

Federal Court



Cour fédérale

**Date: 20140226**

**Docket: IMM-11931-12**

**Citation: 2014 FC 180**

**Ottawa, Ontario, February 26, 2014**

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

**BETWEEN:**

**JING SHOU JIANG**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of the decision of Stephen E. Rudin, a member of the Refugee Protection Division of the Immigration and Refugee Protection Board [the Board], pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. The Board dismissed the Applicant's claim for refugee protection, concluding that he was not a convention refugee or person in need of protection under sections 96 and 97 of the Act.

I. Issue

[2] The issue raised in the present application is as follows:

A. Was the Board's decision unreasonable in its assessment of the risk faced by the Applicant for practising Christianity in Fujian Province?

II. Background

[3] The Applicant is a citizen of the People's Republic of China. He lived in the Fujian Province. He alleges that in May, 2009, he was introduced to Christianity. In June, 2009, he started attending an illegal house church and started spreading the gospel in China to close friends and relatives. Despite security measures, the church was discovered by China's Public Security Bureau [PSB] on April 4, 2010.

[4] The Applicant alleges that after his church was discovered, he went into hiding at the home of his aunt. According to the Applicant's wife, the PSB searched his home, confiscated his resident identity card, and left a summons. In addition, the Applicant alleges that his wife told him that three members of his church had been arrested, and that the PSB had returned to his home, hoping to arrest the Applicant.

[5] The Applicant left China with the assistance of a smuggler and applied for refugee protection in Canada on May 26, 2010.

[6] The Board found that the Applicant did not have a well-founded fear of persecution or harm should he be returned to Fujian in the People's Republic of China.

[7] While accepting the Applicant's identity and the fact that he is a Christian, the Board found that the Applicant's allegations were not credible.

[8] The Board cites documentary evidence from the years 2005-2010 to conclude that there are no recent reports of arrests of Christians in Fujian for Christian activities. The only report of government interference with Christian religious activity in Fujian is from the China Aid Association's 2010 Annual Report, which states that ten people were persecuted. This report does not detail the extent of their persecution. The Board asserts that if, as the Applicant alleges, three members were arrested and sentenced, international observers, such as the China Aid Association, would likely report them, as areas far more remote than Fujian have been the subject of such reports. As a result, the Board found that the Applicant would be able to practice his religion in any church in Fujian if he was to return.

[9] The Board also found that the Applicant would be able to proselytize in the manner that he desires. Citing the Executive Secretary of the Hong Kong Christian Council, the Board concludes that as long as proselytizing does not occur in a public place, it is tolerated. In addition, given that the Applicant's activity occurs in Fujian, the Board found that he would be able to proselytize without persecution.

[10] Finally, the Board gave the summons and jail visiting card produced by the Applicant to support his arrest little weight, as fraudulent documents are easily available in China and the

Applicant would be aware of the availability of such documents, as he testified that he travelled to Canada on a fraudulent Singaporean passport.

[11] Owing to these reasons, the Board held that the Applicant had not satisfied his burden of establishing that there was a serious possibility that he would be persecuted or personally subjected to a risk to his life or a risk of cruel and unusual treatment or a danger of torture upon his return to China.

### III. Standard of Review

[12] The applicable standard of review is the standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, at para 47; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12).

### IV. Analysis

[13] The Respondent argues that it was open for the Board to ascribe low weight to the summons and jail visiting card based on the availability of fraudulent documents in China (*Aleshkina v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 589, at paras 13-14; *Jing v Canada (Minister of Citizenship and Immigration)*, 2012 FC 609, at para 17).

[14] The Respondent also argues that it was reasonable to conclude that if such persecution had occurred in China, it would have been documented (*Nen Mei Lin v Canada (Minister of Citizenship and Immigration)* (4 February 2010), Toronto, IMM-5425-12 (FCTD)).

[15] I find the Board's decision was unreasonable.

[16] The Board assigned low weight to the Applicant's jail visiting card and summons solely because of the easy availability of fraudulent documents in China and the presumption that the Applicant was aware of this. This faulty reasoning suggests absurd results: that a document produced by the Applicant, even if valid, should be rejected as inauthentic; alternately, this reasoning suggests that the Board is free to arbitrarily choose which evidence to accept and which to reject.

[17] Here the Board accepted the Applicant's identity documents but rejected the summons and jail visiting card. This arbitrary and inconsistent reasoning is not justifiable on the Dunsmuir standard of reasonableness.

[18] The Applicant's citation of *Lin v Canada, (Minister of Citizenship and Immigration)*, 2012 FC 157, at para 55, which also involved a case of religious persecution in the Fujian Province. In *Lin*, Justice James Russell concluded:

I am concerned that the RPD does not seem to have looked at the documents the Applicant submitted at all. The RPD must analyze all of the evidence before and weigh the positive against the negative...It may be that fraudulent documents are widely available in the PRC. However, this does not mean that every document that comes out of the PRC is necessarily fraudulent. The RPD was obliged to examine and weigh the actual documents in front of it, rather than simply rejecting them out of hand.

[19] In contrast, the cases cited by the Respondent are distinguishable or inapplicable.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The application is allowed and the matter is referred back to a differently constituted Board for reconsideration;
2. No question for certification.

"Michael D. Manson"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-11931-12

**STYLE OF CAUSE:** Jiang v. MCI

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** February 25, 2014

**REASONS FOR JUDGMENT  
AND JUDGMENT BY:** MANSON J.

**DATED:** February 26, 2014

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