

Federal Court



Cour fédérale

Date: 20140115

Docket: IMM-9603-12

Citation: 2014 FC 44

Ottawa, Ontario, January 15, 2014

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

XIN TONG HE

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[1] This is an application under subsection 72(1) of the Immigration and Refugee Protection Act, SC 2001, c 27 [Act] for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board [RPD or the Board] dated 23 August 2012 [Decision], which refused the Applicant's application to be deemed a Convention refugee or a person in need of protection under sections 96 and 97 of the Act.

BACKGROUND

[2] The Applicant is a citizen of the People's Republic of China who came to Canada in July 2010 with the help of a smuggler. He filed a refugee claim upon his arrival, alleging he had been subjected to persecution in Fujian province for his participation in a Christian house church.

[3] The Applicant says that he was introduced to Christianity by a friend in February 2007, and began attending a small underground house church in March 2007. He says that on 1 July 2010, this house church was raided by the Public Security Bureau [PSB], but that he and other members were able to escape due to a warning from church members who were acting as lookouts. Rather than going home, the Applicant says he hid at a relative's house, and the next day fled to a friend's house in another city. He says the PSB went to his home on 2 July 2010 to arrest him, that his friend and other church members were arrested, and that the PSB returned to his home looking for him on 9 July 2010. He decided to leave China, leaving his wife and family behind, and arrived in Canada on 25 July 2010. He says he later learned that the PSB came looking for him again on 15 July 2010 and 2 August 2010, and that they have been to his home a total of eight times, the most recent in February 2012.

[4] The Applicant's refugee claim was heard on 9 February 2012, and the Decision refusing his claim was issued on 23 August 2012.

DECISION UNDER REVIEW

[5] The RPD accepted that the Applicant was a practising Christian in China, and that he continues to be a practising Christian in Canada, but did not accept his allegations that his house

church was raided, that members of the church were arrested in the wake of that raid, or that the PSB has continued to look for him. The Board found that, on a balance of probabilities, he could return to Fujian province and practise his religion freely. These findings were based on documentary evidence regarding the conditions faced by Christians in Fujian province, which the RPD preferred to the Applicant's testimony.

[6] The RPD found that, although unregistered churches such as the one the Applicant attended are illegal, the documentary evidence shows that there are millions of Christians in China attending illegal underground churches. The Board noted that there are continuing reports of abuse and harassment of Christians in several Chinese provinces, but that the overall number of such incidents has declined, and "Christians in China in general are able to have more space to express their faith and to have a much wider range of diverse expressions during the past few years" (Reasons and Decision [Reasons] at para 23). The Board noted evidence that "the treatment of unregistered Protestants may vary depending on their location and the tolerance of local authorities", and "[o]fficials have wide latitude in interpreting what constitutes 'normal religious activities'": Research Directorate, Immigration and Refugee Board of Canada, Responses to Information [RIRs], CHN103500.E, quoted in Reasons at para 22.

[7] With specific reference to the Applicant's province of Fujian, the Board found that there were no recent reports that this province was a site of arrest, detention or church closures. There were large numbers of unregistered house churches in Fujian, some of which held meetings on the premises of the state-sanctioned Protestant church organization, the Three-Self-Patriotic Movement

[TPSM]. The documentary evidence indicated that Christians who attended illegal underground churches in Fujian in small groups were not persecuted by the PSB.

[8] The RPD observed that there was one report of the detention of a staff member of a Protestant church in Fujian province and the closure of three church sites. However, this did not involve the detention or questioning of parishioners, including those involved in evangelism. The reason for the arrest and closures was not clear, nor was it known whether the detained individual was released after questioning. The Board found there was insufficient evidence that other churches or persons were persecuted in Fujian province.

[9] The Board also noted evidence that house churches have an unclear status, being neither banned nor fully approved, and that “[a]s long as they avoid neighbourly confrontation and keep their congregations below a certain size (usually about 25) the Protestant ones are mostly tolerated”: Home Office UK Border Agency, quoted in Reasons at para 28. Since the Applicant attended a Protestant house church of 25 members in Fujian province, the Board found that, on a balance of probabilities, its members would not be persecuted by government authorities.

[10] The RPD considered a letter from the President of the China Aid Association indicating that it was “naïve and incorrect to assume that house churches are able to operate without any risk or problems in... Fujian Province,” and which noted that there might be underreporting of incidents because of censorship. However, the Board found that there was significant information regarding areas of China much more remote than Fujian, and it was reasonable to expect that if groups like the

Applicant's were being raided and individuals being jailed in that province, there would be significant documentary evidence of this.

[11] The documentary evidence indicated that the treatment of underground church members depends on local authorities, who have the legislative authority and resources to implement a wide range of criminal and administrative sanctions against underground Christians. There was little evidence that officials in Fujian were interested in persecuting underground Protestant Christians.

[12] While noting evidence that proselytizing in public is generally prohibited and the government response to proselytizing varies from place to place, the Board found that based on the evidence the Applicant would be able to spread the Gospel to his friends and acquaintances in Fujian province without problems if he so desired. It found the same with respect to the Applicant's ability to engage in social service work as part of a church group, citing evidence of the increasingly open and public nature of the activities of such groups.

[13] Based on all of the evidence, the Board found that the Applicant's underground church was not raided as he alleged, that its members were not arrested, and that the Applicant was not wanted by the PSB. It also found that, on a balance of probabilities, "the claimant would be free to practice his religion in any church if he were to return to his home in Fujian province in China and... there is not a serious possibility that he would be persecuted for doing so." That is, the Applicant "would be able to return to his home province to practice his religion s he sees fit."

[14] As such, the RPD found that the Applicant was not a Convention refugee or a person in need of protection under sections 96 and 97 of the Act.

ISSUES

[15] The issue in this application is whether the Board's Decision that the Applicant is not a Convention refugee or a person in need of protection under sections 96 and 97 of the Act was unreasonable.

STANDARD OF REVIEW

[16] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Minister of Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[17] The Respondent submits that this case relates to the interpretation and assessment of evidence, which are within the Board's expertise and attract a standard of reasonableness: *He v Canada (Minister of Citizenship and Immigration)*, 2010 FC 525 at paras 6-9; *Lawal v Canada (Minister of Citizenship and Immigration)*, 2010 FC 558 at para 11. I agree.

[18] It is well established that the standard of review applicable to the RPD's risk and credibility findings is reasonableness: see *Qiu v Canada (Minister of Citizenship and Immigration)*, 2009 FC 605 at para 17; *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (FCA); *Wu v Canada (Minister of Citizenship and Immigration)*, 2009 FC 929 at para 17. Further, the standard of review applicable to all of the RPD's findings of fact is reasonableness (*Dunsmuir*, above, at para 53).

[19] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at para 47, and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

STATUTORY PROVISIONS

[20] The following provisions of the Act are applicable in these proceedings:

Convention refugee

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,

Définition de « réfugié »

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) 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

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) 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.

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.

Person in need of protection

Personne à protéger

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

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) 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

(ii) elle y est exposée en tout

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.

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.

ARGUMENT

Applicant

[21] The Applicant argues that the Board made no findings about his credibility or the truthfulness of his account that his underground church was raided and members of the congregation were later arrested. Since the Board's findings regarding these facts were directly contrary to that account, the Applicant says the Board was required to make an explicit finding on his credibility before rejecting his claim. In support of this view, he cites *Mei Hua Lin v Canada (Minister of Citizenship and Immigration)*, 2009 FC 254 [*Lin*], where the Court stated as follows:

[15] For the Board to fairly rely upon general evidence of a diminished risk of religious persecution in China it was critically important to make specific findings about the truthfulness of Ms. Lin's account of the police raid on her church. That is so because the generalized risk facing Christians in China had to be assessed against her particular profile including her past experiences with the authorities. It was not enough for the Board to find that the instances of persecution of individual Christian congregants are now fairly rare

if the authorities in her community were of a persecutory persuasion as evidenced by their earlier behaviour directed at Ms. Lin and the others in her church. Her situation may well have been one of increased risk thus taking her case outside of the statistical norm in China, and it was an error for the Board not to have conclusively resolved that point...

[22] The Applicant says that the documentary evidence before the Board can be reconciled with his account of his circumstances in China, and that it was therefore an error in logic for the Board to reject his account without making a finding about its credibility or truthfulness. In *Lin*, the Court observed that while the country condition evidence revealed an increasing level of tolerance for the practice of Christianity in China, it also showed that the approach was uneven and based on the attitudes of local authorities, with some Christians throughout China receiving extremely harsh treatment. The Court found “[i]t was thus an error for the Board to say that Ms. Lin’s account could not be reconciled with the country condition evidence, because some of that evidence was consistent with her risk narrative”: *Lin*, above, at para 14. The Applicant argues that the same logic applies in the current case: the evidence before the Board indicated that the treatment of unregistered Protestants varied depending on their location and the tolerance of local authorities: see U.S. Department of State, *International Religious Freedom Report 2010: China (Includes Tibet, Hong Kong, Macau)*, November 17, 2010 [*Religious Freedom Report 2010*], Applicant’s Record at pp.142, 144-145.

[23] The Applicant also argues that the Board’s analysis was improperly focused at the provincial level, whereas the evidence shows that it is local authorities and not provincial authorities that have the greatest impact on the treatment of unregistered church members in China. The Board acknowledged that the treatment of unregistered Protestants may vary depending on their location,

and that local authorities have wide latitude. The authorities in the Applicant's location may have been of a particularly persecutory persuasion. It was thus necessary for the Board to make specific findings about the truthfulness of his account if it intended to rely on general evidence of a diminished risk of religious persecution in China in rejecting his claim. Moreover, in light of the evidence that extremely harsh treatment continues to be meted out to Christians throughout China from time to time, the Board's conclusion was unreasonable.

[24] Furthermore, there was evidence before the Board of the persecution of Christians in Fujian province – namely the arrest and detention of a staff member of the Fuzhou Lianjiang Church and the closure of three meeting sites – as acknowledged by the Board in its reasons. The evidence stated that these sites were “sealed without any legal basis or submitting any government paperwork”: ChinaAid Association, *Abduction and Building Closures in Fujian*, October 19, 2010, Applicant's Record at 137.

[25] The Board's finding that unregistered churches must keep their membership below a certain level is itself evidence of persecution. The Board found that house churches have an unclear status, neither banned nor fully approved of, but are mostly tolerated if they avoid neighbourly confrontation and keep their congregations below about 25 people. However, the Court found in *Fosu v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 1813 at para 5, 90 FTR 182 (FCTD) that:

... The fact is that the right to freedom of religion also includes the freedom to demonstrate one's religion or belief in public or in private by teaching, practice, worship and the performance of rites. As a corollary to this statement, it seems that persecution of the practice of religion can take various forms, such as a prohibition on worshipping in public or private, giving or receiving religious instruction or, the

implementation of serious discriminatory policies against persons on account of the practice of their religion. [footnote omitted]

[26] The evidence shows that it would be difficult for the Applicant to join a congregation larger than 25 should he choose to do so, and this is an interference with his right to worship in public or in private.

[27] The Applicant argues that the Board also misapprehended the evidence on a number of specific points:

- a. The Board found that the Applicant would be able to spread the Gospel to his friends and acquaintances in Fujian province if he so desired (Reasons at para 31), but the documentary evidence showed that “proselytizing in public, unregistered places of worship, or by foreigners is not permitted” (*Religious Freedom Report 2010*, Applicant’s Record at 139), and that proselytizing is only permitted in state sanctioned religious venues (RIRs, CHN103255.E: China: Whether proselytizing is legal in China, 27 October 2009, Applicant’s Record at 177);
- b. The Board quoted evidence that unregistered groups are now operating openly (Reasons at para 32), but the report cited (*Religious Freedom Report 2010*) does not contain the quoted statement, and in fact that report is at odds with the Board’s findings;
- c. The Board stated that unregistered groups rent space for offices and carry out social service work, whereas the evidence indicates that unregistered groups are not permitted to openly raise funds, hire employees, open bank accounts or own property, and religious groups not affiliated with an official patriotic religious

association have difficulty registering as non-governmental organizations or performing social service work: *Religious Freedom Report 2010*, Applicant's Record at 142-43.

[28] The fact that there were not more reports of persecution in Fujian does not necessarily indicate that Christians in Fujian are free to practise. The Court found in *Zhang v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1198 at para 19 that the Board's focus on the number of arrests as an indicator of the likelihood of persecution was misplaced and erroneous:

... The number of arrests of underground Christians in China may speak to the ability of church members to stay underground and conceal their activities from the authorities. But the extent to which underground Christians are able to hide their activities and avoid detection is irrelevant for the purpose of determining whether or not they are subject to persecution for their religion, and unable to freely practice their religion openly and in accordance with their fundamental belief system.

[29] The Applicant argues that the same reasoning can be applied in the present case.

Respondent

[30] The Respondent argues that the Applicant provided insufficient credible and trustworthy evidence in support of his refugee claim, that his testimony was at odds with the documentary evidence regarding persecution in his home province of Fujian, and that no error of analysis or principle has been demonstrated. As such, the Decision was reasonable.

[31] The Board accepted that the Applicant is a Christian, but found that his house church had not been raided. The Board preferred the documentary evidence on this point over the Applicant's

testimony. It was entitled to do so, the Respondent says, and was under no obligation to make an explicit credibility finding: *Yu v Canada (Minister of Citizenship and Immigration)*, 2010 FC 310 at para 33 [Yu]; *Wei v Canada (Minister of Citizenship and Immigration)*, 2012 FC 854 at para 52 [Wei]; *He v Canada (Minister of Citizenship and Immigration)*, 2012 FC 665 at paras 27-32. The Board explained why it preferred the documentary evidence when it outlined the characteristics of the Applicant's group and noted that they described a profile – a small church of 25 members in Fujian province – that the evidence showed was mostly tolerated by authorities.

[32] The Applicant essentially disagrees with the weight given to the evidence and is asking the Court to reweigh it. However, matters of weight are not a ground for judicial review (*He*, above, at para 33; *Brar v Canada (Minister of Employment and Immigration)*, [1986] FCJ No 346 (FCA)), nor is the fact that more than one reasonable conclusion might possibly be drawn from the evidence: *Dunsmuir*, above, at para 47.

[33] The Board reasonably found that the PSB did not raid the Applicant's gathering, the Respondent says, essentially because his group did not fit the profile of groups that are targeted. The Board noted reports of house church persecution in China, but found that these occurred outside of the Applicant's province of Fujian. There was only one report of a detention of a church staff member in that province, and that case did not involve the arrest or even questioning of parishioners. In other words, the Board considered the Applicant's specific circumstances and reasonably found that the authorities did not raid the group.

[34] Moreover, it was reasonable for the Board to prefer the “silence of the documentary evidence” regarding the situation of Christians in Fujian province to the testimony of the Applicant in finding that the Applicant would be able to practise his faith in China. This Court has previously held that a claimant’s sworn testimony may be rebutted where the documentary evidence fails to mention what would normally be expected: *Adu v Canada (Minister of Employment and Immigration)*, 1995 CarswellNat 2559, 53 ACWS (3d) 158 (FCA); *Yu*, above, at para 25. Here, the Board reasonably expected to see persuasive evidence to support the allegation of Protestant house churches being raided and parishioners being jailed in Fujian province, and no such evidence was presented.

[35] The Board also reasonably concluded that the Applicant would be able to practise his religion freely in Fujian, the Respondent says. The Board noted that country conditions were mixed with respect to the ability to proselytize. It also noted that the one reported arrest in Fujian province did not involve parishioners, even those involved in proselytizing, and that there was evidence of open-air evangelist campaigns that were sanctioned by the local government. It was open to the Board to prefer the documentary evidence to the Applicant’s testimony regarding his ability to practise his religion openly in Fujian: *Dehghani-Ashkezari v Canada (Minister of Citizenship and Immigration)*, 2011 FC 809 at paras 22-23.

[36] It was the function of the Board to weigh the sometimes conflicting evidence and determine whether there was more than a mere possibility that the Applicant would be persecuted based on a Convention ground, or whether, on a balance of probabilities, he qualified as a protected person under s. 97 of the Act: *Wang v Canada (Minister of Citizenship and Immigration)*, 2011 FC 636 at

paras 23-25. This is exactly what the Board did, the Respondent says, and no error in its reasoning has been shown.

Applicant's Reply

[37] The Applicant argues that *Yu*, above, and *He*, above, cited by the Respondent for the proposition that the Board was entitled to prefer the documentary evidence to the Applicant's testimony without making an explicit credibility finding, are distinguishable here. In those cases, the Board had cited evidence that brought into question the evidence provided by the claimants. In the present case, there was evidence on the record that was consistent with the Applicant's evidence on the repression and persecution of Christians. As in *Lin*, above, it was an error in logic for the Board to make the findings it did when the Applicant's evidence could be reconciled with the documentary evidence.

[38] *Wei*, above, is also distinguishable, the Applicant argues, because in that case the Board made very specific findings regarding the credibility of the claimant's evidence, which the Board in this case did not do.

[39] The Applicant also argues that he is not asking the Court to reweigh the evidence. Rather, the Board made an error when it implicitly found that the Applicant's evidence concerning what transpired in China could not be reconciled with the documentary evidence, when in fact the two were reconcilable.

[40] The Applicant argues that the Board's finding that he could freely practise his religion in Fujian, including proselytizing, is simply not consistent with the evidence. He says it is questionable whether the Board reviewed the documentary evidence, particularly in light of the erroneous quotation noted above. The Applicant submits that the Board ignored, disregarded or misconstrued the evidence on the issue of the free practice of the Christian faith in Fujian.

ANALYSIS

[41] This application raises issues that have come before the Court on numerous occasions. The Applicant presented what has now become a generic narrative regarding religious persecution in Fujian. The RPD rejected that narrative, as it has done on many previous occasions, because the documentary evidence on Fujian reported no material persecution of practising Christians who belong to small house churches, such as the one described by the Applicant. After a careful review of the available documentation on Fujian, the RPD found that "the claimant's underground church was not raided as he alleges and members were not arrested and he is not wanted by the PSB." The RPD repeats this finding at paragraph 38 of the Decision where it says:

Taking into consideration all of the evidence and counsel's submissions, the panel finds that, on a balance of probabilities, the claimant's church was not raided, fellow members were not arrested and detained and he is not being sought by the PSB for his religious activities. ...

This aspect of the Decision is consistent with *Nen Mei Lin v Canada (Minister of Citizenship and Immigration)*, (February 4, 2010), IMM-5425-08, and *Jiang v Canada (Minister of Citizenship and Immigration)*, 2010 FC 222.

[42] There is no explicit credibility finding but, as the above words indicate, the RPD clearly found that the Applicant's allegations of past persecution could not be believed. As in *Yu*, above, having found that the documentary evidence was stronger and was to be preferred, the RPD did not need to make an explicit credibility finding because it is obvious that such a finding was made indirectly.

[43] The rationale for this kind of decision can be found in numerous cases and goes somewhat as follow:

- a. The Applicant bears the burden of proving that he is subject to a risk of persecution;
- b. The Applicant's sworn evidence / testimony should be believed unless there are reasons for doubting it: *Dias Pinzon v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1138 at para 5; *Konya v Canada (Citizenship and Immigration)*, 2013 FC 975;
- c. Where there is detailed and reliable country condition evidence that does not support the Applicant's account, this may provide a good reason for doubting the veracity of that account;
- d. The consequence of this is that corroborating evidence is required to show that events occurred as the Applicant alleges, despite the fact that his account is out of character with the general pattern revealed by the country condition evidence;
- e. The fact that the events described by the Applicant do not conform to a general pattern for the area does not mean that they did not occur, or that the Applicant is not at risk. Rather, it means that the RPD is entitled to expect corroborating evidence before believing the Applicant's account: *Konya*, above, at para 18;

- f. Here, the Applicant did not provide sufficient reliable corroborating evidence to overcome the doubts raised by the country condition evidence. The Board found, on a balance of probabilities, that events did not occur as he described them, and this was a reasonable conclusion based on the evidence.

[44] The RPD's finding on the Applicant's failure to establish past persecution is reasonable. The Federal Court of Appeal has said that a claimant's sworn testimony may be rebutted where the documentary evidence fails to mention what one would normally expect it to mention: *Adu*, above, at para 1. In this case the RPD went through the available evidence, acknowledged the problems experienced by Christians in some areas, and pointed out how any mention of Fujian in that evidence can be distinguished from the Applicant's case. The RPD found that based on the information available about areas of China more remote than Fujian, if groups like the Applicant's were being raided and individuals being jailed in Fujian, there would be significant documentary evidence of this. I cannot say these findings were unreasonable in any way.

[45] In my view, it is only possible to take issue with the RPD's forward looking analysis and its conclusion at paragraph 38 of the Decision that "the panel finds that the claimant would be able to return to his home province to practice his religion as he sees fit."

[46] The Applicant points to the RPD's acknowledgement in paragraph 22 of the Decision that there is evidence that "the treatment of unregistered Protestants within China may vary depending upon their location and on the tolerance of local authorities. Officials have a wide latitude in interpreting what constitutes 'normal religious activities.'" In my view, however, this does not

displace the RPD's general findings of a lack of evidence of persecution throughout the province of Fujian and the greater leniency that appears to prevail there.

[47] The Applicant asks "What if the applicant wanted to join a congregation that already had 25 members?" There is no evidence that the Applicant wanted to join a larger congregation or that the exercise of his religious rights would be thwarted or curtailed if he continued his past religious church practices. The Applicant's question is hypothetical. The Applicant was not persecuted in the past because he wanted to join a larger congregation, and there was no evidence that he wanted to join a larger congregation if he returned to Fujian. The RPD specifically found that the Applicant was a Christian and had attended a house church. There was no convincing evidence to suggest that he could not go back to Fujian and practise his religion as he had always done. He did not complain that he had been prevented from proselytizing or doing social work. These matters are raised now as a hypothetical attack upon the Decision but, as the RPD points out, there just is not enough evidence to establish that the Applicant could not go back to "his home province to practice his religion as he sees fit."

[48] The RPD deals with the freedom to proselytize in paragraph 31 of the Decision and finds that "the claimant could spread the Gospel to his friends and acquaintances in Fujian Province if he so desired." This conclusion was based upon a review of the evidence which seemed to suggest that the government response to public proselytizing varied from one administrative unit to the next. However, the evidence appears to be that, generally speaking, proselytizing is tolerated provided it is not in the public domain and, in some places, even open-air evangelism is allowed. The evidence provides a sufficient and intelligible basis for the RPD's conclusion.

[49] As regards participation in social work, the RPD concludes that “there is insufficient reliable and trustworthy evidence before it to indicate that the claimant would not be able to participate in social service activities.” Having reviewed the evidence in question, I can see that it is possible to disagree with this conclusion, but I cannot say it falls outside the range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[50] All in all, I cannot find a reviewable error with this Decision. In the end, the RPD went through a weighing exercise of the available evidence. It is possible to disagree with its conclusions but I do not think it is possible to say that the Decision was unreasonable.

[51] Counsel agree there is no question for certification and the Court concurs.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. There is no question for certification.

"James Russell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-9603-12

STYLE OF CAUSE: XIN TONG HE v THE MINISTER OF CITIZENSHIP
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PLACE OF HEARING: TORONTO, ONTARIO

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

DATED: JANUARY 15, 2014

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