

Federal Court



Cour fédérale

Date: 20160108

Docket: IMM-818-15

Citation: 2016 FC 15

Ottawa, Ontario, January 8, 2016

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

XUEQI LI

Applicant

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Xueqi Li is a citizen of China. He sought refugee protection in Canada on the basis of his Catholic faith and his membership in an “underground house church” in China. The Refugee Protection Division [the RPD] of the Immigration and Refugee Board determined that Mr. Li is neither a Convention refugee under s 96 of the *Immigration and Refugee Protection Act*, SC

2001, c 27 [the IRPA], nor a person in need of protection as defined by s 97 of the IRPA. Mr. Li has brought an application for judicial review of that decision pursuant to s 72 of the IRPA.

[2] For the reasons that follow, I have concluded that the RPD included many “boilerplate” paragraphs in its decision that did not correspond to Mr. Li’s personal circumstances. The RPD also engaged in forms of analysis that have previously been discredited by this Court. The application for judicial review is therefore allowed.

II. Background

[3] Mr. Li is 22 years old and formerly resided in Guangdong Province in China. His claim for refugee protection was similar to that made by many other Chinese nationals who seek refugee status in Canada.

[4] In July 2010, Mr. Li began attending an underground Catholic church to help him cope with a debilitating personal problem – in his case, an addiction to Internet games. On May 8, 2011, the church was raided by the Public Security Bureau [PSB]. Mr. Li managed to escape and went into hiding.

[5] Beginning in May 2011, the PSB made regular visits to Mr. Li’s home and left a Notice of Summons. Mr. Li decided to flee China with the help of a smuggler. On September 9, 2011, Mr. Li arrived in Canada via the United States. He made a claim for refugee protection on September 13, 2011.

III. The RPD's Decision

[6] Like Mr. Li's refugee claim, the RPD's reasons for rejecting it were similar to many other decisions of the RPD that concern refugee claimants from China.

[7] The RPD accepted Mr. Li's identity as a Catholic but did not accept that he was sought by the PSB in China. The RPD found it implausible that the PSB would not issue an arrest warrant after visiting his home more than ten times. The RPD also noted Mr. Li's testimony that his family members were living safely in China and were able to perform most normal daily activities. The RPD found the PSB's inaction to be inconsistent with the conventional belief that they are a "ruthless and fearsome police force", and that it was reasonable to assume the PSB would have become "more aggressive in their action to influence his parents" to convince Mr. Li to surrender. The RPD determined that documents submitted by Mr. Li in support of his claim were likely fraudulent. Finally, the RPD found it implausible that Mr. Li would have been able to leave China using his own passport without being detected by the authorities.

[8] Despite its adverse credibility findings, the RPD also considered Mr. Li's objective fear of persecution were he to return to China. The RPD found that he could continue to practise his Catholic faith in Guangdong Province. According to country condition reports, Guangdong Province has one of the most liberal policies on religious freedom in China.

IV. Issues

[9] Mr. Li raised several issues in support of his application for judicial review. Two of these are determinative, and they are closely related. Did the RPD improperly apply “boilerplate” analysis to Mr. Li’s claim for refugee protection without accounting for his personal circumstances, and did the RPD engage in forms of analysis that have previously been discredited by this Court?

V. Analysis

[10] Mr. Li’s counsel was able to demonstrate that the RPD’s analysis regarding the PSB’s presumed tendency to become increasingly frustrated and aggressive following unsuccessful attempts to locate a person of interest appears in at least seven other RPD decisions. An adverse inference, expressed in precisely the same language, is drawn from the failure of the PSB to issue an arrest warrant in at least thirteen other decisions of the RPD. Other portions of the decision in this case appear *verbatim* in numerous other RPD decisions. These examples resulted from a search of publicly-available databases. The use of boilerplate paragraphs in RPD decisions is likely to be more widespread.

[11] Much of the boilerplate analysis that appears in the RPD’s decision in this case may be found in other decisions that concerned refugee claimants who said that they feared persecution as practitioners of Falun Gong. Mr. Li claims to be a Catholic. While Catholics may also be subject to persecution in China, the nature and extent of that persecution is different.

[12] Mr. Li relies on this Court's decision in *Velasquez Sanchez v Canada (Citizenship and Immigration)*, 2012 FC 1009 at para 19 for the proposition that the "boilerplate approach" is contrary to the purpose of providing reasons, "as it obscures, rather than reveals" the rationale for a decision.

[13] The use of "boilerplate passages" by the RPD does not render its decision unreasonable by default. In the words of Justice Snider, "provided that the "boilerplate" is based on the documentary evidence and addresses the particular evidence and position of a claimant, the Board's repetition of certain passages from other decisions is not, in and of itself, an error" (*Cordova v Canada (Minister of Citizenship and Immigration)*, 2009 FC 309 at para 24).

[14] However, the boilerplate language used by the RPD in this case did not take into account information contained in the Responses to Information Requests [RIR] that are relied upon by all parties in proceedings before the RPD. In particular, the example of a summons found in the RIR dated July 6, 2010 (Certified Tribunal Record [CTR] at p 107, National Documentation Package [NDP] for China, October 31, 2014, CHN103401.E, RIR, Item 9.3) does not have any security features of the kind described in para 23 of the RPD's decision, raising the question of whether the RPD examined the document provided by Mr. Li in support of his claim. The translated version of Mr. Li's summons inexplicably refers to Falun Gong, rather than Catholicism, but this apparent discrepancy is never mentioned in the RPD's decision.

[15] In *Chen v Canada (Minister of Citizenship and Immigration)*, 2014 FC 749, a case that concerned an alleged practitioner of Falun Gong rather than a Catholic, Justice Russell said the following about the RPD's speculation regarding the likely behaviour of the PSB:

[53] ... the Board's finding that "it is reasonable to expect that her family members would have been subjected to some type of punishment" does not accord with the evidence. The Applicant explained the repeated visits to her house by the PSB. The country documentation speaks to a range of treatments of family members, from harassment and random visits by police to the home, to arbitrary detention and loss of job and state support, to arrests of family members. There is no evidence that supports the Board's contention that, reasonably speaking, the PSB would have done anything more than the Applicant says they did. The Board again relies upon its own opinion.

[54] These are plausibility findings and, as the Court has pointed out many times, such findings are inherently dangerous and should only be made in the clearest of cases: see *Valtchev*, above, at paras 6-8; *Giron*, above; *Leung v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 774 at para 15, 81 FTR 303 (TD); *Mahmood v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1526 at para 16; *Ansar v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1152 at para 17; *Jung v Canada (Citizenship and Immigration)*, 2014 FC 275 at para 74. On the facts of this case, such findings were unreasonable.

[16] Furthermore, recent country condition reports indicate that compliance with a summons is generally low, and the issuance of an arrest warrant is rare (RIR dated July 6, 2010, CTR at p. 106, NDP for China, October 31, 2014, CHN103401.E, Item 9.3). Yet the RPD, as in previous decisions, relied on the absence of an arrest warrant to impugn Mr. Li's credibility.

[17] The RPD's reasons for rejecting the documents offered by Mr. Li to corroborate his story have also attracted criticism from this Court. It is well-established that the general availability of fraudulent documents in China is not sufficient reason to doubt the authenticity of all documents

that emanate from that country (*Lin v Canada (Minister of Citizenship and Immigration)*), 2012 FC 157 at para 53). Again, the decision of the RPD in this case repeats this discredited analysis.

[18] This is sufficient to dispose of the application for judicial review. Mr. Li's refugee claim must be returned to the RPD for reconsideration by a differently-constituted panel.

[19] I have considerable sympathy for members of the RPD who, when faced with nearly identical narratives from refugee claimants, provide nearly identical reasons for rejecting them. One cannot expect members of the RPD to constantly "reinvent the wheel." But if members of the RPD wish to resort to "boilerplate" analysis, then they must take into account the unique, personal circumstances of the claimant. The analysis must also be adjusted to reflect evolving country condition reports and the jurisprudence of this Court.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed and the matter is remitted to the RPD for re-determination by a differently-constituted panel;
2. No question is certified for appeal.

“Simon Fothergill”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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