

Date: 20080423

Docket: IMM-3703-07

Citation: 2008 FC 533

Ottawa, Ontario, April 23, 2008

PRESENT: The Honourable Madam Justice Dawson

BETWEEN:

XIU JIE ZHANG

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This application for judicial review is allowed because the negative inferences drawn by the Refugee Protection Division of the Immigration Refugee Board (Board) were not properly grounded in the evidence. As such, they do not withstand review on either the standard of reasonableness or the standard contained in paragraph 18.1(4)(d) of the *Federal Courts Act*, R.S.C. 1985, c. F-7.

[2] Drawing an inference is a matter of logic. As stated by the Newfoundland Supreme Court (Court of Appeal) in *Osmond v. Newfoundland (Workers' Compensation Commission)* (2001), 200 Nfld. & P.E.I.R. 203 at paragraph 134:

Drawing an inference amounts to a process of reasoning by which a factual conclusion is deduced as a logical consequence from other facts established by the evidence. Speculation on the other hand is merely a guess or conjecture; there is a gap in the reasoning process that is necessary, as a matter of logic, to get from one fact to the conclusions sought to be established. Speculation, unlike an inference, requires a leap of faith.

[3] The same court explained the difference between inference and speculation in another way:

An inference is different from speculation. It must be grounded in some proven fact and established to be probable in the circumstances.

See: *Newfoundland (Workers' Compensation Commission) v. Miller* (2001), 199 Nfld. & P.E.I.R. 186 at paragraph 11 (Nfld. C.A.).

[4] In the present case, the Board heard Ms. Zhang's claim for refugee protection. She testified that she is a Falun Gong practitioner and, as such, she fears persecution in the People's Republic of China (China).

[5] The Board found that Ms. Zhang neither is, nor was, a Falun Gong practitioner. The Board reached this conclusion for the following reasons:

1. First, a negative inference was drawn by the Board from Ms. Zhang's apparent lack of knowledge about the book "Nine Commentaries of the Chinese Communist Party" (Nine Commentaries). The Board noted that Ms. Zhang was questioned

about the content of the book. Her responses, which included the (correct) statement that the book commented on the corruption of the Chinese Communist Party, were found by the Board to be incorrect. According to the Board, if Ms. Zhang believed in the principles of truth, compassion, and forbearance, then she could have said that she did not read the book instead of making up her response.

2. Second, to buttress the first inference, a negative inference was drawn by the Board from Ms. Zhang's use of her own genuine passport to leave China. The Board focused on Ms. Zhang's testimony that, while she went through three security checkpoints at the Beijing airport, her snakehead had told her that her name was not "put through" the computer and that he had bribed "the customs." The Board considered that the documentary evidence indicated that a person leaving China has to pass through at least three security checkpoints and their passport is checked to see if they are wanted by the Public Security Bureau. The Board wrote: "The claimant did not know how many people the snakehead had to bribe. I reject this explanation. Although the People's Republic of China does have a problem with corruption, I do not find it plausible that the smuggler would be able to bribe possibly hundreds of officials, as there would be no guarantee as to which border police would be on duty or as to which line the claimant (and smuggler) would be directed to."

[6] While not a central finding, the Board also noted that Ms. Zhang failed to show any depth of knowledge of the Falun Gong book “Zhuan Falun”. The Board did acknowledge, however, that Ms. Zhang was able to list the topics covered in each chapter of the book.

[7] Finally, the Board did accept that Ms. Zhang was able to answer a number of questions about Falun Gong, to demonstrate a Falun Gong exercise, and to recite some Falun Gong verses. However, the Board concluded that Ms. Zhang’s knowledge could have easily been learned in Canada in order to manufacture her claim.

[8] Turning to the Board’s first inference, the Nine Commentaries is not a Falun Gong publication. The Board does not explain why it is logical to infer that a person is not a Falun Gong practitioner because of their inability to answer questions about the Nine Commentaries. Counsel for the Minister was unable to point to any evidence that establishes a link between the Nine Commentaries and Falun Gong practitioners. This inference was not, therefore, properly grounded in the evidence.

[9] As to the second inference, the United Kingdom Home Office, in its 2005 Country Report in respect of China, described “several highly specialized roles” within the smuggling network, including corrupt public officials. The report noted:

Corrupt public officials are the authorities in China and many transit countries who are paid to aid illegal Chinese immigrants. Some corrupt government officials act not only as facilitators but also as core members or partners of a smuggling organization. Subjects who belonged to large smuggling groups often indicated that local Chinese officials headed their groups.

[10] Response to Information Request CHN36091.E (February 6, 2001) described the security and exit control procedures at Beijing airport in the following terms:

Theoretically the travel documents should be checked twice and if travel to Canada 3 times. The documents would be checked by the airlines when the passenger checks in for the flight, they are then checked by the Frontier Inspection when the passenger proceeds to the exit control. On flights direct to Canada the travel documents are supposed to be checked at the boarding gate by the airline.

The exit control system at Beijing Airport is computerised and all names are supposed to be checked through the computer system. Like any system, errors can be made or names not entered correctly so, people who are wanted should not be able to depart, but it could happen.

[11] In view of this evidence, the Board engaged in speculation when it concluded that possibly hundreds of officials had to be bribed. One official with access to the computer system would be sufficient.

[12] With respect to Ms. Zhang's knowledge of "Zhuan Falun", Ms. Zhang explained which lecture in the book was most meaningful to her. She listed the topic covered by each chapter of the book. There is no evidence in the transcript that Ms. Zhang was asked any other question about the book. Further questions were required in order for the Board to conclude, on the evidence, that Ms. Zhang displayed no in-depth knowledge about this publication.

[13] Finally, it is possible that Ms. Zhang acquired her knowledge of Falun Gong in Canada. It is equally possible that her knowledge was acquired in China. There was no proven fact, and certainly none cited by the Board, from which the Board could infer that it was more probable that Ms. Zhang's knowledge was acquired in Canada. It was, therefore, speculative, and not grounded in the evidence, for the Board to dismiss Ms. Zhang's knowledge about Falun Gong. On the evidence it

was possible, but not established to be probable, that her knowledge of Falun Gong was acquired in Canada.

[14] For these reasons, the application for judicial review will be allowed.

[15] Counsel posed no question for certification, and I agree that no question arises on the record.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is allowed, and the decision of the Refugee Protection Division dated August 21, 2007 is hereby set aside.

2. The matter is remitted for redetermination by a differently constituted panel of the Refugee Protection Division in accordance with these reasons.

“Eleanor R. Dawson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3703-07

STYLE OF CAUSE: XIU JIE ZHANG, Applicant

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION, Respondent

PLACE OF HEARING: TORONTO, ONTARIO

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**REASONS FOR JUDGMENT
AND JUDGMENT:** DAWSON, J.

DATED: APRIL 23, 2008

APPEARANCES:

MR. LEONARD H. BORENSTEIN	FOR THE APPLICANT
MR. BERNARD ASSAN	FOR THE RESPONDENT

SOLICITORS OF RECORD:

LEWIS & ASSOCIATES BARRISTERS AND SOLICITORS TORONTO, ONTARIO	FOR THE APPLICANT
JOHN H. SIMS, Q.C. DEPUTY ATTORNEY GENERAL OF CANADA	FOR THE RESPONDENT