

**Date: 20081009**

**Docket: IMM-1537-08**

**Citation: 2008 FC 1151**

**Toronto, Ontario, October 9, 2008**

**PRESENT: The Honourable Mr. Justice Campbell**

**BETWEEN:**

**SHAOQIN DONG**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The present Application concerns a young woman who claims refugee protection as a Christian on the basis of fear of more than a mere possibility of persecution should she be required to return to China. The Applicant's claim of subjective and objective fear is based in a highly detailed account of her experience in China as a member of an underground Christian church at the age of 15. The Refugee Protection Division (RPD) dismissed the Applicant's claim for protection, essentially as a concoction, with the following statement:

In summary, I find, on a balance of probabilities, that due to a number of omissions and inconsistencies between the claimant's oral

evidence and her Personal Information Form, that she is not, nor ever was, a member of an underground Christian church in the People's Republic of China.

(Decision, p.4)

Counsel for the Applicant argues that each of the specific “omissions and inconsistencies” used to ground the rejection are erroneously made, and further, the RPD’s global negative credibility finding is contrary to law because no clear reasons are provided for its making. I agree with these arguments.

[2] The first contested “omission” reads as follows:

In her oral testimony, the claimant indicated that her best friend, Meijin, spread the gospel to her and that her teacher also spread the gospel to her. Furthermore, the claimant indicated that Meijin attended the same underground Christina church as she did. When it was pointed out to the claimant that she fails to mention her friend spreading the gospel to her in her Personal Information Form (although in the Personal Information Form, the claimant mentions that it was Meijin who informed her that the pastor had been arrested), her explanation was that initially she though [sic] about her friend spreading the gospel to her but during the process, came up with the idea that her teacher mainly guided her. I reject this explanation as the claimant could easily have indicated her friend also spread the gospel to her [Emphasis added].

(Decision, p. 2)

The portion of the transcript of the hearing before the RPD which addresses this concern reads as follows:

Yes. Initially when I fill up the, make my claim, I was, I have thought about that my friend is also the one who spread the Gospel to me, but during the process of, during the process of filling the application, I came out with the idea that since my teacher is the one

who mainly guide me and teach me about the Gospel, my friend is, is only a youth that is learning together with me. That's why I did not emphasize my friend. [Emphasis added]

(Tribunal Record, p. 316)

Counsel for the Applicant argues that, as a matter of law, the Applicant's explanation must be accepted unless clear reasons are given for its rejection. I agree with the submission that, as the RPD gives no clear reasons for rejecting the explanation, the rejection constitutes a reviewable error.

[3] The second "omission" found by the RPD relates to the Applicant's introduction to Christianity in the home of her teacher. In her PIF, the Applicant states that she felt welcome in the home and was treated with "a nice cup of tea and cookies". However, during the course of her testimony before the RPD, the Applicant did not mention the tea and cookies being served but did state that, as a cultural courtesy, she was given a glass of water and was also invited to stay for dinner. With respect to this "omission", the RPD demanded an answer as to why in her oral testimony she did not mention the tea and cookies. The Applicant's response was as follows:

Claimant: I'm not trying to evase [sic] any detail about this. I felt that the conversation during the visit was crucial, but in terms of treating me with meals or other cookies, it's not, it's not crucial in this visit. I went to their house in the middle of the time for lunch, so they were about to have, to have lunch, so I mean, this is, in a polite way they asked me to stay with them, because they don't want me to go home with empty stomach.

(Tribunal Record, pp. 316-317).

As a result of this exchange, the RPD member states: "I reject this explanation, as it fails to answer the question being asked" (Decision, p. 3). Once again, I agree with Counsel for the Applicant's

argument that the RPD's failure to give clear reasons for rejecting the Applicant's statement constitutes a reviewable error.

[4] The third "omission" relates to the Applicant's statement in her PIF that, on her first visit to her teacher's house, her teacher gave her a Bible. The Applicant admitted that she did not recount this detail in the course of her oral evidence at the hearing before the RPD, and gave the following statement as an explanation:

Presiding Member:

[...]

Okay, why did you fail to mention about this Bible, and if you were given a Bible, why did you not have more knowledge when your counsel asked you?

Claimant: First I'd like to confess that I had omitted the part that she gave me a Bible before I left her home. Secondly, I also confess that I, to be honest, I don't like reading material. So the Bible I got from her, basically used during the service when there are a paragraph of Bible to be read or to refer, that's the time I would open the Bible. So basically I seldom read the Bible, because –basically, during the time in China, I learned very little about Christianity, and it was because I don't like reading, and the, the only time I learned more about Christianity is after I came to Canada. And I enjoy going to church and I attend the Sunday school and that's the time I learned more about the Bible.

(Tribunal Record, pp. 317 - 318)

With respect to this explanation, the RPD made the following comment:

The claimant therefore admitted to omitting that she received a Bible during her first visit to her teacher's house, although she had provided an extremely detailed answer about that first visit and thus should have indicated she had received the Bible. [Emphasis added]

(Decision, p. 3)

As the RPD failed to give any reason for a conclusion just quoted, I find that the conclusion constitutes a reviewable error.

[5] A finding of inconsistent evidence is also used to ground the global negative credibility finding at the heart of the present challenge. During the hearing before the RPD, the Applicant testified that her teacher started telling her stories from the Bible after she started to attend the underground church. In this respect, the RPD pointed out to the Applicant that “upon reading the narrative portion of her personal information form it indicates that her teacher told her stories prior to her first attendance at the underground Christian church” (Decision, p. 3-4). In response to the identified apparent contradiction, upon questioning by the RPD, the Applicant gave an explanation:

The claimant was then asked if she had not bothered to read The Bible and knew the consequences if caught by Chinese authorities, why take such a risk. The claimant indicated that she believed in God and wanted to have eternal life and that she was lazy and did not want to read, but that her teacher told her stories from The Bible.

Presiding Member: Okay. My question is, when did your teacher tell you more about the stories in the bible? I’m looking for a date.

Claimant: I can’t give, I cannot give you a specific date when she tell stories to me, because it’s not one occasion, in several occasions that she will tell me and my friend Meijing about a story in the Bible. And one particular story I remember very deeply was the story of the lost sheep, in the story of the lost sheep in the Gospel of Lute [sic].  
Presiding Member: Okay. Now, did she tell you the stories of the Bible between your first visit to the, to her home and your first visit to the underground church?

Claimant: I would say that the story was told to me and Meijing after I have started to attending the church, on Sundays in her house, in my teacher’s house.

Presiding Member: Okay. Well, I’m just reading your, your narrative, madam. Paragraph 6 talks about your first visit to your

teacher's house. And paragraph 7 says, in the following visits afterwards, your teacher began to spread the Gospel to you by telling you stories from the Bible. And then the next paragraph, paragraph 8, says one day in July 2005 your teacher revealed to you that she was as member of an underground church, and asked you whether or not you were interested in joining them.

Reading these, excuse me, I'm sorry – reading these paragraphs, it would appear to me that your teacher talked to you about the stories in the Bible prior, at least some time, at least some of the stories, prior to you ever going to the church. Is that, is that correct?

Claimant: Yes.

Presiding Member: Okay. Well, if that's the case, when your counsel asked you, you know, what knowledge of Christianity you had learned between your first visit to your teacher's house and your first visit to the underground church, why couldn't you recall any of the stories that your teacher told you?

Claimant: Before I attend the church for the first time, my teacher had spread Gospel to me, and she gave me the Bible to read. As I said, since I rarely read the Bible, so when she told me the story from the Bible, at that time I am not aware of those stories came from the Bible.

Presiding Member: Where did you think they came from?

Claimant: Before I actually attending the service, I heard the stories she told me. I'm not aware the stories were from the Bible and I just treat it as a story. I never pay attention to think about where the story came from.

Presiding Member: Madam, you say you didn't want to read because you don't like reading. You say you didn't pay attention to where the stories came from. If this is the case, why are you, why did you even bother going to the underground church? You don't seem to be very – you don't seem to be that interested, if you're not paying attention to where they came from, or reading the Bible.

Claimant: I will again draw your attention to the, to the phrase that I have said before, that belief on God, I can have eternal life, and belief on God is the most important event of my life.  
(Tribunal Record, pp. 319-321).

With respect to this explanation, the RPD stated “I reject this explanation, as it fails to answer the question being asked” (Decision, p. 4). I agree with Counsel for the Applicant that, not only did the Applicant answer the question in detail, but the RPD, yet again, failed to give any clear reasons for rejecting the explanation. As a result, I find that the RPD’s rejection of the Applicant’s explanation constitutes a reviewable error.

[6] It is obvious that, in the rendering of the reasons quoted, the RPD gave absolutely no weight to the fact that, at the time the events occurred, the Applicant was mere youth, and at the time the Applicant testified, she was a young person. On the face of the record, the depth and breath of the explanations the Applicant gave should have given the RPD pause for making strong and unsubstantiated negative credibility findings. While the RPD states in its decision that “I have taken in into account the *Chairperson’s Guidelines on Child Refugee Claimants*”, there is no evidence of any accommodation shown to this youthful Applicant.

[7] I have no hesitation in finding that the decision under review was rendered in manifest reviewable error.

**ORDER**

Accordingly, I set aside the decision under review and refer the matter back to a differently constituted panel for re-determination.

There is no question to certify.

“Douglas R. Campbell”

---

Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1537-08

**STYLE OF CAUSE:** SHAOQIN DONG v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 8, 2008

**REASONS FOR ORDER  
AND ORDER BY:** CAMPBELL J.

**DATED:** OCTOBER 9, 2008

**APPEARANCES:**

NKUNDA I. KABATERAINE FOR THE APPLICANT

JANET CHISHOLM FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

NKUNDA I. KABATERAINE  
Barrister and Solicitor  
Toronto, Ontario FOR THE APPLICANT

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