

Federal Court



Cour fédérale

Date: 20120510

Docket: IMM-6804-11

Citation: 2012 FC 565

Toronto, Ontario, May 10, 2012

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

JUE CHEN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Refugee Protection Division of the Immigration and Refugee Board rejected Jue Chen's refugee claim. It did not believe that she was a practicing Christian in Shanghai, that her church had been raided by the Public Security Bureau (PSB) or that she was wanted by the PSB.

[2] The Board did, however, accept that Ms. Chen has become a practicing Christian in Canada. It was, however, satisfied that she would be able to safely practice her faith in China.

[3] While I am satisfied that the Board's negative credibility findings were reasonable, I have concluded that the Board failed to properly assess the risk that Ms. Chen would face were she to attempt to practice her faith in China. As a consequence, the application will be allowed.

The Board's Negative Credibility Findings

[4] The Board noted that Ms. Chen's refugee claim was filed within days of the refusal of her latest application to stay in Canada. It was reasonably open to the Board to look at Ms. Chen's immigration history and the timing of her refugee claim as matters casting doubt on the veracity of her story.

[5] It was also open to the Board to have concerns with the failure of the PSB to leave a summons for Ms. Chen. The Board was aware of the documentary evidence indicating that summonses are not always issued. It also carefully considered the circumstances of Ms. Chen's own case, finding that a summons could reasonably have been expected to have been left at her home.

[6] Ms. Chen had claimed that the PSB had come to her home looking for her on some 12 or 13 occasions, which suggested that it had more than a casual interest in her. The Board was also influenced by the fact that Ms. Chen's husband had never been taken in for questioning, and the fact that her family continued to live safely in Shanghai.

[7] In the circumstances, it was reasonably open to the Board to find that the lack of a summons raised concerns with respect to the credibility of Ms. Chen's story.

[8] I would further note that the Board had several other reasons for finding Ms. Chen not to be credible, which she has not challenged. Ms. Chen has thus not persuaded me that the Board erred in finding that her story of past persecution at the hands of the PSB because of her religion was not credible.

Ms. Chen's *Sur Place* Claim

[9] Despite its negative credibility finding with respect to Ms. Chen's claim to have been a practicing Christian while she was in China, the Board was nevertheless satisfied that she had become a practicing Christian since coming to Canada. As a result, the Board was obliged to assess her *sur place* claim.

[10] The Board did consider whether Ms. Chen would be able to worship safely at a small underground house church in Shanghai. After reviewing the documentary evidence on this issue, the Board concluded that she would indeed be able to do so. This finding was one that was reasonably open to the Board on the record before it.

[11] Where the Board erred was in failing to consider whether Ms. Chen would be able to freely practice other aspects of her religion in China. There was evidence before the Board that part of Ms. Chen's religious observance involved her spreading the gospel in public places. Although this issue was squarely raised in argument, the Board never addressed whether Ms. Chen would be able to proselytize in Shanghai. Nor did it consider whether any inability on her part to do so would amount to religious persecution. This renders its assessment of the *sur place* claim unreasonable.

Conclusion

[12] For these reasons, the application for judicial review is allowed. I agree with the parties that the case does not raise a question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is allowed, and the matter is remitted to a differently constituted panel for re-determination; and
2. No serious question of general importance is certified.

“Anne Mactavish”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6804-11

STYLE OF CAUSE: JUE CHEN v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: May 9, 2012

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

DATED: May 10, 2012

APPEARANCES:

Lindsey Weppler

FOR THE APPLICANT

Norah Dorcine

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Blanshay & Lewis
Barristers & Solicitors
Toronto, Ontario

FOR THE APPLICANT

Myles J. Kirvan
Deputy Attorney General of Canada

FOR THE RESPONDENT