

Federal Court



Cour fédérale

Date: 20120531

Docket: IMM-7565-11

Citation: 2012 FC 671

Toronto, Ontario, May 31 2012

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

YU KUN LIN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

MOSLEY J.

[1] The applicant, a citizen of China, claimed refugee protection based on a fear of persecution because of his Roman Catholic faith. He seeks judicial review of the decision of the Immigration

and Refugee Board, Refugee Protection Division (the “Board”) which determined that he is not a Convention refugee or person in need of protection.

[2] For the reasons that follow, the application is dismissed.

[3] The applicant is from Fujian Province. He claimed that he began attending house church services and distributing pamphlets about Catholicism in May 2008. A year later he learned that agents of the Public Security Bureau (the “PSB”) had been to his house looking for him. He was dismissed from his school for participating in illegal religious activities. Enlisting the aid of a smuggler, he fled China in September 2009 and came to Canada to claim protection. He was baptized here in April 2011. His claim was denied on October 3, 2011.

[4] The sole issue in this matter is whether the Board’s decision is reasonable. The decision was based on mixed findings of fact and law and is reviewable on the reasonableness standard:

Dunsmuir v New Brunswick, 2008 SCC 9 at paras 51 and 53.

[5] The applicant submits that the Board erred in its consideration of the documentary evidence and points to certain documents from the record which contain statements that are not consistent with the Board’s findings, including, specifically, a letter from the China Aid Association regarding the persecution of Christians in China. In my view, however, it was reasonable for the Board not to mention this letter as the Board had already accepted evidence of some persecution and referenced other evidence to the same effect from the China Aid Association.

[6] The applicant relies on findings by this Court that Catholics are at risk of persecution in Fujian Province, citing *Liang v Canada (Minister of Citizenship and Immigration)*, 2011 FC 65 at paragraphs 2 and 3, and *Liu v Canada (Minister of Citizenship and Immigration)*, 2010 FC 135 at paragraphs 12 and 13.

[7] He further contends that the Board erred by failing to consider forms of persecution other than arrest, including restrictions on religious freedom. He notes that this Court has interpreted religious freedom broadly, including in *Chen v Canada (Minister of Citizenship and Immigration)*, 1997 CarswellNat 171, where the Court found a reviewable error when the Board focused on the chances of a particular claimant being singled out for arrest rather than looking at the “continuing system of sanctions in China against those who practice unauthorized religions.”

[8] Finally, the applicant submits that the Board unreasonably found that the PSB would have left a summons if they were really looking for him, citing reports in the National Documentation Package that state that there is no consistent policy and that police procedures vary from one region to the next.

[9] As the respondent has pointed out, *Liang*, above, does not stand for the broad proposition that all Catholics in Fujian are at risk. Rather, each refugee claimant must provide sufficient credible evidence to establish a risk of persecution: *He v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1199 at paras 15-18; and *Yu v Canada (Minister of Citizenship and Immigration)*, 2010 FC 310 at para 22.

[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.

[11] The Board was cognizant of the mixed evidence relating to the treatment of Catholics in China. It acknowledged that there is “sporadic” persecution of underground Catholic churches, but found that the risk varied significantly from one province to another.

[12] Turning to the Fujian province specifically, the Board noted the conflicting evidence about the treatment of Christians there, but preferred the evidence of the Hong Kong Christian Council as the Council provided details from personal experiences; the Council highlighted Fujian as one of the most tolerant provinces in China with respect to unregistered Christian groups.

[13] The Board’s finding that, to the extent that there is persecution in Fujian province, it is the bishops and priests who are being persecuted rather than congregants with as low of a profile as the applicant was reasonably based on the evidence. The conclusion that the evidence did not disclose a risk of persecution or a risk of torture or to the applicant’s life, and that the applicant would be free to worship in the Catholic congregation of his choosing was within the range of defensible outcomes justified on the facts and the law.

[14] The applicant proposes that I certify the following question as a serious question of general application:

Where there is evidence that indicates that the applicant would not be able to freely practice their religion, does this restriction amount to persecution?

[15] As stated in *Canada (Minister of Citizenship and Immigration) v Zazai*, 2004 FCA 89 at paragraph 11, the threshold for certifying a question is whether there is a serious question of general importance which would be dispositive of an appeal.

[16] In my view, the proposed question has already been answered by the jurisprudence (see *Chen*, above) and would not be dispositive of an appeal in this matter. The tribunal found on the evidence that the applicant would be free to worship in the Catholic congregation of his choosing despite the concern expressed by the applicant in his evidence.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. the application for judicial review is dismissed;
2. no question is certified.

"Richard G. Mosley"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7565-11

STYLE OF CAUSE: *YU KUN LIN v. THE MINISTER OF CITIZENSHIP
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PLACE OF HEARING: TORONTO, ONTARIO

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

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