

Federal Court



Cour fédérale

**Date: 20150312**

**Docket: IMM-6248-13**

**Citation: 2015 FC 315**

**Toronto, Ontario, March 12, 2015**

**PRESENT: The Honourable Mr. Justice S. Noël**

**BETWEEN:**

**JIE CAO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] This is an application by Jie Cao [the Applicant] for leave to commence an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision of the Refugee Protection Division [RPD] dated August 29, 2013, which held that the Applicant was neither a Convention refugee nor a person in need of protection within the meaning of sections 96 and 97 of IRPA.

II. Facts

[2] The Applicant is a citizen of Tianjin City [Tianjin], People's Republic of China [China].

[3] The Applicant claimed to have been introduced to Christianity by a friend in October 2009 when he was invited to attend an underground Christian house. He was later baptised by a visiting pastor on June 20, 2010.

[4] The Public Safety Bureau [PSB] is said to have raided the underground church service on November 21, 2010. The Applicant went into hiding at a cousin's house. The Applicant claimed that the PSB was looking for him and that they went to his home and his brother's home looking for him. The Applicant further stated that the PSB went to his house on November 25, 2010, and left a summons for him to surrender. The Applicant therefore decided to find an agent to leave China before being discovered.

[5] He arrived in Canada on February 25, 2011, and made a refugee claim. The RPD determined, on August 29, 2013, that the Applicant was neither a Convention refugee nor a person in need of protection. This is the decision under review.

III. Impugned Decision

[6] The identity of the Applicant is not of issue.

[7] The RPD first stated that the credibility of the Applicant is undermined because of a lack of credible evidence provided regarding his reasons for wanting to travel to Brazil in 2007. The RPD also found that the credibility of the Applicant is damaged because he came out from hiding in order to get married on February 21, 2011, where he had to use his Resident Identity Card [RIC] number. By referring to country documents, the RPD explained that the PSB uses a database called Operation Golden Shield to track criminal fugitive in China using RIC numbers. The Applicant would therefore have been tracked by the PSB at that time. The RPD also found it implausible that the Applicant got married by the civil authorities on February 21, 2011, when he had been a fugitive since November 23, 2010. The RPD stated that approaching the civil authorities would have placed him at risk of detention. The RPD also found it implausible that the Applicant's agent bribed the exit control officer at the airport in order to leave China since this agent can easily be traced by the authorities.

[8] The RPD further determined that the Applicant's knowledge of his church group was deficient and that the Applicant's baptism in Canada was only for show in order to add to his refugee claim. The Applicant's evidence is also contrary to the documentary evidence of the situation in Tianjin. The RPD thus concluded that the Applicant's testimony that the PSB raided his underground church, that the PSB detained several members of his church and that he is being pursued by the PSB not credible. The RPD also did not find the Applicant to be a genuine Christian. The RPD further concluded that the Applicant joined a Christian church in Canada to support his fraudulent refugee claim.

[9] As for the situation of Christians in Tianjin, the RPD concluded, based on documentary evidence, that the authorities' response to underground church activities in this city is different than in other provinces within China, where, in other provinces, proselytizing is suppressed and arrests and incidents of persecution of ordinary Christians do happen. Tianjin, on the other hand, has one of the more liberal policies on religion in China. The RPD further wrote that the documentary evidence presented does not contain any mentions of recent arrests of lay Christians in Tianjin.

[10] The RPD therefore determined that the Applicant was not a credible witness and was not sought after by the PSB based on his underground church activities in China. The RPD further stated that there is no serious possibility that the Applicant would be persecuted for practicing Christianity in China if he wished to do so.

#### IV. Parties' Submissions

[11] The Applicant submits that the RPD made unreasonable credibility findings based on speculation and a misapprehension of the documentary evidence, specifically with regards to the Applicant's travel plans to Brazil four years prior to his refugee claim and with regards to the use of his passport to leave China by bribing the exit control officer. The Applicant further argues that the RPD erred in its reliance on the Operation Golden Shield nation-wide system in China used to track individuals. The Respondent retorts by arguing that the RPD's finding regarding the Applicant's lack of credibility based on his attempt to leave China to be grounded in the evidence. The Respondent further submits that the Applicant misapprehended the evidence regarding Operation Golden Shield and that such a system exists nation-wide in China.

[12] The Applicant also argues that the RPD made an unreasonable finding with regards to his documentary evidence, namely by not assessing the arrest summons left for him at his parents' home and simply declaring it fraudulent. The Respondent states, however, that the documentary evidence before the RPD explains that fraudulent documents are widely available in China. In light of this evidence and based on other credibility findings, the RPD's conclusion on this point is reasonable.

[13] The Applicant further submits that the RPD failed to determine that the Applicant was a genuine Christian in Canada and at the time of the hearing. The RPD further failed to recognize that a prohibition against carrying out religious activities in public can constitute religious persecution. The Respondent is however of the opinion that it was reasonable for the RPD to evaluate the Applicant's religious practice in Canada in light of the finding that he was not a genuine Christian in China. Also, the RPD's conclusion that the evidence did not demonstrate a serious possibility of persecution of lay members of Christian house churches in Tianjin is reasonable.

#### V. Issues

[14] I have reviewed the parties' submissions and respective records and formulate the issues as follows:

1. Are the RPD's credibility findings reasonable?
2. Did the RPD make an unreasonable finding with respect to the Applicant's arrest summons?

3. Is the RPD's conclusion of the Applicant's religious identity reasonable?
4. Is the RPD's conclusion of the risk of religious persecution in Tianjin reasonable?

VI. Standard of Review

[15] The RPD's assessment of the Applicant's credibility is highly factual in nature (*Chen v Canada (Minister of Citizenship and Immigration)*, 2009 FC 677 [*Chen*]). This Court will therefore apply the reasonableness standard to the RPD's credibility determinations (*Wei v Canada (Minister of Citizenship and Immigration)*, 2010 FC 694 at para 13; *Chen*, above at para 14). The other three issues raised above are questions where the legal issues cannot be easily separated from the factual issues, the reasonableness standard therefore also applies (*Jing v Canada (Minister of Citizenship and Immigration)*, 2012 FC 609 at para 9 [*Jing*]). This Court shall only intervene if it concludes that the decision is unreasonable and falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] SCJ No 9 at para 47).

VII. Analysis

A. *Are the RPD's credibility findings reasonable?*

[16] The determination of the credibility of the Applicant is at the heart of the RPD's jurisdiction (*Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at para 7 [*Lubana*]). Credibility determinations by the RPD are therefore afforded deference (*Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319 at paras 27 and 31 [*Rahal*]).

This Court will only intervene if the RPD “based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it” (*Khakh v Canada (Minister of Citizenship and Immigration)*, [1996] FCJ No 980, 116 FTR 310 at para 6 [*Khakh*]; *Rahal*, above at para 35; *Lubana*, above at para 8).

[17] In the case at bar, the Applicant’s first argument concerns the RPD’s negative credibility inference from his testimony regarding the visitor visa he obtained for Brazil in September 2007, about four years prior to his refugee claim. The Applicant argues that the RPD’s reliance on this point was erroneous as this matter is peripheral to his refugee claim. I agree. It was improper for the RPD to derive a negative credibility inference on this matter, which was irrelevant and peripheral to his refugee claim (*Lubana*, above at para 11). The RPD’s conclusion of this point is thus unreasonable. That being said, this does not, on its own, render the entire decision unreasonable as it will be seen.

[18] The Applicant, at the hearing, testified that one person had been arrested after the church raid. He claims that it is his wife who informed him of the arrest. He also testified that the arrested person was in fact his “introducer” to the underground church (Certified Tribunal Record [CTR] pages 709-711). However, his Personal Information Form [PIF] states that “Till now, I still don’t know who have been arrested” (Applicant’s Record [AR] page 46 at para 12). It was reasonable for the RPD to draw a negative credibility inference from this contradiction.

[19] Also, the Applicant’s submission that the RPD based its decision on “speculation, impermissible inferences and a misappropriation of the documentary evidence before” is not

persuasive. The RPD is indeed entitled to make determinations on common sense and rationality (*Jing*, above at para 15). The RPD's assessment of the Applicant's credibility, based on the use of his passport at the airport when leaving the country, his decision to come out of hiding to get married before the civil authorities using his RIC and the precautions (to have in order to ensure church activities) that the Applicant forgot to mention to the RPD but remembered when the RPD proposed them to him, is reasonable and supported by the documentary evidence contained in the Certified Tribunal Record. For example, the documentary evidence demonstrates that RICs are used to obtain a marriage license and contain information such as the card holder's name, date of birth, residential address, photo, gender, nationality, and more (CTR page 121). Moreover, the documentary evidence also demonstrates that the national computer network, referred to as Operation Golden Shield, used by the PSB is used to track, among other things, passport exit and entry (CTR page 140) (*Hao v Canada (Minister of Citizenship and Immigration)*, 2015 FC 119 at para 15 [*Hao*]). The RPD's credibility determinations on these questions are thus reasonable.

B. *Did the RPD make an unreasonable finding with respect to the Applicant's arrest summons?*

[20] Contrary to the Applicant's argument, the RPD's decision that the arrest summons submitted by the Applicant is fraudulent and to afford it no weight is reasonable (*Jing*, above at para 17). The RPD considered the document and concluded that it is fraudulent based on the lack of credibility of the Applicant and on the evidence of the abundance of fraudulent documents in China (AR page 18 at paras 49-50). I further agree with the Respondent that the case law cited by the Applicant, *Yin v Canada (Minister of Citizenship and Immigration)*, 2010 FC 544 does



not help the Applicant's case. Indeed, in this decision, this Court determined that the RPD had not evaluated the evidence put forward by the Applicant and discounted other evidence submitted by the Applicant. This is not the case here. In the case at bar, the RPD assessed the documents presented by the Applicant, such as the arrest summons, and other documents, such as his baptismal certificate, church letter and photos (AR page 19 at paras 48-52). The RPD did not disregard the arrest summons, or any other document, but rather analysed them in the context of the Applicant's refugee claim. The intervention of this Court on this matter is not warranted.

C. *Is the RPD's conclusion of the Applicant's religious identity reasonable?*

[21] Again, I cannot agree with the Applicant that the RPD failed to perform an analysis of the Applicant's evidence regarding the genuineness of his faith and religious convictions. Contrary to the Applicant's position, the RPD did assess the letter from his pastor, his baptismal certificate and the photos submitted by the Applicant, as discussed above, in its decision (AR page 19 at paras 48-52). The RPD assessed the Applicant's religious identity based on the evidence and in light of its credibility determinations (*Jing*, above at paras 22-23; *Hao*, above at paras 17-18; *Fang v Canada (Minister of Citizenship and Immigration)*, 2013 FC 241 at para 27). The RPD's analysis on this point is thus reasonable. The Applicant is simply asking this Court to reweigh the evidence, which is not its role.

D. *Is the RPD's conclusion of the risk of religious persecution in Tianjin reasonable?*

[22] I find that the RPD conducted a thorough analysis of the documentary evidence with regards to the situation of Christians in Tianjin, and did so in a forward-looking manner. The

Applicant mainly takes issue with the RPD's conclusion on the situation of Christians in Tianjin. This, in and of itself, cannot render the RPD's decision unreasonable (*Jing*, above at para 27). The Applicant simply offers a different interpretation than the RPD did. Moreover, the RPD's analysis is based on its evaluation of various documentary evidence contained in the record; it did not ignore evidence nor did it misapprehend the evidence. Indeed, the RPD assessed the evidence by asking itself if there was a serious possibility that the Applicant would be persecuted for practicing Christianity in an unregistered church in Tianjin. The RPD completed this analysis independently of its previous findings regarding the Applicant (AR pages 20-26 at paras 59-76).

[23] The Applicant also points to a 2010 China Aid Association's Annual Report [the Report] in its submissions to suggest that it is a reliable source of information on the persecution of house churches in China (AR page 155 at paras 42-44). This report specifically mentions Tianjin and that municipal authorities attempted to tear down Immanuel Church. The Applicant argues that the RPD attempted to disregard this incident, which renders the RPD's decision unreasonable. It so happens that the exact same argument, based on the exact same document was argued in *Qin v Canada (Minister of Citizenship and Immigration)*, 2012 FC 9 at para 71. In this case, Justice Russell explained, in its analysis of the document and the said event that:

[I]n the end, the Applicant can only point to the 2010 China Aid Report which mentions that in Tianjin some Korean Christians have been expelled, and that, in Jinghai County, authorities had attempted to tear down the meeting building of the Immanuel church. The full context of these events is not given, so that we have no explanation for why the authorities may have acted as they did and the significance of such action for general Christian practice in Tianjin. We also do not know whether these actions would amount to persecution in terms of Convention and Canadian refugee law. [...]

[24] The same can be said here: the Applicant did not provide more information with regards to this event. After the evaluation of the above Report and other documentary evidence presented, the RPD wrote:

[T]he panel considered the documentary evidence about conditions in Tianjin and the claimant's personal circumstances. The panel finds, on balance of probabilities, that the claimant would be able to practice his alleged religion, worshipping in the Christian congregation of his choosing, if he were to return to his home in Tianjin in China, and that there is no serious possibility that he would be persecuted for doing so (AR page 29 at para 86).

The RPD also evaluated the situation of Christians in China in general and noted that the religious practice and tolerance varies widely within the country (AR pages 21-22 at paras 62-64).

[25] Therefore, contrary to the Applicant's argument, the RPD did not unreasonably disregard this evidence. I cannot find any reviewable error with regards of the RPD's assessment of the situation of Christians in Tianjin. The RPD's conclusion on this point is reasonable, even more so in light of the reasonable conclusion that it did find, on a balance of probabilities, that the Applicant did not attend the underground church in China and was not a practicing Christian (AR page 17 at para 44). The RPD thus considered the documentary evidence provided and reached reasonable conclusions on the situation of Christians in Tianjin.

#### VIII. Conclusion

[26] Except for the findings made as the result of the Applicant's Brazil visitor's visa of 2007, I find that all the other determinations made (such as the credibility findings made, the comments

on the summons, the evaluation on the Applicant's religious identity and his risk of religious prosecution in Tianjin, etc.) render this decision reasonable.

[27] Counsels were invited to submit questions but none were proposed.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. There is no serious question of general importance to be certified.

“Simon Noël”

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Judge

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

**DOCKET:** IMM-6248-13

**STYLE OF CAUSE:** JIE CAO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** March 9, 2015

**JUDGMENT AND REASONS:** NOËL S J.

**DATED:** March 11, 2015

**APPEARANCES:**

Lev Abramovich

FOR THE APPLICANT

Rachel Hepburn Craig

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Levine Associates  
Barristers and Solicitors  
Toronto, Ontario

FOR THE APPLICANT

William F. Pentney  
Deputy Attorney General of  
Canada

FOR THE RESPONDENT