

Federal Court



Cour fédérale

Date: 20120515

Docket: IMM-7359-11

Citation: 2012 FC 586

Toronto, Ontario, May 15, 2012

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

**LIHUA SU
JUN BIN YANG**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] In December 2010, the Applicant Lihua Su, and her young son, both citizens of China, fled their home in Guangdong Province in China and claimed refugee protection in Canada. The claim is based on the Applicant's evidence as the principal claimant that she is a Christian and, because of this religious identity, if she is required to return to China she will suffer more than a mere possibility of persecution under s. 96 of the *IRPA*, or probable risk under s. 97 of the *IRPA*.

[2] In the decision under review the Refugee Protection Division (RPD) accepted the Applicant's evidence that she is a Christian. However, the RPD denied the Applicant's claim on a determination that, as a matter of fact, if the Applicant and her son return to their home in Guangdong, the objective risk claimed under both s. 96 and s. 97 cannot be established.

[3] The RPD's determination is based on the opinion that, while there is evidence of persecution of Christians in Guangdong, the risk of persecution is low for persons described as "lay" Christians. Whether this opinion is sustainable depends on the quality of the RPD's analysis of the evidence on the record with respect to the current conditions of persecution facing Christians in Guangdong. For the reasons that follow I find that the analysis is made in reviewable error because it neglects to address key elements of the evidence.

[4] The RPD's analysis of the most current in-country evidence available at the time the decision under review was made focussed on the 2010 China Aid Association Report which is named in the Immigration and Refugee Board's document index as Item 12.10. The precise evidence of acts of persecution in Guangdong noted in the document for the period January 2010 to December 2010 are stated as follows:

6. South China: Guangdong

(Total persecution cases in this region: 6, last year: 8; number of persons persecuted: >233, last year: >300; number of persons detained: 2, last year: >0; number of persons sentenced: 0, last year: 0)

| Date | Case (6) | Legal Punishment | Abuse (2 cases, 2 people) | Number of people |
|--|---|------------------|---|------------------|
| GUANGDONG | | | | |
| Mar. 3 | Pastor Wang Dao, pastor of Guangzhou's Liangren Church, his wife and six-year-old daughter are called in for police questioning | | child brought in for police questioning | 2 |
| Mar. 4 | Pastor Wang Dao is assaulted and detained at a church meeting in Luoxi Xincheng | | multiple bodily injuries | >10 |
| For details, click here: http://www.chinaaid.org/2010/03/guangzhou-police-kidnap-pastor-wang-dao.html | | | | |
| May 2 | Liangren Church is forced to meet outdoors | | | >100 |

| | | | | | |
|--|---|-------------------------------|----------------|--------------------------------|---|
| For details, click here: http://www.chinaaid.org/2010/05/liangren-church-pastor-wang-dao.html | | | | | |
| May 9 | Pastor Wang Dao is criminally detained, worshippers meeting in park are chased away | 1 person criminally detained | | >100 | |
| For details, click here: http://www.chinaaid.org/2010/05/liangren-church-persecution-continues.html | | | | | |
| Oct. 13 | A delegate to the Lausanne congress is barred at the airport from leaving country | barred from leaving country | | 1 | |
| For details, click here: http://www.chinaaid.org/2010/10/china-lausanne-delegation-writes-open.html | | | | | |
| November | Many house churches are forced to close during the period of the Asian Games in Guangzhou | forced to disband | | >20 | |
| For details, click here: http://www.chinaaid.org/2010/11/guangzhou-bans-prayer-meetings.html | | | | | |
| Guangzhou | Number of persecution cases: 6 | Number of persons detained: 2 | Abuse cases: 2 | Number of persons sentenced: 0 | Total number of persons persecuted >233 |

[5] The RPD provides the following analysis of the information provided in the 2010 China Aid Association Report:

[...] This report very specifically notes the arrests and incidents of persecution of Christians in China from January 2010 to December 2010. This report states that during 2010, the number of Christians persecuted in all of China was 3,343 and that the number of

Christians arrested and detained was 556. Further, the report indicates that only 6 individuals were ‘sentenced’ following detention, a significant drop from 23 individuals a year prior. The panel notes the figures pertaining to the total number of Christians persecuted are somewhat misleading. The statistics for the province of Guangdong indicates 233 people were ‘persecuted’. Closer examination reveals that four of the incidents involve Pastor Wang Dao and the Liangren church which held its services in a park in Guangzhou City. Two of these incidents indicate more than 100 individuals were involved. A third incident indicates more than ten individuals were involved. This brings the total for the four events to 212 individuals. The manner in which these incidents are reported suggest that these incidents [are] likely the same congregants.

[...]

The 2010 China Aid Association document identified that the pastor of the Liangren Church continues to be harassed by authorities [*sic*] and has been interrogated several times over the past two years and that he was criminally detained and beaten. This report suggests that the pastor was accused of “sedition” for having posted articles on the Internet. The report also suggests that the pastor is being harassed because of his intention to hold a large outdoor service. In any event, there is no indication that any lay persons were arrested or have ever been arrested in connection with Liangren church. The panel takes note that the Liangren church is distinctive in its profile from other underground churches in China in terms of its size and the confrontational actions of its pastor.

[...]

The panel has considered that the China Aid Association (CAA) and its president, Bob Fu, have stated in its report that they have not documented all cases of persecution and religious repression which has occurred in every province in China, including Guangdong and Fujian. However, the panel notes again that there has been no persuasive evidence of recent arrests or incidents of persecution of lay Christians in Guangdong province in any of the documentation regarding religious persecution in China.

[Emphasis added]

[Footnotes removed]

(Decision, paras. 16, 18, and 21)

[6] On the evidence considered, the conclusion reached by the RPD is fully described as follows:

The panel recognizes that even if the evidence speaks of some harm that would qualify as serious, the Refugee Protection Division must consider whether there is a serious possibility that the harm will actually come to pass. A statute which outlaws the claimant's conduct or characteristic may be in existence, and it may provide for unconscionably severe punishment for that conduct or characteristic, but this does not necessarily mean there is a serious possibility that the punishment will be inflicted on the claimant. The Supreme Court has emphasized that, in a determination as to whether the claimant's fear is objectively well-founded, the relevant factors include the laws in the claimant's homeland, together with the manner in which they are applied. In this connection, the Court cited the UNHCR"

Enforcement measures may vary from area to area within a country, and if this is the case, "the reasonableness of a fear of persecution depends, inter alia, on the practices of the relevant local authority". A pattern of non-enforcement might imply that there is less than a serious possibility.

As has been discussed, the supporting documentary evidence for the claimant's home province of Guangdong indicates the risk of persecution for practicing Christians is low. The panel has considered the documentary evidence about conditions in Guangdong province and the claimant's personal circumstances. The panel finds, on a balance of probabilities, that the claimant would be able to practice her religion, worshiping in the Christian congregation of her choosing, if she were to return to her home in Guangdong province in China and that there is not a serious possibility that she would be persecuted for doing so.

(Decision, paras. 24 – 25)

[7] However, in the analysis of the evidence on the record leading to the conclusion reached by the RPD, the RPD neglected to address the "November" entry in the 2010 China Aid Association Report quoted above: "many house churches are forced to close during the period of the Asian Games in Guangdong". The RPD also neglected to address the internet story that details the action

taken against “lay” Christians cited at <http://www.chinaaid.org/2010/11/guangzhou-bans-prayer-meetings.html> which reads as follows:

Authorities in the southern Chinese city of Guangzhou have banned unofficially Protestant “house churches” from holding meetings, as the city prepares to host the Asian Games later this week.

Local pastors and their congregations have been warned not to meet during the 16th Asian Games, which run from Nov. 12 to 27 [2010], according to rights lawyer and Protestant house church member Tang Jingling.

“This situation is fairly widespread among all the house churches I have dealings with,” Tang said.

“[The authorities] have been seeking out the pastors of these groups and ordering them to stop holding meetings.”

He said some of the groups had responded by splitting up into much smaller groups and meeting at locations which never remain the same.

He said that police had approached the leaders of his own church group over the ban, which Tang said was likely to remain until January.

“We have switched to small group meetings because of this, meeting at a different person’s house each time,” Tang said.

But he said the churches are not taking an antagonistic attitude to the Games. “No one is planning to do anything. However, if you make trouble for people, of course that is going to cause some antipathy”.

Wang Dao, pastor of the Guangzhou Liangren church, said that local police had tried to call on him while he was out of town, and that the order was apparently extended to all house churches in the entire Pearl River Delta region.

“The day I came to Shanghai on Oct. 31, some of my brothers and sisters told me that the police had come to my house to speak to me,” Wang said.

“It’s not just in Guangzhou, but it includes the whole Pearl River delta areas,” he added.

“I had a text message from a church in Jiangmen, saying that they had been told to stop their regular meetings over the period of the Asian Games, for security reasons.”

But he said that Protestant groups in the region are unlikely to pose much of a security threat.

“There isn’t an issue with security” he said. “I think it’s just an excuse, so they can undertake a total crackdown and cleanup of house churches.”

China’s unregistered churches are under constant fire from the government for operating outside officially sanctioned religious activities.

Officially an atheist country, China has an army of officials whose job is to watch over faith-based activities, which have spread rapidly in the wake of massive social change and economic uncertainty since economic reforms began 30 years ago.

Party officials are put in charge of Catholics, Buddhists, Taoists, Muslims, and Protestants. Judaism isn’t recognized, and worship in unapproved temples, churches, or mosques is against the law.

In its most recent report on human rights in China, the U.S. State Department said freedom of religion is permitted to varying degrees around China.

[8] I accept Counsel for the Applicant’s argument that the RPD’s failure to consider all of the evidence available in the 2010 China Aid Association Report with respect to the Applicant’s religious identity constitutes a reviewable error. This is so because the November entry and the internet article contradict the RPD’s finding, as emphasized above, that there is “no persuasive evidence of recent arrests or incidents of persecution of lay Christians in Guangdong province in any of the documentation regarding religious persecution in China”.

[9] As a result, I find that the decision under review does not fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

ORDER

THIS COURT ORDERS that:

The decision under review is set aside and the matter is referred back for redetermination to a differently constituted panel.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-7359-11

STYLE OF CAUSE: LIHUA SU, JUN BIN YANG v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 10, 2012

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

DATED: MAY 15, 2012

APPEARANCES:

Shelley Levine FOR THE APPLICANTS

Neal Samson FOR THE RESPONDENT

SOLICITORS OF RECORD:

LEVINE ASSOCIATES FOR THE APPLICANTS
Toronto, Ontario

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario