

Federal Court



Cour fédérale

Date: 20110926

Docket: IMM-782-11

Citation: 2011 FC 1096

Ottawa, Ontario, September 26, 2011

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

KUN ZHENG

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] Zheng Kun claimed to fear persecution in the Peoples' Republic of China because of his Christian faith. Mr. Zheng's refugee claim was rejected by the Refugee Protection Division of the Immigration and Refugee Board, which found Mr. Zheng to be utterly lacking in credibility.

[2] Mr. Zheng seeks judicial review of the Board's decision, alleging that he was denied a fair hearing. According to Mr. Zheng, the Board failed to deal properly with his request to file an amended Personal Information Form (or "PIF") after the completion of his refugee hearing.

[3] For the reasons that follow, I am not persuaded that the Board erred as alleged.

Consequently, Mr. Zheng's application will be dismissed.

Background

[4] Mr. Zheng had a difficult time at his refugee hearing. He was questioned extensively about material inconsistencies in the information that he provided at the port of entry, in his PIF and in his testimony before the Board. The Board described the explanations provided by Mr. Zheng for these inconsistencies as "evasive and hesitant".

[5] The Board found that the summons produced by Mr. Zheng to show that the police were looking for him in China was fraudulent. It also found that Mr. Zheng had limited knowledge of Christianity, despite his claim to have been a practicing Christian for over 10 years. These findings led the Board to conclude that Mr. Zheng was not a genuine practicing Christian, undermining the fundamental basis of his claim for refugee protection.

[6] Two days after Mr. Zheng's refugee hearing, his counsel wrote to the presiding member, seeking to file an amended PIF. Counsel's letter stated that Mr. Zheng's immigration consultant thought that he had already filed the amended PIF with the Board, and that Mr. Zheng himself was under the mistaken impression that the amended PIF was before the Board. It is the Board's treatment of this request that is in issue in this application for judicial review.

Analysis

[7] I agree with Mr. Zheng that to the extent that the Board's reasons can be read to suggest that a formal motion to adduce post-hearing evidence supported by affidavit evidence was required, the Board erred. A review of Rule 37 of *Refugee Protection Division Rules*, SOR/2002-228, makes it clear that such formalities are not required for a request to file post-hearing evidence.

[8] That said, it is apparent from the Board's reasons that the presiding member nevertheless went on to consider Mr. Zheng's request in light of the factors articulated in Rule 37. These factors include the relevance and probative value of the document in question, any new evidence that it brings to the proceedings, and whether the party, with reasonable effort, could have provided the document or documents in question in advance of the hearing.

[9] I do not agree that the Board only looked at whether or not to reconvene Mr. Zheng's refugee hearing, and failed to consider whether to admit the document into evidence thereby denying him a fair hearing. It is, in my view, implicit in paragraph nine of the decision that the Board decided not to admit the document into evidence. This is borne out by the notation placed on the document in question by the presiding member.

[10] I also do not agree with Mr. Zheng that the Board's finding that the new PIF was "vastly amended" was inconsistent with its finding that the new narrative "had little probative value". Mr. Zheng's story changed repeatedly and had evolved over time. It was reasonably open to the Board to conclude that a fourth version of events would have limited probative value, particularly in the absence of any explanation from Mr. Zheng for the fundamental differences in his two PIFs.

[11] Mr. Zheng acknowledges that in attempting to file a new PIF after the hearing, he was trying to “rectify the problems” that arose before the Board. To the extent that Mr. Zheng’s amended PIF confirmed the version of events described in his testimony before the Board, it was reasonably open to the Board to conclude that “it brought little new evidence to the proceeding”.

[12] The Board also concluded that, with reasonable effort, Mr. Zheng could have filed the amended PIF in a timely manner. A review of the transcript shows that Mr. Zheng was taken to his PIF at the commencement of his hearing. He confirmed that it was his document, and further confirmed certain amendments that had been made to the original PIF. Mr. Zheng never suggested that he had prepared a more recent and significantly different PIF than the one that was before the Board.

[13] Mr. Zheng’s counsel now argues that the PIF document put to Mr. Zheng at the hearing was in English, and that he may not have understood it. Counsel further suggests that Mr. Zheng may not have realized that it was his original PIF and not his amended PIF. The difficulty with this argument is that it lacks any evidentiary foundation. Mr. Zheng did not file an affidavit in support of his application for judicial review, and the affidavit provided by a legal assistant was simply a vehicle for the production of documents.

[14] The decision whether to admit new evidence is a discretionary one. I am satisfied that the Board turned its mind to the request to admit post-hearing evidence and that, in exercising its discretion in this regard, the Board considered the relevant factors and did not take irrelevant

matters into account. I am further satisfied that having properly addressed Mr. Zheng's request, the Board did not deny him a fair hearing. As a result, the application is dismissed.

Certification

[15] Mr. Zheng proposes the following question for certification:

Under what circumstances may courts find exceptions to the general rule that breaches of natural justice void decisions regardless of what decision the Board may have come to?

[16] This question relates to the respondent's alternative argument that, even if there was a breach of natural justice in this case, it would be pointless to remit the matter for a new hearing as Mr. Zheng has been found to be so utterly lacking in credibility that the outcome of any new hearing would inevitably be the rejection of his claim.

[17] Having concluded that Mr. Zheng was not denied procedural fairness in this matter, it follows that the question does not arise. Accordingly, I decline to certify it.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed; and
2. No serious question of general importance is certified.

“Anne Mactavish”

Judge

Federal Court



Cour fédérale

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-782-11

STYLE OF CAUSE: KUN ZHENG v. MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 21, 2011

**REASONS FOR ORDER
AND ORDER:** MACTAVISH J.

DATED: September 26, 2011

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