

Federal Court



Cour fédérale

**Date: 20170705**

**Docket: IMM-5221-16**

**Citation: 2017 FC 650**

**Toronto, Ontario, July 5, 2017**

**PRESENT: The Honourable Mr. Justice Diner**

**BETWEEN:**

**BING CHEN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Background**

[1] This is an application for judicial review under section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [the Act] of a November 17, 2016 decision [Decision] by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board. In its Decision, the RAD confirmed the Refugee Protection Division [RPD] conclusion that the Applicant was

neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the Act. For the reasons explained below, I am dismissing this judicial review.

[2] The Applicant is a citizen of China from Tantou Town in Changle City, in the Province of Fujian. He alleges that he experienced, and will continue to experience, religious persecution in China due to his adherence to the Roman Catholic faith.

[3] The Applicant alleges that on December 24, 2015, he attended his first gathering in a Catholic house church on the recommendation of two friends. He claims that he subsequently started attending regular Sunday evening services, held in in five different believers' homes.

[4] The Applicant alleges that on March 18, 2016, he fled and went into hiding upon being approached by Public Security Bureau [PSB] officers while distributing religious flyers. The Applicant says he managed to escape to his aunt's home where he remained in hiding until arrangements were secured for a departure to Canada. The Applicant states he paid a smuggler to procure a Chinese passport in his name, and a visa, to facilitate departure from China to Canada.

[5] The Applicant left China on May 16, 2016, from Guangzhou aboard a direct flight to Vancouver. He initiated a refugee claim upon landing. The RPD ultimately dismissed the Applicant's claim based on a number of negative credibility findings. The Applicant appealed the decision to the RAD.

[6] Undertaking its own analysis, the RAD rejected the claim based on negative credibility findings and insufficiency of evidence. The credibility findings included that the evidence failed to establish, on a balance of probabilities, that he had been a member of an underground Catholic church in China, and was also insufficient to establish a *sur place* claim.

## II. Issues and Analysis

[7] The Applicant raises three issues: did the RAD err in its assessment of the Applicant's (A) credibility; (B) genuine belief in Roman Catholicism; and (C) *sur place* claim?

[8] The applicable standard of review for these three issues is reasonableness (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35). The Court must consider whether the RAD's findings fall "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]).

### A. *Credibility in the Departure from China*

[9] The RAD's credibility findings were reasonable. The RAD identified a number of factors that undermined the Applicant's credibility, including his accounts of losing his Resident Identity Card [RIC] and then his family subsequently finding an old RIC; losing his passport in the airplane yet retaining all other key travel documents; exiting China using a fraudulent passport issued in his own name while wanted by the PSB; and his experiences with Catholicism.

[10] The Applicant, in his written materials, did not attack the RAD's finding that the new detail regarding the RIC (not provided in his Basis of Claim [BOC] form) constituted an embellishment and therefore undermined the Applicant's credibility. However, in oral reply, the Applicant argued that this credibility finding was unreasonable. In my view, however, the RAD's (and the RPD's) characterization of the RIC's explanation as an embellishment was entirely reasonable.

[11] There is also nothing unreasonable about the findings with respect to the passport, i.e. using a false passport issued in his own name, despite being allegedly wanted by the PSB. The same applies to the alleged loss of the passport in the airplane: in light of the importance of the passport in leaving China, along with the absence of any mention of the passport in the Applicant's list of refugee claim documents, and the lack of any efforts to recover the passport after realizing it was lost, the RAD reasonably pointed to section 106 of the Act. It also justifiably relied on Rule 11 of the *Refugee Protection Division Rules*, SOR/2012-256, which requires that a claimant must "provide acceptable documents establishing identity and other elements of the claim" – and claimants who fail to do so must explain why they did not provide the documents and what steps they took to obtain them.

[12] Having said this, the RAD's credibility findings are not perfect. I agree with the Applicant that the RAD's finding that he had to apply for his passport at his local PSB station is problematic. This finding overlooks ample documentary evidence regarding the availability of illicit passports obtained by third parties, which would not require the individual to apply at the local PSB station.

[13] I also find the related conclusion regarding the ability to exit China undetected on a fraudulent passport issued in one's name by an individual wanted by the PSB, to be a questionable one, notwithstanding important evidentiary and factual differences in the case at bar from cases relied upon by the Applicant (including *Yang v Canada (Citizenship and Immigration)*, 2016 FC 543 and *Ren v Canada (Citizenship and Immigration)*, 2015 FC 1402). As Justice Locke stated in *Yao v Canada (Citizenship and Immigration)*, 2016 FC 927 at para 16, "it is far from clear in the evidence that false Chinese passports cannot be used to clear border controls and leave China."

[14] Nonetheless, when these questionable findings with respect to the obtaining of the passport and exiting of China are considered in the context of all the other tribunal findings – including those with respect to the passport itself, such as the plausibility of its loss on the airplane – they are not fatal to the overall determination. There are a significant number of other justifiable credibility findings made in the Decision.

[15] I find that overall, the credibility findings relating to the Applicant's passage to Canada are all within the range of possible, acceptable outcomes, and therefore withstand the scrutiny on judicial review.

B. *Whether the Applicant was a Genuine Catholic and a Member of an Underground Church in China*

[16] The RAD found that the following factors undermined the Applicant's claim that he was a genuine Catholic and a member of an underground church in China: (1) his "vague" testimony

as to why he first attended, and continued to attend, the church, and “vague” testimony why Catholicism resonated with him; (2) his inability to reasonably explain what security measures were in place by the church and its members to avoid PSB interest, despite his testimony that security measures helped allay his fear of joining the underground church; (3) his lack of knowledge regarding the very basics of the structure of the Catholic Church (such as questions pertaining to the Pope and the Vatican).

[17] Given the factual context, and the questioning that took place before the RPD, these findings were open to the RAD. While the BOC and oral testimony include explanations for joining the Catholic Church and statements that attendance left the Applicant with “a positive feeling”, this evidence does not address the RAD’s concern with the Applicant’s lack of any basic knowledge of Roman Catholicism or its institutions. The RAD is owed significant deference in its assessment of a claimant’s religious knowledge in instances where the applicant’s credibility has been impugned and an applicant has failed to provide any strong evidence in support of the genuineness of his or her belief (*Hou v Canada (Citizenship and Immigration)*, 2012 FC 993 at para 54).

[18] Likewise, I find no error in the RAD’s doubts as to the Applicant’s motivation for joining the underground church in China, his inability to provide details about its security measures, and his very limited knowledge of Roman Catholicism. It was also open to the RAD to find that the Applicant’s emphasis on the little that he had learned in Canada undermined the claim that he was a genuine Catholic in China.

C. *The Applicant's sur place Claim*

[19] Finally, the RAD's findings with respect to the *sur place* claim were intelligible and justifiable: letters from a priest at a Catholic Church in Canada, and from parishioners, were simply insufficient to establish the genuineness of the Applicant's claimed Catholic belief, on a balance of probabilities, for the purposes of a *sur place* claim, particularly in light of the findings with respect to his involvement in China (see, for instance, *Li v Canada (Citizenship and Immigration)*, 2012 FC 998 at paras 29, 32; *Su v Canada (Citizenship and Immigration)*, 2013 FC 518).

III. Conclusion

[20] The RAD provided detailed and incisive reasons, including reference to specific pieces of key documentary evidence, and applied the relevant law. The fact that the RAD disagreed with the treatment of certain evidence by the RPD demonstrated that it engaged in an independent and thorough analysis of the claim. I find that the record supports the RAD's outcome based on the totality of the evidence. While the Decision is not perfect, when reviewed as a whole, it is eminently justifiable, intelligible and transparent (*Dunsmuir* at para. 48; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 15). This application for judicial review is accordingly dismissed.

**JUDGMENT in IMM-5221-16**

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

1. This application for judicial review is dismissed.
2. Counsel presented no questions for certification, nor do any arise.
3. There is no order as to costs.

“Alan S. Diner”

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Judge



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

**DOCKET:** IMM-5221-16

**STYLE OF CAUSE:** BIN CHEN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JUNE 19, 2017

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