

Date: 20070919

Docket: IMM-5071-06

Citation: 2007 FC 937

Toronto, Ontario, September 19, 2007

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

LAN YING TANG, QIAN NI CHI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicants are a mother and infant daughter who are citizens of the People's Republic of China. They sought and were denied refugee protection in Canada by a decision dated August 25, 2006 of a Member of the Immigration and Refugee Board (Refugee Protection Division), Steve Ellis, who determined that the Applicants did not face a risk to their lives, a risk of cruel and unusual treatment or face a danger of torture if they were to return to China. Accordingly they were determined not to be persons in need of protection.

[2] The decision of the Member was based on a negative credibility finding in respect of the testimony of the adult Applicant. Such findings are to be afforded deference and are to be reviewed

on this basis of patent unreasonableness (see e.g. *Aguebor v. Canada*, 160 N.R. 315 (FCA) at paragraph 4). However where such decision is, on a review of the evidence before the Member, seen to be patently unreasonable, the decision is to be set aside and returned for re-determination by a different Member. This is such a circumstance.

[3] The Member, when reciting specifics of the evidence given by the Applicant, remarked upon the interchange between the Applicant and the Member as to how dark it was when a raid was conducted on a house where a church service was conducted. At page 7 of his Reasons, the Member gives an incomplete narrative as to that discussion and, at page 8, leaps to a conclusion of his own not supported by evidence. If there was any issue as to the matter, the Member should have continued questioning the Applicant along these lines. He did not.

[4] Subsequently, on pages 8 and 9 of his Reasons, the Member gives an incomplete summary of the evidence as to the arrest of a colleague of the Applicant. A complete review of the evidence shows that the evidence as to the Applicant's knowledge of that arrest is completely consistent. The same is true as to the incomplete recitals, by the Member on pages 10 to 12 as to the incursions of the PSB into the Applicant's home.

[5] As to the Applicant's Christian beliefs, the recital of the Lord's Prayer given by the adult Applicant that English is not her first language, is quite credible and the Members criticism that it is not "quite exactly the right wording" is unsustainable. The Members criticism as to the Applicant's answers as to the Book of Revelations is simply wrong. The Applicant was right. The Members

recollection of the parable of the foolish and wise virgins as given at page 14 of her Reasons is wrong. The Applicant in her testimony got it right.

[6] A review of the Member's reasons in comparison with the evidence given by the Applicant, clearly demonstrates that the Member got the evidence wrong, or sought to misrepresent the evidence as something that it was not.

[7] This is clearly a case where the Applicants must have an opportunity to present their case to another Member.

JUDGMENT

For the Reasons given:

THIS COURT ORDERS AND ADJUDGES that:

1. The Application is allowed:
2. The decision of the Member dated August 25, 2006 is set aside and the matter is returned to the Board for re-determination by a different Member;
3. There is no question for certification;
4. There is no Order as to cost.

“Roger T. Hughes”

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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STYLE OF CAUSE: LAN YING TANG and QIAN NI CHI v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September. 19, 2007

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

DATED: September. 19, 2007

APPEARANCES:

Ms. Shelley Levine FOR THE APPLICANTS

Ms. Martina Karvellas FOR THE RESPONDENT

SOLICITORS OF RECORD:

Levine Associates
Toronto, Ontario FOR THE APPLICANTS

John H. Sims, Q.C.
Deputy Attorney General of Canada FOR THE RESPONDENT