home or how many people in the Applicant's house church would have been arrested and sentenced.

[13] The Applicants affirm that this extract runs counter to the Board's decision. Thus, the Board's finding concerning the arrest warrant is unreasonable.

[14] The Applicants also submit that the Board erred in its assessment of the documentary evidence regarding the persecution of Roman Catholics in Fujian province. According to item 12.8 of the IRB's National Documentation Package "Fujian is, alongside Hebei, Zhejiang and Liaoning, one of the provinces where the most unregistered Catholics are located and that they are "tightly controlled" by local authorities" (application record, affidavit of Owen Dobson-Smith, Exhibit D, Item 12.8, Response to Information Requests CHN103401.E).

[15] The Applicants rely again on *Liang* cited above, where the Court found 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" (see *Liang* at para 2).

[16] The Board concluded there was limited evidence to support the Applicants' position. However, according to the Applicants, the Board's conclusion is erroneous as it is based on speculation. "While there may not have any reports of Christians being arrested in the Fujian [province], reports of persecution of house churches in the Fujian [province] do exist: the destruction of house churches in that province have been reported. The China Aid Association considered a reliable, reputable source by the Board, itself, has had it reported as such" (see *Liang* at para 3).



[17] The Applicants also rely on *Liu v Canada (Minister of Citizenship and Immigration)*, 2010 FC 135, more specifically paras 12-13, where the Court made the following conclusion with respect to the persecution of Christians in Fujian province

[12] In terms of the likelihood of persecution in Fujian province specifically, the Board correctly noted that the attitude toward Christianity there appears to be more tolerant than elsewhere in China. Further, small groups of people praying and studying the Bible were rarely targeted. Still, the documentary evidence cited by the Board also referred to the fact that:

- unregistered churches are illegal;
- prayer meetings are usually allowed but, in some areas, house churches with only a few members are proscribed;
- officials sometimes harass unregistered religious groups;
- while there were no reports of actual arrests or prosecutions of Christians in Fujian province in 2007, those who are persecuted often fail to report their mistreatment.

[13] 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.

[18] According to the Applicants, the Board did not assess all of the evidence related to the risk of persecution in Fujian province. They refer to paragraph 24 where the Board states there “is mixed information regarding the treatment of Christians in Fujian province” (see the Board’s decision at para 24).

[19] The Applicants also allege that the Board erred in its analysis of their *sur place* claim. There is no obligation of good faith and “opportunistic claimants are still protected under the Convention

if they can establish a genuine and well-founded fear of persecution for a Convention ground” (see *Ghasemian v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1266 at para 31).

[20] For these reasons, the Applicants claim that the Board’s decision is unreasonable.

## **B. Respondent’s submissions**

[21] The Respondent underlines that the Applicants made two contentions that are not related to the Board’s decision. Firstly, the Board never stated that good faith is a prerequisite to making a refugee claim. Secondly, the Applicants allege that the Board only considered the issue of arrest in its analysis of persecution in the Fujian province. These two allegations, according to the Respondent, cannot form the basis of a valid claim for judicial review.

[22] The Respondent also alleges that the Board’s credibility findings are reasonable as the Applicants are ignoring the context of the Board’s decision. The Board expressly concluded that the documentary evidence with respect to the issuance of warrants is mixed. The Board weighed the evidence in light of the Applicants’ circumstances. As a result of this analysis, the Board reasonably concluded, based on the country documentation, that the Applicants lacked credibility, according to the Respondent.

[23] The Respondent affirms that “the Board based its decision on documentary evidence that in many cases warrants or summons are normally left. It was up to the Applicant to introduce into evidence all the material to establish that her claim was well-founded and a lack of relevant

documents can be a valid consideration for the purpose of assessing credibility” (see *He v Canada (Minister of Citizenship and Immigration)*, 2010 FC 525 at para 14).

[24] As for the Board’s conclusion concerning the arrests of Ms. Lin’s fellow church members, the Respondent claims that it is reasonable to expect that these arrests would be reported given that the members were sentenced to several years of incarceration. The Respondent relies on *Yu v Canada (Minister of Citizenship and Immigration)*, 2010 FC 310 at paras 34 and 38 [*Yu*], wherein the Court determined that where there is a paucity of documentary evidence attesting of religious persecution in a given province, there is no evidence of religious persecution.

[25] Given that there is no evidence to demonstrate that Ms. Lin would be persecuted if she was to attend an underground church in China, the Respondent affirms that the Board’s decision is reasonable and ultimately determinative of the Applicants’ application for judicial review.

[26] The Respondent finally argues that there is no doubt that the Board did consider the issue of church members’ arrests in Fujian, particularly in light of the Applicants’ claim. In the present case, the Applicants failed to adduce evidence demonstrating that Catholics practicing in unregistered churches are persecuted in the province of Fujian. According to the Respondent, the Board’s analysis of the country documentation was thorough analysis and it reasonably concluded that the Applicants were not credible.

## VI. Analysis

### 1. *Did the Board err in determining that the Applicants were not credible?*

[27] The Board did not err in determining that Ms. Lin was not credible.

[28] A credibility finding 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).

[29] The Applicants contend that the Board erred in determining that the PSB would have left a warrant with Ms. Lin's brother. The Applicants refer to item 9.3 of the National Documentation Package where it is shown that arrest procedures are inconsistent throughout China and vary from region to region. They note that “the documentary evidence indicate[s] that it is not usual procedure to leave a summons/warrant with any other person other than the person to whom it is issued” (see *Liang* at para 13).

[30] No evidence was adduced by the Applicants to demonstrate that, in the context of their claim, the PSB followed common procedures. This distinguishes this case from the situation in *Liang* where the Court held that “the norm in the Applicant's region is for the PSB not to leave a summons/warrant for anyone other than the person who is named, then presumably that norm is followed regardless of how many times the PSB visits the Applicant's home or how many people in

the Applicant's house church would have been arrested and sentenced" (see *Liang* at para 14). There was no evidence presented to demonstrate that the PSB does not leave warrants with family members in Fujian province. The Board reasonably determined that the PSB was not looking for the Applicants in China.

[31] The Court finds that the Board reasonably assessed all of the evidence adduced by the Applicants concerning the persecution of Catholics in Fujian province. The Board noted in its decision that "there is mixed information regarding the treatment of Christians in Fujian province. [However,] [i]n the case of the Catholic Church, there is information detailing very specific examples from areas much more remote and difficult to access than Fujian province. There is even information from Fujian province that indicates to the panel that information regarding persecutory treatment against members of the Catholic faith is documented if it has occurred" (see the Board's decision at paras 24 and 28). In the present case, it was open to the Board to rely on particular documentary evidence (see *Yu* cited above at paras 32-33). Even though some documents were contradictory, the Board reasonably determined that there was no evidence to show that religious persecutions had occurred in Fujian province. The Board's assessment on that issue cannot be qualified as unreasonable or capricious as it falls within the range of possible and acceptable outcomes. There was no documentary evidence supporting the proposition of raids to underground churches in Fujian province. Therefore, the Board reasonably concluded there was not a serious possibility that the Applicants would be persecuted or that they would be subjected personally to a danger of torture or to a risk to their life, or a risk of cruel and unusual treatment or punishment should they return to their country of origin.

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

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

Justice Blanchard stated:

[11] . . . 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. . .

[33] 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.

[34] The Applicants provided pictures of religious ceremonies and a letter from Reverend Peter Chin dated November 1, 2011. They also adduced documentary evidence to demonstrate that Christians are being persecuted in China. However, this Court, further to a thorough review of the evidence adduced, finds no reviewable error in the Board's conclusion that the Applicants failed to

meet the burden of establishing a serious possibility that they would be persecuted or that they would be personally subjected to a risk to their life or a risk of cruel and unusual treatment in China.

## **VII. Conclusion**

[35] This application for judicial review is dismissed. The Board's conclusion is reasonable as it "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (see *Dunsmuir* at para 47).

**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-9100-11

**STYLE OF CAUSE:** BIZHU LIN  
JIAHAO ZHANG (a minor)  
v  
THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** July 23, 2012

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

**DATED:** October 15, 2012

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