

Federal Court



Cour fédérale

**Date: 20150323**

**Docket: IMM-1102-14**

**Citation: 2015 FC 365**

**Ottawa, Ontario, March 23, 2015**

**PRESENT: The Honourable Mr. Justice de Montigny**

**BETWEEN:**

**RENXIAN MENG AND HONGHUI LIAO**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for leave and judicial review of a decision rendered on February 3, 2014 by the Immigration and Refugee Board, Refugee Protection Division (the Board), rejecting the refugee claims of Renxian Meng and his wife Honghui Liao (the Applicants) for lack of credibility. The Applicants claimed that an underground Christian church they attended in China was raided while they were visiting Honghui's sister in Canada, and that they cannot return

because the Public Security Bureau (PSB) will arrest and detain them for their religious practices.

[2] For the reasons set out below, this application is dismissed.

## **I. Facts**

[3] Renxian and his wife Honghui are citizens of China, and lived with their son in Cheng Du City, Si Chuan province. They allege that in 2009, they had difficulties with their marriage and Honghui suffered from climacteric syndrome.

[4] Renxian alleges that in June 2009, his friend Ding Yuan visited him and told him about Christianity, and how this new religion and the support of fellow believers might help him face his difficulties. Ding Yuan attended an underground church, and explained to Renxian that the authorized churches were controlled by the Communist Party and were not “true houses of God”. He was told that they took precautions and that the church had never had any problems with the authorities before. Renxian claims that he attended the underground church for the first time on June 21, 2009, and became a regular at their weekly services. The services helped him gain a more positive outlook, and he persuaded his wife to attend as well in September 2009. They were both allegedly baptized on March 28, 2010.

[5] On March 12, 2011, Renxian and Honghui came to Canada on a visitor visa to visit Honghui’s sister. They began attending the Living Stone Assembly Church in Scarborough, and on July 16, 2011, they were baptized a second time, this time obtaining baptismal certificates.

Their visitor visa was set to expire on July 14, 2011, but Honghui's sister invited them to stay for another three months, and they claim that they extended their visa until September 2011.

[6] On August 17, 2011, the Applicants claim that they received a call from their son, who told them that the PSB had been to their home enquiring about them, and that the PSB had told their son that the underground church they attended had been raided, and several of the church members had been arrested. They claim that the PSB accused them of being members of an underground illegal cult religion. At the hearing, Renxian stated that their son had told them that the PSB kept returning every four or five months looking for them.

[7] The Applicants filed their refugee claim on September 20, 2011.

## **II. The impugned decision**

[8] The Board found that the Applicants were generally not credible due to an accumulation of credibility concerns.

[9] First, the Board drew a negative credibility inference from the fact that they provided no documents, such as a summons or arrest warrant, to support their allegation that the PSB had sought to arrest them. The Board found that, although the documentary evidence is mixed on this issue, it was reasonable to assume that given their allegation that other church members had been arrested and that the authorities have continued to inquire about the Applicants for more than two years, a summons or arrest warrant would have been issued against them and left with their son. The Board also drew a negative inference from the fact that the Applicants' son had no serious

problems with the PSB, and found that the inaction of the PSB runs counter to documentary evidence about the PSB's methods. In the Board's view, Renxian's testimony in this respect is implausible and detracts from his credibility. Finally, the Board drew a negative inference of credibility from their lack of effort to obtain information regarding the church members allegedly arrested and documents regarding their arrest and possible sentencing and detention. As for Renxian's failure to request that his son obtain information from other church members after the arrests because he would not know where to get this information and he worked every day, the Board found that explanation unsatisfactory.

[10] Second, the Board noted that the timing of the raid was suspiciously convenient given their visit to Canada, the extension of their stay, and the lack of evidence indicating that Renxian had any employment to return to in China, particularly in a context where they allege that the church had had no problems for the last six years. The Board found that they had in fact delayed making a claim to become established at a Canadian Church in support of their refugee claim.

[11] Third, the Board concluded that the documentary evidence cast doubt on, and did not establish, that they in fact resided in Cheng Du, Si Chuan at the time they allege they attended the underground church in Cheng Du. The Board remarked that the address on the Applicants' Household Registration Card did not match the address indicated in their Personal Information Form, that the employment section on their cards was not completed even though the country condition documentation indicates that this is required, and that since these documents were brought to Canada by a friend after the Applicants' arrival in Canada, they could not attest to their provenance. Noting the evidence of widespread document fraud in China according to the

country condition documentation, the Board found that the Household Registration Cards were likely fraudulent and did not establish their residency at the material times. The Board also found that Honghui's medical records were likely also fraudulent because they have no security features, they mention her menopausal ailments but not the other stomach ailments she claims to have suffered from in 2008, and Honghui altered her testimony with respect to the reason why the stomach ailments were not included. The Board found that these documents could not be relied upon to establish the Applicants' residency.

[12] Fourth, the Board found that the Applicants lacked subjective fear because they failed to bring their claim upon arrival in Canada. The Board noted that it asked the Applicants why, if they were Christians practising in an underground church in China, they did not claim refugee protection when they arrived in March 2011. Renxian explained that although they knew it was illegal, they only expected they would be subject to a fine or warning if they got caught, and that it was only in August 2011, after the raid, that they realized the extent of the risk they faced. The Board found this explanation unsatisfactory, noting that it was highly unlikely that a couple in their fifties that had lived in several large cities in China, attended an underground Christian church for two years in China and a church in Canada, would not already be aware of the severe repression of unregistered house churches in China. The Board found that the five-month delay after their arrival in Canada in filing their claim undermined their credibility and demonstrated a lack of subjective fear.

[13] Having found that the Applicants' church was not of interest to the PSB and that the PSB had no interest in the Applicants, the Board found, on the basis of its credibility findings and

negative inferences, that the Applicants' allegation that they were practising Christians in China is not credible, and was only made for the purpose of supporting a fraudulent claim. Having so found, and having no evidence of conversion in Canada, the Board also found that the Applicants joined a Christian church in Canada solely for the purpose of supporting a fraudulent refugee claim. In this respect, the Board gave little weight to the letter of support from their pastor in Canada, as well as their baptismal certificates and photographs, and noted that they indicated participation, but did not establish their motivations.

[14] In conclusion, the Board remarked that although each of these credibility concerns might not be determinative individually, the cumulative effect was sufficient to undermine their credibility. The Board concluded that the Applicants had not practiced Christianity in China, were not sought after by the PSB, and were not genuine Christians now. The Board also noted that the Applicants had not established a risk of torture or a risk to their lives or security under section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

### **III. Issue**

[15] The only issue to be decided in this application is whether the Board's credibility findings are reasonable.

### **IV. Analysis**

[16] The parties are in agreement that the applicable standard of review with respect to credibility findings of the Board is reasonableness: see *Aguebor v Canada (Minister of*

*Employment and Immigration*), [1993] FCJ No 732, at para 4; *Tomic v Canada (Minister of Citizenship and Immigration)*, 2015 FC 126, at para 21.

[17] The Applicants first submitted that there are two serious flaws with respect to the Board's conclusion regarding the absence of a summons and arrest warrant. First, counsel argued that the documentary evidence referred to and relied upon by the Board is a Country of Information Report authored by the UK Border Agency, the source of which is a document that formed part of the Board's own National Documentation Package from June 2004 that was removed from the Board's package in October 2012. Furthermore, the Applicants contend that the report indicates that although it is common to leave a summons with a family member, this is not in fact the proper procedure and procedures may vary from region to region. The Applicants argue that it is unreasonable to draw a negative inference from the absence of an arrest warrant where the country condition documentation indicates that this is a possibility.

[18] I agree with counsel for the Applicants that it was inappropriate for the Board to refer indirectly (through the use of a document from the UK Border Agency) to a document that previously formed part of the Board's own National Documentation Package but that was removed from that package at the time of the hearing. I also agree with the Applicants that the Board's conclusion that it was reasonable to expect that a summons and a subsequent arrest warrant would have been left with the Applicants' son was made without giving proper regard to the evidence. Indeed, the above-noted UK Report does indicate that the proper procedure for issuance of a summons is to serve it in person, although in practice such documents are often served on family members. Implausibility findings may only be made in the "clearest of cases"

(*Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776, at para 7), and where the country condition documentation indicates that the Applicants' version is one of the possibilities, then this is not sufficient to ground an implausibility finding.

[19] That being said, the Board then went on to discuss the Applicants' lack of effort in obtaining copies of a summons or arrest warrant or any information on fellow church members who were arrested in 2011. The Applicants' Screening Form instructed them to obtain certain documents, including any summons or arrest warrants. When the Board asked the Applicants whether they had asked their son to obtain such information and documents, the Applicants said that they had not asked their son to do so because "[...] even if he were to go to the authorities he wouldn't know which one, which department to go to. And my son, he has to work every day" (Tribunal Record, p 973). In my view, it was reasonable for the Board to draw a negative inference from this explanation, which was insufficient to explain why they had not even tried to obtain relevant documents, as requested by the Board.

[20] Concerning the problems faced by the Applicants' son, the Applicants argue that the Board's finding is entirely speculative as the evidence does not support the conclusion that the PSB would become aggressive towards the family member of an alleged Christian. On this point, I agree with the Applicants. Although reporting significant harassment, arrest and detention of unregistered Protestant church members, the two country reports cited do not indicate harassment of non-practicing family members as a form of coercion. To be sure, the U.S. Department of State Report on International Religious Freedoms provides only that family members of "religious leaders" and those of some "religious freedom activists" were subject to



aggressive action by the PSB. Similarly, the 2013 Annual Report of the U.S. Commission on International Freedom references a single incident of the family members of a Uighur human rights and religious freedom activist being subject to harsh treatment at the hands of the PSB. However, no similar treatment was noted for family members of mere Christian practitioners. As a result, this aspect of the Board's reasoning is unfounded on the evidence.

[21] With respect to the coincidental timing of the raid, the Applicants contend that this finding is illogical and speculative. They emphasized that they only claimed refugee protection in August 2011 because that is when the church raid occurred, and that there is nothing implausible about the occurrence of the church raid or the timing of it. They argue that the fact that they attended church upon their arrival in Canada simply shows that they are devout Christians and this should not have given rise to a negative credibility finding. They remark that the Board's implied assertion that the timing is suspicious because they have no employment to return to is unreasonable and would make every refugee claimant from a less fortunate country not credible. Overall, they contend that the Board failed to apply the presumption of truthfulness to their testimony.

[22] In my view, the Board's remark that the timing of the alleged church raid is an "extraordinary coincidence" that is suspiciously convenient is not unreasonable in light of the evidence, notably the fact that they were visiting their sister in Canada and their visitor visa was set to expire. Although I agree with the Applicants that there is nothing inherently implausible about a church raid occurring while the Applicants were away, there are a number of suspicious aspects to the timing of their story.

[23] For example, the Board noted that the Applicants began attending the Living Stone Water Assembly shortly after their arrival in Canada and were baptized on July 16, 2011. Although I agree that their church attendance does not cause a problem, why would the Applicants undergo a second baptism in July 2011 if their intention at that point was to return to China upon the expiration of their visa a month later? There was no theological reason for a second baptism, and a baptismal certificate would be a dangerous document to carry on their return to China. It seems reasonable to suspect, given this timing, that the Applicants were planning their refugee claim before the alleged raid in August 2011.

[24] Furthermore, although I agree that not having employment in the country of origin should not generally be a ground to doubt a refugee claimant's motives, it does seem odd that Mr. Meng would have no problem obtaining a total of six months' leave from work just to come sightseeing in Canada with his sister-in-law. There was no objective evidence to support his claim that he still had a job and that his employer had agreed to extend his leave for six months. In my view, it was reasonable to note that this cast doubt on the Applicants' motivations for visiting Canada and extending their visit, and on their credibility generally. Indeed, the Board put that coincidence to Renxian at the hearing, but his answer was unresponsive. In those circumstances, it was reasonable for the Board to suspect that the timing of the alleged church raid suggested that the Applicants had intended all along to make a refugee claim and had delayed it in order to become established at a Toronto church.

[25] With respect to the delay in claiming, the Applicants argue that they have consistently testified that they claimed refugee protection after the church raid, and that prior to that raid they

had only expected to face a fine or warning if their activities were discovered. They submit that the Board's finding that they would have known these risks, is speculative. I am unable to agree with the Applicants. I find nothing unreasonable or speculative in this line of reasoning, and I agree that the Applicants' testimony – combined with the above-noted issues relating to timing – suggest that the Applicants delayed filing their claim to become established at a church in Canada and build up evidence for their claim. Although the Applicants contend that there is nothing implausible about filing a claim after a significant event of persecution, such as a church raid, it is the Applicants' explanation for that delay that really cast doubt on their credibility. Having testified that they worshipped in private homes and had lookouts for each service to avoid the authorities, the Applicants must have known of the potential serious consequences for members of underground churches in China. It is one thing to say that you were prepared to tolerate some repression until a significant event occurred, and quite another to feign ignorance of the impact of your actions. If the Applicants had actually been members of an underground church which was hidden from the authorities, it was not unreasonable to presume that they would have made some effort to seek protection without delay. Though not determinative, the delay in claiming was a basis on which the Board could scrutinize the credibility of the claim.

[26] Finally, the Applicants contend that the Board erred in not conducting an independent assessment to determine whether – regardless of their motivations for beginning to practice – they had become genuine Christians by the time of the hearing. They claim that the Board's reasons do not indicate that it gave any consideration to Renxian's actual evidence concerning the genuineness of his beliefs, his own knowledge and his practice of his religion, and thereby

failed to assess the *sur place* aspect of his claim. The Applicants also submit that the Board should have done an independent assessment of Honghui's religious identity.

[27] I agree that the jurisprudence requires the Board to go beyond the initial fraudulent intent and consider the totality of the evidence concerning the Applicants' practices: *Hou v Canada (Minister of Citizenship and Immigration)*, 2012 FC 993; *Jiang v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1067; *Chen v Canada (Minister of Citizenship and Immigration)*, 2014 FC 749. However, this is precisely what the Board did at paragraphs 51 to 55 of its decision. The Board considered all of the relevant evidence with respect to the Applicants' practice in Canada, and came to the conclusion that this evidence had little weight and did not support the Applicants' contention that they had become genuine Christians. Combined with its finding that the Applicants were not Christians in China, this lack of evidence of a genuine conversion in Canada allowed the Board to reasonably find that the Applicants are not genuine Christians. In those circumstances, it was unnecessary for the Board to conduct a distinct analysis of the female Applicant's religious identity, since the evidence tendered with respect to her practice was essentially the same as that of her husband's.

[28] The Board was aware that none of the concerns that it raised were sufficient, each on its own, to negate the Applicants' claim. It is the cumulative effect of all of them, in the end, that was found to be fatal.

[29] The Applicants' story rested on a specific allegation, that is, that they belong to an underground church in Cheng Du, Si Chuan province, which was raided by the PSB on or about

August 17, 2011, and that several members of their church were arrested on that day. To succeed in their claim, they needed to establish these facts on a balance of probabilities; in the absence of any corroborative evidence, they failed to do so.

[30] The Applicants could not establish the relevant facts through their own testimony, since they were not in China at the time. They relied on the double hearsay of their son, who could not provide any documentary evidence in support of the Applicants' story. They sought to present country condition evidence to make up the gap, but the extensive documentary evidence before the Board made no mention of any such raid in Cheng Du anytime close to August 2011. In those circumstances, and in light of the many implausibilities and inadequacies in the Applicants' testimony, the Board was entitled to consider the presumption of truthfulness rebutted.

## **V. Conclusion**

[31] The decision of the Board is not without frailties. When considered in its totality, nevertheless, I am of the view that the Board identified a number of credibility concerns that were reasonable and cumulatively sufficient to support its final decision. This application is therefore dismissed. No question is certified.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application for judicial review is dismissed.

No question is certified.

"Yves de Montigny"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1102-14

**STYLE OF CAUSE:** RENXIAN MENG AND HONGHUI LIAO v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MARCH 17, 2015

**JUDGMENT AND REASONS:** DE MONTIGNY J.

**DATED:** MARCH 23, 2015

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