

Federal Court



Cour fédérale

Date: 20140711

Docket: IMM-3310-13

Citation: 2014 FC 683

Ottawa, Ontario, July 11, 2014

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

FEI CHAN LIN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of the decision of Joel Bousfield, a member of the Refugee Protection Division of the Immigration and Refugee Protection Board [the Board], pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. The Board dismissed the Applicant's claim for refugee protection, concluding that she was not a convention refugee or person in need of protection under sections 96 and 97 of the Act.

I. Issue

[2] The issue in the present application is whether the Board's decision was unreasonable.

II. Background

[3] The Applicant is a citizen of China. According to her Personal Information Form [PIF] Narrative, she fears persecution as a result of her involvement in secret Christian house churches.

[4] In September, 2009, a friend of the Applicant's, Chen Yun Jin, invited the Applicant to work in a bookstore with her. The Applicant agreed. She was 17 years old at the time. Chen Yun Jin's uncle, Chen Yao, was the owner of the bookstore. The same month, the Applicant witnessed the aftermath of a motor vehicle accident and converted to Christianity with the encouragement of Chen Yun Jin. Chen Yun Jin informed the Applicant that she practiced Christianity in secret and that Chen Yao was the leader of an underground house church.

[5] On September 27, 2009, the Applicant accompanied Chen Yun Jin to an underground house church. The Applicant enjoyed the experience and continued to attend meetings held in different members' homes, with security precautions in place.

[6] In late November, 2009, Chen Yao instructed the Applicant and Chen Yun Jin to distribute bibles to customers of the bookstore. The Applicant and Chen Yun Jin warned Chen Yao not to distribute the bibles, but Chen Yao believed it would not cause problems. After distributing bibles for five days, his bookstore was shut down by police on November 30, 2009.

The Applicant was informed by Chen Yun Jin, who advised the Applicant to go into hiding. The Applicant moved into her aunt's home.

[7] On December 2, 2009, the Applicant's mother informed the Applicant via telephone that police had searched the Applicant's home, interrogated the Applicant's parents, and accused the Applicant of assisting Chen Yao with illegal Christian activities. The police ordered the Applicant to report to the police.

[8] The Applicant did not report to the police. The police returned to the Applicant's parents' home and left a summons which directed the Applicant to report to the police. The Applicant's parents arranged for the Applicant to hide in the city of Guangzhou. She decided to flee China and sought refugee protection in Canada in March, 2010.

[9] In May, 2010, the Applicant learned that individuals who had been arrested for involvement in Chen Yao's underground church had been sentenced to three years in jail and that the Chinese authorities were looking for her.

[10] In July, 2012, the Applicant had a daughter in Canada. She is fearful that the Chinese government will harm her for having had an unauthorized child, as an unmarried Chinese woman.

[11] In her testimony, the Applicant stated that in June, 2010, the Chinese authorities left an arrest warrant in her name with her parents.

[12] The determinative issue for the Board was credibility. The Board based its conclusion primarily on two plausibility findings:

- i. The Board did not find it plausible that an underground house church leader would so have quickly invited a 17-year-old to its services, given the possibility that she may have easily informed others about the church;
- ii. The Board found it implausible that Chen Yao would distribute bibles out of his bookstore, given the security precautions his church members took to protect their services from being discovered by the police.

[13] The Board states that it confronted the Applicant with these implausibilities but no satisfactory explanation was provided.

[14] The Board notes that the Applicant testified that the police looked for her in May, 2010, and left an arrest warrant with her parents. However, the Applicant did not mention this in her PIF. The Board drew a negative inference from this omission.

[15] As a result of the implausibilities and the omission noted above, the Board placed no weight on corroborative evidence provided by the Applicant, which included a Baptismal certificate, photographs, a letter from a Toronto reverend, and a summons provided by Chinese authorities. With regard to the summons, the Board notes that such documents can easily be fabricated. The Board concluded that the Applicant is not a practicing Christian.

[16] The Board accepted that the Applicant has a daughter, but found that it would be unlikely that the Applicant would be subject to harm on this basis. The Board concluded that the Applicant would be likely to leave her daughter in Canada, as the child's father is a permanent resident in Canada. If the child remained in Canada, she would not pose a population threat in China and thus would not be considered a risk to the Chinese authorities. Even if the Applicant were to bring her daughter to China, a Response to Information Request (CHN 104185.E) indicates that most individuals who violate the one-child policy are forced to pay a fine instead of being subject to more draconian punishment such as forced sterilization.

III. Standard of Review

[17] The standard of review is reasonableness (*Huang v Canada (Minister of Citizenship and Immigration)*, 2011 FC 288, at paras 15-16).

IV. Analysis

A. *Credibility*

[18] The Board's plausibility finding regarding the likelihood that an underground Christian church would accept the Applicant has no basis on the evidence before me.

[19] Credibility findings on the basis of implausibility can only be made in the clearest of cases (*Vodics v Canada (Minister of Citizenship and Immigration)*, 2005 FC 783, at paras 10-11). As stated in *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776, at para 7 [*Valtchev*]:

7 A tribunal may make adverse findings of credibility based on the implausibility of an applicant's story provided the inferences drawn can be reasonably said to exist. However, plausibility findings should be made only in the clearest of cases, i.e., if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant. A tribunal must be careful when rendering a decision based on a lack of plausibility because refugee claimants come from diverse cultures, and actions which appear implausible when judged from Canadian standards might be plausible when considered from within the claimant's milieu. [see L. Waldman, *Immigration Law and Practice* (Markham, ON: Butterworths, 1992) at 8.22]

[20] While it may be inadvisable for an underground church to admit a young member or distribute any literature for fear of drawing attention, such a situation does not demonstrate a “clear case” in the sense that the facts at issue are outside the realm of what could reasonably be expected. Furthermore, the Board did not cite any objective evidence that would support its implausibility finding. No evidence was cited which described the level of scrutiny these churches receive by police, their typical proselytizing practices, or the profile of individuals who are admitted to the church. In the absence of a concrete grounding in evidence, the Board’s plausibility findings were merely speculative.

[21] Moreover, the fact that the Church had security measures in place does not support the speculation by the Board concerning the plausibility of the fact that bibles were distributed by

the Church leader. While the Applicant was given a chance to address the implausibility, it was unreasonable of the Board to draw a negative inference because she could not explain a third party's decision (*Valtchev*, above, at para 13).

[22] The Board was also unreasonable in giving no weight to the corroborative evidence submitted. Even if the events in China did not occur, there is still evidence that the Applicant is a practicing Christian in Canada (*Chen v Canada (Minister of Citizenship and Immigration)*, 2009 FC 677, at para 26). The Board ought to have assessed the Applicant's religious identity in Canada, independent of her religious identity in China.

[23] The only other credibility finding cited by the Board is the omission of the arrest warrant from the initial narrative. I do not believe this is a sufficient basis on which to ground a determinative negative credibility finding.

[24] The Board's credibility findings were unreasonable.

B. *Risk to the Applicant*

[25] The Applicant claims that the Board was unreasonable in assessing the risk to unmarried women in China by ignoring documentary evidence and the objective of family reunification underlying the Act.

[26] I find that the Board's conclusion was reasonable. It was reasonable to conclude that the authorities would either not find out about the Applicant's child, or, if they did, would not levy a

severe punishment against the Applicant. The Board cited and considered the documentary evidence which shows that the prevalence of severe penalties has declined in recent years, and the Board was not obliged to cite all evidence on this point.

[27] Moreover, I also agree that the Applicant's desire to have more children was not an issue to be dealt with by the Board, as it is only a speculative risk (*Liang v Canada (Minister of Citizenship and Immigration)*, 2013 FC 765, at para 76).

[28] However, given my finding on credibility, I allow this application.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is allowed and remitted back for reconsideration by a different Board member;
2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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