

Federal Court



Cour fédérale

**Date: 20120719**

**Docket: IMM-8613-11**

**Citation: 2012 FC 911**

**Ottawa, Ontario, July 19, 2012**

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

**BETWEEN:**

**KAI BIN WEI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**INTRODUCTION**

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (Act) for judicial review of the decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated 11 October 2011 (Decision), which refused the Applicant's application to be deemed a Convention refugee or a person in need of protection under sections 96 and 97 of the Act.

## **BACKGROUND**

[2] The Applicant is 22 years old and a citizen of the People's Republic of China (China) from Fujian Province. He is a Protestant Christian and fears persecution in China for his religious beliefs.

[3] In early 2009, the Applicant was under pressure from his parents to perform well at school. After disappointing results on an examination, he became depressed. While he was visiting his friend, Ze Tao, Ze Tao's father told him stories about Jesus and about Christianity. Ze Tao took the Applicant to an underground church in China. Although the Applicant was concerned because the church was secret, Ze Tao's parents told him not to worry because they took steps to avoid discovery. After the Applicant converted to Christianity on 12 April 2009, he attended the church weekly.

[4] On 14 October 2009, the Applicant came to Canada on a student visa and began to attend the Living Stone Assembly, a Pentecostal church led by Reverend David Ko.

[5] In a telephone call on 23 February 2010, the Applicant's mother told him the Public Security Bureau (PSB) had discovered his underground church in China. The PSB told his mother they had arrested three members of the church and they knew the Applicant was also a member. Although he attempted to contact Ze Tao and the other church members, he could not get in touch with any of them. After speaking about his situation with members of the Living Stone Assembly, they advised him to seek refugee protection. The Applicant claimed protection on 1 April 2010. He says the PSB continues to harass his parents in China.

[6] The RPD heard the Applicant's claim on 11 October 2011. In oral reasons delivered at the end of the hearing, the RPD rejected the Applicant's claim.

## **DECISION UNDER REVIEW**

[7] The RPD rejected the Applicant's claim because he was not credible and was not a genuine Christian in China or in Canada. The RPD also found that even if he were a genuine Christian, he would not face a risk of persecution in Fujian Province.

### **Credibility**

#### *Events in China*

[8] The RPD found the Applicant was not a credible witness based on discrepancies between his oral testimony, the documentary evidence before it, and the documents he submitted to support his claim.

[9] First, the RPD found his account of the raid on the underground church he attended was not consistent with the country condition documents before it. The country condition documents showed that the risk to Christians in Fujian province was low. This was inconsistent with his testimony that members of his church had been arrested and the PSB had gone looking for him at his home. The RPD drew a negative inference and found that members of his church in China were not arrested.

[10] Second, the Applicant's testimony about the PSB's interaction with his family was not consistent with the country condition documents. Response to Information Request (RIR) CHN42444.E indicated that summonses are generally left with family members. The documentary

evidence also suggested summonses are not always left with family members, but the RPD found the PSB would have given his mother a copy of a summons if they were actually looking for him. The Applicant had testified his mother found out through a contact that the PSB was looking for him and had issued a summons. However, the PSB had not left a copy of the summons with his mother when they came looking for him.

[11] Third, the RPD drew a negative credibility inference from the Applicant's failure to provide a copy of his summons to the RPD. He testified that a summons existed, but had not provided a copy to the RPD. RIR CHN42444.E indicated that it is possible to obtain a copy of a summons from the PSB. Although the Applicant agreed at the hearing it is possible to get a copy, he said it was not reasonable for him or his family to contact the PSB. The RPD rejected this explanation, noting that the screening form it gave him said it was important to provide supporting documents. The RPD also found the Applicant had provided no persuasive evidence the PSB was looking for him, other than the allegation in his Personal Information Form (PIF).

[12] Fourth, the Applicant had testified at the hearing the PSB had searched his home when they went looking for him. However, he had omitted this detail from his PIF. The RPD rejected his explanation that he only wanted to give a framework of the events in his PIF and had expected to provide details at the hearing. The RPD pointed out that the PIF specifically instructed him to describe all significant events and actions the police had taken against him or his family members. Had the search on his home actually occurred, the RPD found he would have mentioned it in his PIF.

*Events in Canada*

[13] The Applicant was also not credible because he did not corroborate his testimony about what he had done after he arrived in Canada with acceptable documents. When the Applicant came to Canada in October 2000, he came on a student visa. At the hearing, the Applicant said he had attended Great Lakes College in Toronto until March 2010, when he left his program without finishing. He said he was upset by the events that had transpired in China so he could not concentrate on his studies. The Applicant provided a photocopy of a transcript from Great Lakes College to prove his studies in Canada. The RPD found the photocopy the Applicant submitted was not a copy of a genuine document. The transcript did not bear an official seal or stamp and his name and student number were in a different font than the rest of the document.

[14] The Applicant said he attended Great Lakes College until March 2010, but he did not provide any tuition fee receipts or a student card to prove this was so. He had not requested a refund of his tuition, even though he left his program early. The RPD noted transcripts from educational institutions in Ontario are easily obtained, so his failure to provide an original transcript meant he was not credible. The RPD was not persuaded by his explanation that Great Lakes College had provided him with the photocopy he presented to the RPD. The RPD's screening form said he was required to provide documents to prove his studies in Canada. The RPD drew a negative inference from his failure to provide adequate documents. It also questioned whether his motivation for coming to Canada was genuine.

[15] When the RPD asked the Applicant about some of his teachers at the Great Lakes College, he said a woman was his drama teacher. However, his drama teacher was actually a man. The RPD

found the Applicant was unable to identify three of his teachers and this also undermined his credibility.

### *Religious Identity*

[16] The RPD found the Applicant was not a genuine Christian because he could not adequately describe the contents of the Bible and could not recite the Lord's Prayer in its entirety. The Applicant testified he had read the Bible several days each week since he became a Christian. He also said the stories about Jesus's miracles had led him to become a Christian and that the Gospel of Mark was his favourite. When the RPD asked him to say why Mark was his favourite gospel, he said only that this was his preference. When asked about the Gospel of Matthew, he said it was about Jesus's birth and baptism, but did not provide more detail. The RPD found that the miracles described in the Gospels of Mark and Matthew would have resonated with the Applicant and he would have known these gospels contained accounts of miracles if he had actually read the Bible as he said he did.

[17] The Applicant testified he had been reciting the Lord's Prayer since he had converted to Christianity. When the RPD asked him to recite it, he could only remember the first three lines. He explained his lapse in memory by saying he was nervous, but the RPD rejected this explanation. The Applicant had been able to recall events, dates, and times without hesitation, so he should have been able to recall the Lord's Prayer. His inability to recite the whole prayer meant the Applicant was not credible.

[18] The Applicant had demonstrated some knowledge of Christianity, but this did not mean he was actually a Christian. He said he regularly attended church, went to Bible classes, and read the

Bible, so he should have had a high level of knowledge about Christianity. He did not. The Applicant had also provided a letter from Reverend Ko, but this letter could only attest to his church attendance, not his motivation. The RPD found the Applicant was not a practising Christian in China.

[19] Based on its finding that other members of the church in China were not arrested and the Applicant was not a genuine Christian in China, the RPD found his story about attending an underground church was not credible. The Applicant had concocted this story to support a fraudulent claim for protection.

### ***Sur Place Claim***

[20] The RPD also considered whether the Applicant was a genuine Christian in Canada. It found that he could have learned all he knew about Christianity while he was in Canada. His knowledge, limited though it was, did not speak to whether he was a genuine Christian, so the RPD put little weight on it. The RPD also found the Applicant had not made his refugee claim in good faith. The lack of good faith showed he had joined the Living Stone Assembly to support a fraudulent claim. He was not a genuine Christian in Canada also would not be perceived as a Christian in China if he returned, and faced no risk of persecution.

### **Risk in China**

[21] Even if the Applicant were a genuine Christian, the RPD found he would be able to practise Christianity in Fujian Province without fear of persecution.

[22] RIR CHN103501.E indicated that Fujian and Guangdong provinces have the most liberal policy on religion in China. As recently as 14 June 2010, an official from the Hong Kong Christian Council said Chinese authorities are tolerant toward Christians, including those who practise in unregistered groups. Although Christians had been arrested in China between 2005 and 2010, none of the arrests recorded were in Fujian Province. The ChinaAid Association's *Annual Report of Persecution by the Government on Christian House Churches within Mainland China* showed that, in Fujian Province, ten Christians were persecuted and three venues used by churches were closed in 2010. However, the report was not clear about how the ten Christians were persecuted or why the churches were sealed. The RPD gave this report little weight.

[23] Had Christians been arrested recently in Fujian Province, these arrests would have been documented. Several groups, whose goal was to document incidents of persecution in China, had provided detailed reports of persecution in remote areas. However, they had not recorded any events in Fujian Province. An egregious event, like the raid the Applicant described, would have been reported. The China Aid Association said it had not documented all cases of persecution in China. However, the US Department of State, in its report, *China: International Religious Freedom Report 2010*, said that extent of religious freedom in China varies widely. The RPD found the situation in Fujian Province did not reflect the situation in other Chinese provinces where Christians had been arrested.

[24] The risk of persecution the Applicant faced in Fujian Province was low. Although practising Christianity in an unregistered church is unlawful in China, the RPD noted that the manner in which laws are enforced is an important factor to consider. See *Chan v Canada (Minister of Employment and Immigration)*, [1995] 3 SCR 593. If he returned to Fujian Province, the Applicant would be



able to practise Christianity in any church he chose to and would not face a risk of persecution for doing so.

### **Conclusion**

[25] The Applicant had not established that he faced a serious possibility of persecution or a risk to his life, a risk of cruel and unusual treatment or punishment, or a risk of torture. The RPD denied his claim for protection.

### **ISSUES**

[26] The Applicant raises the following issues in this application:

- a. Whether the RPD's credibility finding was reasonable;
- b. Whether the RPD's risk finding was reasonable;
- c. Whether the RPD erred in imposing a requirement of good faith on him.

### **STANDARD OF REVIEW**

[27] The Supreme Court of Canada in *Dunsmuir v New Brunswick* 2008 SCC 9 held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[28] The standard of review applicable to the first two issues in this case is reasonableness. It is well established that the standard of review applicable to the RPD's findings on credibility is reasonableness. See *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (FCA); *Elmi v Canada (Minister of Citizenship and Immigration)* 2008 FC 773, at paragraph 21, and *Wu v Canada (Minister of Citizenship and Immigration)* 2009 FC 929, at paragraph 17. It is also well established that the standard of review applicable to a risk finding is reasonableness. See *Sarmis v Canada (Minister of Citizenship and Immigration)* 2004 FC 110, at paragraph 11; *S.A.H. v Canada (Minister of Citizenship and Immigration)* 2011 FC 613; and *Qiu v. Canada (Minister of Citizenship and Immigration)* 2009 FC 605 at paragraph 17.

[29] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at paragraph 47, and *Canada (Minister of Citizenship and Immigration) v Khosa* 2009 SCC 12 at paragraph 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

[30] The standard of review with respect to the third issue is correctness. In *Huang v Canada (Minister of Citizenship and Immigration)* 2012 FC 205, Justice Russel Zinn held at paragraph 21 that the imposition of a good faith requirement implicated the correct test for a *sur place* claim. This issue was to be evaluated on the correctness standard. I agree. As Justice Michael Phelan held at paragraph 7 in *Sahota v Canada (Minister of Citizenship and Immigration)* 2011 FC 739 the

application of the proper legal test is reviewable on the correctness standard. See also *Garcia v Canada (Minister of Citizenship and Immigration)* 2010 FC 677 at paragraph 7 and *Markis v Canada (Minister of Citizenship and Immigration)* 2008 FC 428 at paragraph 19.

## STATUTORY PROVISIONS

[31] The following provisions of the Act are applicable in this proceeding:

**96.** A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries;

[...]

**97.** (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention

**96.** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques:

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

[...]

**97.** (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la

Against Torture; or	Convention contre la torture;
(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if	b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,	(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,	(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and	(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.
[...]	[...]

## ARGUMENTS

### The Applicant

#### Unreasonable Credibility Finding

[32] The RPD's credibility finding was unreasonable because it misconstrued the evidence on the use of summonses in China.

[33] The RPD found the Applicant was not credible because his account of the PSB's interaction with his mother did not match what was described in the country condition documents. RIR CHN42444.E, which the RPD relied on to find the usual practice is to leave a summons with a family member, actually shows that leaving summonses with family members is improper procedure. This document also shows that law enforcement in China is arbitrary and not uniform. Information produced more recently shows that local authorities sometimes detain and punish people in ways which are not authorized by the law. The RPD's finding that a summons would have been left with the Applicant's parents was not based on the evidence. Its credibility finding was based on this erroneous finding and is unreasonable.

[34] It was also unreasonable for the RPD to find the Applicant not credible because he did not provide a copy of the summons the PSB issued. It was perverse for the RPD to conclude that the Applicant or his family members should have approached the PSB for evidence confirming persecution. Approaching the PSB for a copy of the summons would put the Applicant or his family at risk of harm.

### **Good Faith Requirement**

[35] It was also unreasonable for the RPD to impose a "good faith" requirement on the Applicant when it examined his *sur place* claim. In imposing this requirement, the RPD relied on outdated authorities and foreign case law. The RPD ignored jurisprudence which shows there is no requirement that refugee claims be made in good faith to establish a *sur place* claim. In *Ghasemian v Canada (Minister of Citizenship and Immigration)* 2003 FC 1266, Justice Johanne Gauthier held that opportunistic claimants are still protected if they can establish persecution on a Convention ground.

### **Risk Finding Unreasonable**

[36] The RPD's finding the Applicant did not face a risk of persecution in Fujian Province was unreasonable because it is contrary to this Court's jurisprudence. The risk finding was also not supported by the documentary evidence which was before the RPD.

[37] In *Zheng v Canada (Minister of Citizenship and Immigration)* 2011 FC 1359, Justice Richard Mosley held at paragraphs 11 to 13 that

Here, the Board's concerns related primarily to the treatment of Christians in the applicant's home province. The earlier document presented a more favourable view of the situation in that province than later information reflected in the 2010 document would support.

The respondent's argument that the 2005 document was not the "cornerstone" of the decision is not persuasive given the Board's reliance on the more positive picture that it presents. Nor am I satisfied, based on a reading of the transcript of the hearing, that the applicant's counsel was aware of the content of the document. It is clear from the transcript that counsel addressed the general question of a more liberal policy in Fujian Province, but without reference to the specific comments in the 2005 and 2010 documents.

In the circumstances, I find that the Board's reliance on the earlier document constituted a breach of procedural fairness. I am unable to agree with the respondent that the 2010 changes to the document are so trivial that I should find that the decision maker would have reached the same conclusion notwithstanding the breach.

[38] *Zheng* precluded the RPD from finding that Fujian Province is the most liberal with respect to Christianity.

[39] The RPD also relied on out of date information to support its risk finding without analysing more recent information. RIR CHN103500.E, dated 30 June 2010, quotes the following passage from a letter written to the Immigration and Refugee Board by the ChinaAid Association:

With specific reference to the provinces Fujian and Guangdong, it is absolutely incorrect to find that there is religious freedom in these provinces. [...] [T]he persecution may come and go and not be totally predictable, but it is always present. Even the very threat of a government crackdown is a method of persecution. The house churches in Fujian and Guangdong, like all of China, face the constant and fearful risk of being closed and its members punished. Certainly, these provinces do not enjoy religious freedom while all other parts of China do not.

[40] The RPD's own information showed that Christians in Fujian Province are constantly under threat of punishment. RIR CHN103500.E no longer contains a reference to Fujian Province as having "the most liberal policy on religion in China," which shows this statement is no longer true. The RPD did not consider this in the Decision.

[41] Although Fujian Province may be more liberal with respect to Christianity than other parts of China, this does not mean that Christians can practise freely. RIR CHN102491.E shows that unregistered churches are still illegal and Christians face many sanctions. In *Liang v Canada (Minister of Citizenship and Immigration)* 2011 FC 65, Justice Michel Shore held that the RPD's finding the applicant did not face a risk of persecution was unreasonable, given evidence which showed house churches had been destroyed by authorities in Fujian Province. There may not have been evidence of recent arrests in Fujian Province, but there was evidence that persecution and destruction of house churches occurs.

[42] There was clear and compelling evidence before the RPD that Christian practice is restricted in China. The RPD did not consider how the continuing system of sanctions could amount to persecution. See *Chen v Canada (Minister of Citizenship and Immigration)*, [1997] FCJ No 118. The RPD did not consider the totality of the evidence, which shows restrictions on Christian practice in Fujian Province amount to persecution.

[43] It was also an error for the RPD to conclude the Applicant was not at risk because Chinese authorities are not interested in arresting members of small underground churches. This finding assumes without evidence the Applicant will continue to practise Christianity in a small underground church. At some point in the future, his church may grow to a size where the PSB becomes interested in it. Further, the fact the Applicant would have to limit his practice to a small church shows that his freedom to worship is limited. *Liang*, above, shows that Chinese authorities continue to raid churches regardless of their size, so the RPD's reliance on the small size of the Applicant's church was unreasonable.

## **The Respondent**

### **Reasonable Credibility Finding**

[44] The RPD's negative credibility finding was reasonable because it was based on the following errors, omissions, and inconsistencies in the Applicant's testimony:

- a. He failed to mention the PSB's search of his home in his PIF;
- b. He failed to adequately document his studies in Canada;
- c. He could not correctly identify his teachers;
- d. He did not provide an acceptable reason why the Gospel of Mark is his favourite;
- e. He provided insufficient detail about what the Gospel of Matthew contained;
- f. He could not recite the whole Lord's Prayer, even though he was given extra time to;
- g. He had limited knowledge of Christianity.



[45] Each of these subsidiary findings is supported by the transcript. It was open to the RPD to conclude the Applicant was not a Christian in China and is not a Christian in Canada. He has not challenged any of these findings, so they must be presumed to stand.

[46] It was also reasonable for the RPD to find the Applicant's story was not credible because it did not match the documentary evidence. The country condition evidence before the RPD showed that no Christians had been arrested recently in Fujian Province. It was reasonable for the RPD to find that any incidents of persecution would have been documented, given that arrests and persecution were documented in regions more remote than Fujian Province.

[47] In the context of the Applicant's assertion that the PSB had been to his home on several occasions, and his testimony that his mother told him the PSB had issued a summons, it was reasonable for the RPD to find he was not credible because he had not provided a copy of the summons to corroborate his story. In *Zhang v Canada (Minister of Citizenship and Immigration)* 2011 FC 654, Justice Michael Kelen held that "[the] Board may weigh documentary evidence against the applicant's testimony, and find that the documentary evidence supports a finding contrary to the applicant's testimony." See paragraph 23.

[48] Although it may not be proper procedure in China for the PSB to leave a summons with the family, the country condition documents indicated this is common. It was reasonable for the RPD to find the lack of a summons meant the Applicant was not credible.

[49] The Applicant has said the RIR CHN42444.E is outdated and does not support the RPD's findings. He also relies on RIR CHN103501.E, which is more recent, and says this document contradicts the RPD's findings. The Respondent says RIR CHN103501.E supports the RPD's

finding. It shows summonses may be left with an adult family member if the person sought is not available and does not say it is improper procedure or uncommon for a summons to be left with family members. Further, RIR CHN103501.E shows it is possible to obtain copies of summonses from the PSB. There was nothing before the RPD to show that requesting a copy of the summons would increase the risk to the Applicant or his family, so it was reasonable for the RPD to expect him to have provided one. Even if the RPD's finding from the lack of a summons is unreasonable, the RPD's other credibility findings mean this one finding was not determinative.

### ***Sur Place Claim***

[50] On the evidence which was before the RPD, it was reasonable to conclude the Applicant is not a genuine Christian in Canada and would not be perceived as such if he returned to China. Even if the RPD improperly imposed a requirement of good faith on the Applicant, it fully analysed his *sur place* claim on its merits and concluded he was not a genuine Christian. Having found the Applicant is not a genuine Christian, the RPD did not need to analyse whether he was at risk of persecution in China.

### **Risk Finding Reasonable**

[51] The RPD's finding the Applicant would not be at risk in China was reasonable because it was based on a complete assessment of the country condition evidence before the RPD as it related to the Applicant's circumstances. The Applicant has said there was evidence before the RPD which showed Christians in China are persecuted, but he has not shown that the RPD ignored this evidence. The RPD pointed to evidence which showed some Christians in China are persecuted and referred to statements from the ChinaAid Association that it had not documented all incidents of

persecution. At the same time, there was no evidence before the RPD that any Christians had been arrested in Fujian Province recently. There was no evidence which specifically contradicted the RPD's finding.

[52] It was also reasonable for the RPD to find the Applicant could practise Christianity in the church of his choosing in Fujian Province. He has not shown that the size of his church was a determining factor in the RPD's risk analysis, so *Liang*, above, cannot assist him. *He v Canada (Minister of Citizenship and Immigration)* 2011 FC 1199 establishes that *Liang* is not authority for the proposition that every claim based on religious persecution in Fujian Province must be successful. Each case turns on its own facts.

[53] The Applicant has said *Zheng*, above, shows a finding that Fujian Province is the most liberal with respect to Christianity is not supported by documentary evidence. However, findings of fact are to be made according to the evidence, not the jurisprudence of the Court. The RPD noted evidence in RIR CHN103501.E which said authorities in Fujian and Guangdong are more tolerant than those in other provinces. Unlike *Zheng*, above, the updated information was not so substantively different from the information the RPD relied on that it would have resulted in a different conclusion.

[54] The RPD acknowledged that the extent to which Christians could practise their religion in China varied considerably. It was reasonable for the RPD to conclude the Applicant could practise Christianity in Fujian Province and would not be persecuted if he did.

[55] Even if the Court disagrees with the RPD's conclusion on risk, the Decision can stand on the basis of the RPD's reasonable credibility finding.

## ANALYSIS

[56] The Decision is based upon two alternative grounds. First of all, the RPD found that the Applicant had concocted his refugee claim and was “not a genuine practicing Christian, nor would he be perceived to be in China.” Alternatively, the RPD found that even if he was a practising Christian

on a balance of probabilities, that the claimant would be able to practice his religion in any church in Fujian province if he were to return to his home in Fujian province in China and that there is not a serious possibility that he would be persecuted for doing so.

[57] The Applicant alleges reviewable error for both grounds of the Decision. On the credibility ground he argues that the RPD misconstrued the evidence on the issuance of summonses and that the documentation does not support the RPD’s finding that summons are generally left or shown to family members when the police want someone to come to their headquarters. He points to more recent documentation which says there is a wide administrative discretion throughout the country and that “the individual may not receive a copy of the summons without specifically asking for it...” The Decision, however, acknowledges that summonses are not always left, but goes on to say that it would be reasonable to infer that one would have been issued in the Applicant’s case because “he alleged that the PSB have gone to his home six times and that they alleged that they have intention to arrest him.” His credibility was questioned because “he provided no persuasive evidence that he was being pursued by the Public Service Bureau.”

[58] In my view, the later documentation referred to by the Applicant does not necessarily contradict the earlier document or the RPD’s findings. However, even if the RPD overreached on

this one point, the credibility ground is based upon a wide range of findings that the Applicant does not challenge.

[59] The Applicant was not a credible witness. He could not establish that he was studying in Canada, and there was no credible evidence that he went to school here. He could not identify his teachers. He also failed to mention the PSB's search of his house in his PIF. As Justice Pinard makes clear in *Jin v Canada (Minister of Citizenship and Immigration)* 2012 FC 595 at paragraph 11, the RPD is entitled to draw negative inferences from omissions in an applicant's PIF:

Moreover, the Board considered the applicant's explanation as to his omission, but chose to reject it, as outlined in its decision, as it was permitted to do (*Jones*, above at para 27). The Board also clearly explained why it did not consider the applicant credible, having omitted to mention a significant fact in his Personal Information Form ("PIF") (see *Armson v. Canada (Minister of Employment and Immigration)*, [1989] F.C.J. No. 800 (F.C.A.) (QL), 101 N.R. 372) and *Dong v. Minister of Citizenship and Immigration*, 2010 FC 55 at para 15 [*Dong*]). The applicant had the obligation to include all relevant facts in his PIF and it is insufficient for the applicant to claim that his oral testimony was an elaboration (*Sanchez v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 536 (F.C.) (QL) at paragraph 9; *Basseghi v. Canada (Minister of Citizenship and Immigration)*, [1994] F.C.J. No. 1867 at para 33 (F.C.T.D.) (QL)). The applicant's failure to mention the existence of an arrest warrant in his PIF is a significant event that should have initially been mentioned. Thus, the Board's negative inference was justified.

[60] On the summons issue, the RPD relied upon documentary evidence that it is possible to obtain a copy of a summons, and yet the Applicant's mother who has been monitoring the whole situation and assisting the Applicant failed to obtain a copy of the summons for him. The Applicant says it was "perverse" of the RPD to expect his family to place themselves in danger by requesting a copy of the summons. Yet the Applicant offers no evidence to suggest that someone is placed in danger in China if they ask for a copy of the summons for a family member who is out of the

country. As Justice Mosley pointed out in *Lin v Canada (Minister of Citizenship and Immigration)* 2012 FC 671, IMM-7565-11 (unreported) at paragraph 10,

The Board drew a negative inference from the lack of a summons in part because the applicant claimed that the PSB had visited his home nine times. Considering the evidence on the uneven enforcement practice of the PSB, this may have been unreasonable (see *Weng v Canada (Minister of Citizenship and Immigration)*, 2011 FC 422 at paras 16-18). However, this one inference was not determinative and is not sufficient to render the entire decision unreasonable.

[61] The credibility finding is based upon a cumulation of discrepancies that the Applicant does not challenge. When this body of credibility concerns is examined in total, it is quite obvious why, even if the RPD got the summons issue wrong (which I do not think it did), there were ample grounds for the RPD's conclusion that the Applicant was not a genuine Christian, that he had come to Canada for dubious reasons, and that he would not be perceived as a Christian if he returned to China.

[62] The Applicant provided no objective evidence of what had occurred with his church in China. There was no affidavit evidence from other members of the church, and no explanation as to what had happened to the three members who were arrested. There was nothing in writing from his mother who was reputedly the source of his information as to what had occurred in China. There was simply no corroborative evidence and no adequate explanation for its absence. Regardless of the general situation in Fujian province, the Applicant was unable to provide a convincing narrative that would connect him to any problems that might be experienced by Christians.

[63] Rather than address the full range of findings that led the RPD to its credibility findings, the Applicant has chosen to assert that the RPD made a reviewable error when it imposed a "good

faith” requirement on him. The Applicant relies upon *Ghasemian*, above, at paragraphs 29 – 31, for the following:

Mrs. Ghasemian says that the Board also erred when it looked at her motive for conversion and applied the wrong test by rejecting her claim on the basis that it was not made in good faith i.e. she did not convert for a purely religious motive. She relies on the decision of the English Court of Appeal in *Danian v. Secretary of State for the Home Department*, [1999] E.W.J. No. 5459 online: QL.

In that case, the English Court of Appeal found that even though Mr. Danian’s “refugee *sur place*” claim was based on outspoken political opinions, allegedly made for the sole purpose of supporting his claim, the tribunal still had the obligation to determine whether he would face persecution if returned to his country of origin.

Although the decision in *Danian*, above, is not binding on this Court, I find its reasoning quite persuasive and agree that opportunistic claimants are still protected under the Convention if they can establish a genuine and well-founded fear of persecution for a Convention ground.

[64] In my view, the Applicant simply could not establish to the RPD’s satisfaction that he actually was a Christian or would be perceived as such in China. He had little knowledge of Christianity, and he could not recite the Lord’s Prayer even after he was given a second opportunity to do so. The Applicant complains that the RPD was focused on his motives and improperly imparted a “good faith” requirement. However, a reading of the Decision as a whole shows that, the RPD examined the Applicant’s religious practices in Canada and carefully tested his knowledge of Christianity. The Applicant does not challenge the RPD’s findings on this issue. Much the same occurred in *Jin*, above, where Justice Pinard found as follows, at paragraphs 18 – 20:

Lastly, the applicant argues that the Board further erred in its assessment of the applicant’s *sur place* claim, failing to apply the proper test and confounding its findings with regards to the applicant’s religious practice in China and in Canada, as in *Yin*, above.

Every case must turn to its own facts (*Chen*, above at para 25). In addressing a *sur place* refugee claim, the fact that an applicant was not actually a practicing Christian in China does not mean that he is not a sincere practicing Christian in Canada (*Yin*, above at para 94). Thereby, the Board had to consider the applicant's religious practice in Canada, which it did, explicitly addressing the documents previously discussed, as stated in *Ejtehadian*, above at paragraph 11:

... credible evidence of a claimant's activities while in Canada that are likely to substantiate any potential harm upon return must be expressly considered by the IRB even if the motivation behind the activities is non-genuine ...

The Board did not apply the wrong legal test, nor did it focus on the applicant's motives for converting to Christianity. Rather, it considered whether the applicant was a genuine Christian likely to be persecuted in China due to his beliefs. Since the applicant was not considered to be a genuine practicing Christian, the Board need not consider whether the applicant would be at risk of religious persecution in China. Thereby, this is not a case where the applicant's religious activities in Canada might give rise to negative reaction on the part of Chinese authorities if forced to return to China (see *Girmaeyesus v. Minister of Citizenship and Immigration*, 2010 FC 53 at para 28). Furthermore, the respondent is right in that it would be absurd to grant a *sur place* claim every time a pastor provides a letter attesting to an applicant's membership in his church.

[65] Whether or not a claim is made in good faith, the claimant must establish the risk he faces.

The RPD reasonably concluded that he was not a Christian and the authorities in China would not see him as a Christian.

[66] The Decision was reasonable with respect to the Applicant's credibility and his *sur place* claim, so there is no reason to consider the RPD's alternative finding that, even if the Applicant was a genuine Christian, he would be able to practise his religion freely in Fujian province. However, in my view, the RPD's assessment on this issue was reasonable. It looked at the entire situation in



Fujian province, acknowledged the contradictory evidence, and, in my view, came to a reasonable conclusion.

[67] Counsel agree there is no question for certification and the Court concurs.

**JUDGMENT**

**THIS COURT’S JUDGMENT is that**

1. The application is dismissed.
2. There is no question for certification.

“James Russell”

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Judge

**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** IMM-8613-11

**STYLE OF CAUSE:** **KAI BIN WEI**

- and -

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** June 28, 2012

**REASONS FOR JUDGMENT  
AND JUDGMENT:** HON. MR. JUSTICE RUSSELL

**DATED:** July 19, 2012

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