

Date: 20071106

Docket: IMM-5623-06

Citation: 2007 FC 1149

Ottawa, Ontario, November 6th, 2007

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

HONG RUI ZHANG

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] In 2000, Ms. Hong Rui Zhang came to Canada from China as a skilled worker. It subsequently came to light that she had submitted false documents to obtain permanent residence here. At that point, she made an application for refugee protection. A panel of the Immigration and Refugee Board dismissed her claim because of a lack of credible evidence.

[2] Ms. Zhang argues that the Board erred in its analysis of the evidence and asks me to order a new hearing before a different panel. I agree with Ms. Zhang and will allow this application for judicial review.

I. Issue

[3] Was the Board's finding that Ms. Zhang's testimony lacked credibility based on the evidence before it?

II. Analysis

[4] I can overturn the Board's findings of fact only if they were out of keeping with the evidence.

(a) Factual Background

[5] After Ms. Zhang became a permanent resident, she returned to China, got married to Mr. Han Dehui, and sponsored his entry to Canada. Mr. Han arrived in Canada in January 2003. The relationship quickly soured. At one point, Ms. Zhang locked him out of their apartment. Mr. Han phoned Ms. Zhang and threatened her physically. He also threatened to tell Canadian immigration officials that she had filed false documents in support of her permanent residency application. Later, he did just that.

[6] Ms. Zhang read some of her husband's e-mails, which showed him to be exchanging intimate messages with a woman whom he called his "dear wife" and who called him her "dearest

husband”. Naturally, Ms Zhang suspected her husband was having an affair. This caused her to wonder about his motives for marrying her.

[7] Ms. Zhang kept a tape of one of Mr. Han’s voice mail threats. A transcript of the message states:

Male: Zhang Hongrui, listen to me. I came back to get my stuff, but you already changed the lock. Now I cannot open the door. Please contact me as soon as possible. Otherwise, you shall be responsible for all the subsequence. Please remember: If I want to find you, I can surely find you no matter where you hide.

Female: Who is it? You are?

Male: I am Han Dehui!

[8] The female voice on the tape belongs to Mr. Han’s sister, who could be heard in the background.

[9] Mr. Han returned to China after less than a month in Canada. The couple subsequently divorced. Ms. Zhang testified that she did not attend the divorce proceedings in China in 2005.

[10] Ms. Zhang claims that if she returns to China her former husband will cause her physical harm. Further, she fears he will denounce her as a Falun Gong practitioner. Ms. Zhang says that Mr. Han had previously made threats along those lines after he found Falun Gong materials in her possession (even though she was not a follower of Falun Gong).

(b) The Board's Decision

[11] The Board disbelieved important parts of Ms. Zhang's evidence. I will review the main areas of the Board's concerns.

[12] The Board did not accept Ms. Zhang's evidence about her husband's alleged affair because, in the Chinese divorce proceedings, the Court noted that Ms. Zhang had failed to provide sufficient evidence that her husband had had "extramarital love". It is not clear, though, what evidence Ms. Zhang had provided the Chinese Court. The Board did not ask her about that or give any reason for doubting the significance of the e-mails.

[13] The Board also doubted that the voice mail message Ms. Zhang had recorded came from Mr. Han. The Board noted that the message was too polite and formal – using his and her full names, as well as the word "please". The Board also wondered why Ms. Zhang had not recognized her husband's voice and had to ask "who is it?" The Board stated:

The claimant was asked to explain why she asked "who is it" she explained because his sister was in the background. . . It is reasonable to expect, given her explanation that she heard his sister's voice in the background, she would know that it was her husband.

[14] The Board appears to have been confused about this evidence. The person who stated "who is it" was Mr. Han's sister, whose voice could be heard in the background, not Ms. Zhang. The interpreter stated that those words could also mean "state your name". In other words, Mr. Han's

sister was urging him to identify himself in the voice message to Ms. Zhang. Further, had the Board indicated during the hearing that it was in any doubt about whether the message had been left by Mr. Han, Ms. Zhang had with her a witness who could have confirmed it. The Board assured Ms. Zhang that it would not be necessary to hear from the witness on that point.

[15] The Board doubted Ms. Zhang's testimony that she did not attend the divorce proceedings in China. The significance of this point was that the Board concluded that Mr. Han could have harmed her while she was in China the last time. Since he did not, it appeared that she was not in any danger from him. The Board's doubt arose from the fact that the Chinese court stated in its judgment that Ms. Zhang had appeared in person. However, Ms. Zhang was not asked about this at the hearing. Again, had it appeared necessary, Ms Zhang could have produced evidence showing that the Chinese court had erred.

[16] The Board was also concerned that Ms. Zhang had failed to mention her fear of her husband when she was interviewed by an immigration officer regarding the problems with her permanent residency status. The Board quoted a passage from the officer's report indicating that Ms. Zhang did not wish to return to China because she would have trouble getting a job. However, the Board failed to mention that the officer's handwritten notes indicated that Ms. Zhang had indeed stated that she had been threatened by her husband.

[17] The Board also drew an adverse inference from the fact that Ms. Zhang had not claimed refugee status in Canada until after she had been ordered deported. In fact, Ms. Zhang made her

refugee application when she realized that her permanent residency status was in jeopardy. She was not under a deportation order at that point.

[18] Based on all of these concerns, the Board concluded that Ms. Zhang's case amounted merely to speculation about how her husband might behave if she returned to China.

(c) Conclusion

[19] In my view, the Board's negative credibility findings are not supported by the evidence that was before it. Accordingly, I must allow this application for judicial review and order a new hearing before a different panel. 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 allowed. The matter is referred back to the Board for a new hearing before a different panel;
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5623-06

STYLE OF CAUSE: ZHANG v. MCI

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: October 17, 2007

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

DATED: November 6, 2007

APPEARANCES:

Daniel Kingwell FOR THE APPLICANT

Margherita Braccia FOR THE RESPONDENT

SOLICITORS OF RECORD:

MAMANN & associates FOR THE APPLICANT
Toronto, On.

JOHN H. SIMS, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, ON