

Federal Court



Cour fédérale

Date: 20140509

Docket: IMM-2344-13

Citation: 2014 FC 451

Ottawa, Ontario, May 9, 2014

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

YINGLI XIE

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act) of a decision made by the Refugee Protection Division of the Immigration and Refugee Board (the Board) on March 7, 2013, wherein the Board rejected the applicant's application for refugee protection.

I. Factual background

[2] Yingli Xie (the applicant) is a citizen of the People's Republic of China (China).

[3] The applicant claims that, after a personal crisis, she was introduced to the Catholic faith and started attending an underground church on January 31, 2010. On August 15, 2010, the Public Security Bureau (PSB) discovered the underground church. The applicant fled and went into hiding. On August 16, 2010, the PSB searched the applicant's family home in order to find her. The applicant claims that she understood then that she could not stay in China and decided to leave the country with the assistance of an agent.

[4] She arrived in Vancouver, Canada, on September 30, 2010. Fearing persecution in China because of her Catholic faith, she claimed protection in Toronto on November 22, 2010.

[5] The Board heard the applicant's claim on January 28, 2013. An interpreter was present at the hearing since the applicant did not understand English. On March 7, 2013, the Board rejected her claim because it found that the applicant was not credible when she alleged having been persecuted because of her Catholic faith.

[6] The Board finally determined that the applicant failed to demonstrate that she would face persecution if she returned to the Guangdong province. While the documentary evidence suggests some level of discrimination and harassment towards underground Christian worshippers, especially high-ranking Church officials, nothing indicates that lay practitioners of Roman Catholicism are persecuted in the Guangdong province (Board's decisions at paras 23-43).

II. Issues

[7] The sole issue in this case is the following: Did the Board commit a breach of procedural fairness by failing to provide the applicant with proper interpretation at the hearing?

III. Standard of review

[8] The present application raises an alleged breach of procedural fairness by the Board. As stated by the Federal Court of Appeal, such an issue “is reviewed as a question of law. No deference is due. The decision-maker has either complied with the content of the duty of fairness appropriate for the particular circumstances, or has breached this duty” (*Sketchley v Canada (Attorney General)*, 2005 FCA 404 at para 53, [2006] 3 FCR 392; see also *Canadian Union of Public Employees (CUPE) v Ontario (Minister of Labour)*, 2003 SCC 29 at paras 100 102. 103, [2003] SCJ No 28 [*CUPE*]).

IV. Analysis

[9] The applicant essentially argues that the Board breached procedural fairness by proceeding with the hearing after counsel for the applicant raised objections concerning the quality of the interpretation provided. The applicant does not otherwise challenge the reasonableness of the Board’s decision.

[10] The Supreme Court of Canada stated that the right to interpretation (section 14 of the *Charter*) is a constitutional guarantee of any accused in a criminal matter and should be considered as a principle of fundamental justice (*R v Tran*, [1994] 2 SCR 951 at para 66, 117 DLR (4th) 7 at paras 36, 44). The Federal Court of Appeal confirmed that this guarantee also

applies to immigration proceedings before the Board (*Mohammadian v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 191 at para 4, [2001] 4 FC 85).

[11] The Supreme Court of Canada also defined the content of this constitutional guarantee as the right to a continuous, precise and impartial interpretation. There is a breach of the right to interpretation if there is a possibility that the applicant “may not have understood a part of the proceedings by virtue of his or her difficulty with the language being used in court” (*R v Tran*, above at para 66).

[12] The applicant points to four (4) pages of the transcripts of the Board’s hearing (Applicant’s Record at 60-64) where issues of interpretation arose. According to the applicant, the Board should have stopped the hearing and arrange for proper interpretation. Instead, the Board indicated that the applicant’s objection was on the record and that the interpreter’s understanding of Catholic terminology would not be further addressed unless they “run into problems” (Applicant’s Record at 61).

[13] Relying on the transcript, the applicant submits that her right to interpretation has been breached by the Board’s decision to proceed with the hearing after it became clear that the interpreter was not familiar with certain Catholic terms. For instance, the translation concern raised by the applicant arose at the hearing before the Board on the meaning of a very technical terminology in the Catholic faith: “rosary”. Hence, the applicant’s concern stems from the fact that the interpreter mentioned that she was not familiar with some Catholic terms. The applicant did not raise other aspect related to the translation.

[14] The Board did not take issue with the applicant's identity as a member of the Catholic faith (Applicant's record p 18; Tribunal record, vol. 3, p 571). Even if the interpreter was not familiar with certain Catholic terms, the applicant's counsel failed to point to any part of the proceeding that was not understood by the applicant. The applicant failed to convince this Court that the deficiencies alleged in the interpretation process are material to the case at bar. When reading the decision as a whole, the applicant's rights to procedural fairness was not breached and the alleged breach could not have affected the outcome of the decision of the Board (*Patel v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 55, 288 NR 48; *Mobil Oil Canada Ltd. v Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 SCR 202). Indeed, the Court recalls that the Board's credibility concerns were unrelated to the applicant's claim to be Catholic. The Board drew negative credibility inferences on the evasive and inconsistent testimony, the pursuit by the Public Security Bureau (PSB) and the lack of corroborating documentary evidence. These issues go to the heart of the applicant's claim (*Fu v Canada (Minister of Citizenship and Immigration)*, 2011 FC 155, [2011] FCJ No 353 (QL)).

[15] The Court finds that the Board's decision was well-reasoned, was supported by the evidence and complied with principles of procedural fairness. Its intervention is thus not warranted.

[16] For the reasons above, the application for judicial review will be dismissed. No question was proposed for certification and none arises.

JUDGMENT

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

No question for certification.

“Richard Boivin”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2344-13

STYLE OF CAUSE: YINGLI XIE
v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 2, 2014

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

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