

Federal Court



Cour fédérale

Date: 20130618

Docket: IMM-8541-12

Citation: 2013 FC 673

Toronto, Ontario, June 18, 2013

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

MING XUAN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Mr Ming Xuan claimed refugee protection in Canada on the basis that he fears religious persecution in China as a Christian. He says that the Public Security Bureau (PSB) in China raided the house church he attended and is now seeking his arrest.

[2] Prior to his hearing before a member of the Immigration and Refugee Board, Mr Xuan requested the Board member to recuse himself on the basis that his acceptance rate for refugee claims in 2011 was zero. Mr Xuan argued that this evidence gave rise to a reasonable apprehension of bias on the Board member's part.

[3] The member dismissed Mr Xuan's request on the basis that statistics alone cannot give rise to a reasonable apprehension of bias. He went on to consider the merits of Mr Xuan's claim and dismissed it, concluding that Mr Xuan had failed to establish his identity or provide credible evidence to support his claim.

[4] Mr Xuan argues that the Board member treated him unfairly by rejecting his recusal motion. Further, he submits that the Board's findings regarding his identity documents and other evidence were unreasonable. He asks me to quash the Board's decision and order a new hearing before a different member.

[5] I can find no basis for overturning the Board's decision and must, therefore, dismiss this application for judicial review. In my view, the Board did not treat Mr Xuan unfairly by rejecting his recusal motion; this Court has confirmed that statistics alone do not give rise to an apprehension of bias. Further, the Board's conclusion that Mr Xuan had failed to support his claim with credible evidence was not unreasonable.

[6] There are two issues:

1. Did the Board treat Mr Xuan unfairly by dismissing his recusal motion?
2. Did the Board unreasonably conclude that Mr Xuan's refugee claim was not supported by credible evidence?

II. The Board's Decision

(1) On the Recusal Motion

[7] The Board cited the well-accepted standard for a reasonable apprehension of bias from *Committee for Justice and Liberty v National Energy Board*, [1978] 1 SCR 369. It also referred to decisions of the Federal Court in which judges have concluded that statistics relating to the acceptance rates of Board members do not, in themselves, establish a reasonable apprehension of bias: *Hernandez Victoria v Canada (Minister of Citizenship and Immigration)*, 2009 FC 388; *Zupko v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1319.

[8] Accordingly, the Board concluded that Mr Xuan had provided insufficient grounds for his motion. It found that a reasonable, informed person, viewing the matter realistically and practically, would not conclude that the Board would fail to decide Mr Xuan's claim fairly.

(2) On the Merits

[9] The Board accepted that Mr Xuan was a citizen of China. However, the evidence relating to his personal identity was unsatisfactory. It referred to the following problems with the evidence:

- Mr Xuan stated that he had never travelled outside of China until he came to Canada. He later testified that he had previously travelled abroad. The other trips were recorded in his passport and corroborated by various travel visas.
- In his application for a Canadian visa, Mr Xuan stated that he was General Director of the Shenyang Huatai Hospital and had been invited to Canada by an official at a hospital in Hamilton, Ontario. The Board verified that an invitation had been sent to a “Xuan Ming” but the official in Hamilton had no personal knowledge of Mr Xuan.
- Other identity documents provided by Mr Xuan apparently were given to him by a friend, but no evidence was provided about their origin.
- A document showing Mr Xuan’s work record in a factory misstated his age by four years. Mr Xuan had no explanation for the discrepancy. The work record also contradicted Mr Xuan’s testimony about where he worked at various points in time.
- Mr Xuan’s Hukou contained a page that did not match the others. Mr Xuan could not explain why that was so. Further, he could not explain an amendment that was made to his Hukou by the PSB at a point in time when the PSB was allegedly looking for him.

[10] The Board concluded that Mr Xuan's credibility was discredited to the extent that it could not believe his claim to be a Christian in China who was sought by the PSB. This conclusion was reinforced by Mr Xuan's inconsistent testimony about when he had joined an underground church.

[11] The Board also considered evidence that Mr Xuan was a practicing Christian in Canada. However, it found that this evidence was acquired for the purposes of supporting an unmeritorious refugee claim.

[12] The Board found that Mr Xuan was neither a Convention refugee nor a person in need of protection.

III. Issue One – Did the Board treat Mr Xuan unfairly by dismissing his recusal motion?

[13] Mr Xuan presented the Board with a copy of a report from the CBC describing a study conducted by Professor Sean Rehaag of Osgoode Hall Law School about the acceptance rates of members of the Immigration and Refugee Board. That report stated that the Board member had approved none of the 127 refugee claims he had considered in 2011. Mr Xuan argues that this evidence, on its own, showed a reasonable apprehension of bias on the part of the individual Board member.

[14] Before me, Mr Xuan sought to introduce further evidence about the Board member's rate of acceptance. I need not consider that evidence because it adds little to the information that was already before the Board at the time of the hearing.

[15] In my view, the Board correctly concluded that statistics alone do not normally establish a reasonable apprehension of bias. This was confirmed recently in a decision of Justice Russel Zinn in which he cites numerous other factors that would be relevant to that issue: *Turoczi v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1423, at para 15.

[16] Accordingly, I cannot conclude that the Board erred in dismissing Mr Xuan's recusal motion.

IV. Issue Two– Did the Board unreasonably conclude that Mr Xuan's refugee claim was not supported by credible evidence?

[17] Mr Xuan argues that the Board's assessment of his identity documents and other evidence was unreasonable. He believes the Board reviewed his evidence microscopically and jumped to unreasonable conclusions about it. Further, Mr Xuan submits that the Board failed to consider the risk that faces him as a practising Christian if he is returned to China. In support of his claim, Mr Xuan provided a letter from his pastor in Canada and a baptismal certificate.

[18] In my view, the Board provided clear reasons for disbelieving Mr Xuan's account of events in China and for doubting his personal identity. The sole remaining question is whether the Board adequately considered whether, notwithstanding those problems with Mr Xuan's claim, there remained a reasonable chance that Mr Xuan would face a risk of religious persecution in China.

[19] As I read the Board's decision, it doubted all of Mr Xuan's assertions, including his claim to be a genuine Christian, because of the problems with the other evidence presented in support of his claim. It found that he had engaged in religious activities in order to bolster an unmeritorious claim.

[20] In my view, this finding was available to the Board on the evidence and, therefore, I cannot conclude that it was unreasonable. The Board was entitled to permit its extensive credibility findings relating to Mr Xuan's identity and his experiences in China to influence its assessment of the genuineness of Mr Xuan's religious convictions in Canada: *Jiang v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1067, at paras 27-28.

V. Conclusion and Disposition

[21] The Board provided a valid basis for rejecting Mr Xuan's recusal motion. In addition, its conclusion that Mr Xuan's refugee claim was unsupported by reliable evidence was not unreasonable. Therefore, I must dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8541-12

STYLE OF CAUSE: MING XUAN v MCI

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 11, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: JUNE 18, 2013

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