

Federal Court



Cour fédérale

Date: 20080923

Docket: IMM-589-08

Citation: 2008 FC 1066

Ottawa, Ontario, September 23, 2008

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

QIAO YING ZHU

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Is it reasonable to find that a Christian from China may satisfy her beliefs by attending a state-sanctioned Church because of the low level of her religious sophistication?

BACKGROUND

[2] This is an application for judicial review of the decision of the Immigration and Refugee Board of Canada, Refugee Protection Division (RPD) dated January 21, 2008, which determined that the Applicant was neither a Convention refugee nor a person in need of protection.

[3] The Applicant is a 32-year-old Chinese national from Fuzhou city, in Jiangxi province. She arrived in Canada on August 1, 2006 and immediately claimed refugee protection. Both her husband and her 10 year old son are still in China. Her formal education is very limited and she is illiterate.

[4] The Applicant claimed that she joined the congregation of an illegal house-church in early May 2006, after being forced to undergo an abortion pursuant to Chinese family planning regulations. This caused her to question the meaning of life and a friend introduced her to the church. She had only been involved with the church for a period of about a month before it was raided and service broken up by agents of the Public Security Bureau (PSB) on May 28, 2006. She fled and went into hiding at a relative's home during which time she learned that PBS agents had gone to her home and interrogated family members with regards to her whereabouts. She also learned that five members of the congregation had been arrested.

[5] At the hearing of her claim on October 2, 2007, the Applicant testified that she had no prior knowledge of Christianity before she was introduced to the congregation of the house-church. She stated that her attachment to the house-church rather than one of the registered, i.e. state sanctioned churches rests on her belief that the latter put the government first whereas her congregation puts Jesus Christ first. Her knowledge of the Gospel stems from what she has absorbed from sermons and prayers in the brief period of her attendance at the church. Over the course of her involvement with the house-church she was able to attend only four services prior to the alleged raid by the PBS.

[6] In its decision, the RPD discounted aspects of the claimant's story, finding that her testimony was not altogether credible, primarily on the basis of significant discrepancies in the story she recounted to the immigration authorities at the point of entry and her later testimony at the hearing and in the PIF narrative. On account of these discrepancies and omissions, the RPD found on the balance of probabilities that the alleged raid of the house-church was a fabrication. However, it did accept the Applicant's embrace of Christianity to be genuine and stated that "she much enjoyed her short religious experience in China prior to leaving her country". On this basis and having accepted the truthfulness of her stated desire to attend an underground church, the RPD proceeded to analyze the validity of her claim, notwithstanding its misgivings about the veracity of her testimony in other respects.

[7] In its analysis, the RPD noted that five religions are recognized by the Chinese government. It cited documentary evidence that the liturgy and rites of the state sanctioned Protestant churches are comparable to those of Western churches and gave little weight to one documentary source that claimed that key Protestant doctrines are suppressed and opposed by state-sponsored churches.

[8] After canvassing the documentary evidence, the RPD determined that the Applicant's understanding of Christianity was not sophisticated enough that her religious needs could not be met within the framework of the state-sanctioned church structure, her convictions being limited to a belief in God and a belief in the role of Jesus as Saviour. Accordingly, it found that there was no basis for her to fear persecution in China. Specifically the RPD comments:

Religion, per se, is widely recognized as a fundamental right. Each of its manifestations (Muslim, Catholic, Protestant, etc.) is comprised of core beliefs. That is not to say that every aspect of any religion is "fundamental" to it such that it enjoys the protection of the Convention. ... The proposition posed by the claimant's counsel which extends the fundamental nature of religion to such things as the choice of going to particular house as opposed to registered church or the choice of a specific pastor is not persuasive with regard to this specific claimant's particular religious belief arising from her brief exposure to Christianity and her level of religious sophistication.

[9] The RPD also observed that laws which require the registration of churches are not conclusive of religious persecution and it notes that even in Canada any denomination which wishes to hold land in its name or conduct business must register as a legal entity. It concludes that provided such laws do not prevent the practice of core religious beliefs then those laws do not violate fundamental religious beliefs.

ISSUE

[10] The Applicant contends that the RPD erred in its assessment of the risk of persecution to her in China by assessing whether her core religious beliefs would be denied if she returned to that country.

ANALYSIS

[11] The RPD accepted the sincerity of the Applicant's profession of faith and her desire to attend an underground church. Its evaluation of whether or not these convictions would put the Applicant

at risk of persecution were she returned to China must be able to withstand review, and in my view, it does not.

[12] The approach taken by the RPD with respect to religious freedom and persecution for religious reasons is fundamentally flawed. It was flawed because the approach taken by the RPD was that the Applicant's appreciation of Christian doctrine was not sophisticated enough for her to have any valid reason to prefer an underground church to state sanctioned one; hence, it was open to her to observe her religious beliefs without fear of persecution.

[13] First, having found that the Applicant was a Christian, it is not for the RPD to assess the sophistication of her belief. The question it was required to address, having accepted her evidence that she was a Christian, was whether that would put her at risk if she were returned to China

[14] Secondly, the RPD overlooks the principal conviction the Applicant articulated that the state-sanctioned church is beholden to government, whereas the underground church places God first. This was her stated reason for not wishing to attend a state-sanctioned church. That church fails to follow one of her principal beliefs. This is the conviction that should have been analyzed by the Board; it is entirely irrelevant whether state-sanctioned churches embrace conventional Protestant teachings.

[15] The Applicant relied on the decision of this Court in *Fosu v. Canada (Minister of Employment and Immigration)*, [1994] 90 F.T.R. 182. In that decision, which was cited

approvingly by Justice Sharlow in *Irripugge v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 29, and more recently by Justice Phelan in *Golesorkhi v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 511, it was remarked that persecution of the practice of religion can include the prohibition of worshiping in private and that the Board had unduly limited the concept of religious practice by confining it to prayer and Bible study:

It appeared from a careful analysis of the evidence and the decision in the case at bar that this Court should intervene. I feel that the Refugee Division unduly limited the concept of religious practice, confining it to "praying to God or studying the Bible". The fact is that the right to freedom of religion also includes the freedom to demonstrate one's religion or belief in public or in private by teaching, practice, worship and the performance of rites¹. As a corollary to this statement, it seems that persecution of the practice of religion can take various forms, such as a prohibition on worshipping in public or private, giving or receiving religious instruction or, the implementation of serious discriminatory policies against persons on account of the practice of their religion. In the case at bar I feel that the prohibition made against Jehovah's Witnesses meeting to practise their religion could amount to persecution. That is precisely what the Refugee Division had to analyze.

[16] This approach to the notion of religious persecution is consistent with and complementary to the concept of religious freedom subsequently endorsed by the Supreme Court of Canada in *Syndicat Northcrest v. Amselem*, 2004 SCC 47, where the Court emphasizes the subjectivity of religious conviction and includes the germane observation at paragraph 43 that "claimants seeking to invoke freedom of religion should not need to prove the objective validity of their beliefs in that their beliefs are objectively recognized as valid by other members of the same religion, nor is such an inquiry appropriate for courts to make". The Court further observed at paragraph 50 that:

...[T]he State is in no position to be, nor should it become, the arbiter of religious dogma. Accordingly, courts should avoid judicially interpreting and thus determining, either explicitly or implicitly, the

content of a subjective understanding of religious requirement, "obligation", precept, "commandment", custom or ritual. Secular judicial determinations of theological or religious disputes, or of contentious matters of religious doctrine, unjustifiably entangle the court in the affairs of religion.

[17] This is not to suggest that the sincerity of a claimant's religious conviction cannot be tested with reference to the claimant's familiarity with the dogma or creed invoked. In my view, in this case, after accepting the sincerity of the Applicant's conviction, the RPD erred when it went on to articulate a rather elaborate conception of religious freedom which entirely discounts the subjective aspect of religious belief in holding that the legitimacy of a person's belief can and should be measured against his or her level of religious sophistication.

[18] Accordingly, this decision cannot stand and must be set aside. No question was proposed for certification and there is none on the facts.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is allowed and the matter is referred to a different panel of the Immigration and Refugee Board of Canada, Refugee Protection Division, for redetermination.

“Russel W. Zinn”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-589-08

STYLE OF CAUSE: QIAO YING ZHU v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

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DATE OF HEARING: September 2, 2008

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

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