Federal Court  Cour fédérale

**Date: 20171227**

**Docket: IMM-2361-17**

**Citation: 2017 FC 1193**

**Ottawa, Ontario, December 27, 2017**

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

**BETWEEN:**

**ENCI HUANG**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Introduction

[1] This is the judicial review of a Refugee Appeal Division [RAD] decision confirming that the Applicant was neither a refugee nor a person in need of protection.

[2] The Applicant alleged a fear of persecution in China on the basis of his "Shouter" Christian faith.

## II. Background

[3] The Applicant, a citizen of China, claimed that he had started attending weekly services of a local Shouter group in August or October 2015 until April 2016 when the Public Security Bureau [PSB] raided the church. He then went into hiding but the PSB continued to pursue him.

[4] The Applicant then hired a smuggler who arranged his exit using his own passport.

[5] The Applicant was unsuccessful before the Refugee Protection Division [RPD] and appealed the matter to the RAD. The RAD disagreed with the RPD on several points, but those errors were not sufficient to justify granting the refugee protection order and the RPD decision was upheld.

## III. Analysis

[6] The overarching standard of review is reasonableness as there are no procedural fairness issues (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93, [2016] 4 FCR 157). This standard of review applies to each of the sub-issues raised.

[7] The Court was asked to draw a negative inference from the filing of a third party affidavit on the judicial review in lieu of one from the Applicant. Such an inference is entirely reasonable, particularly when the affidavit is based on a “review of the contents of the Applicant’s file”.

Absent a compelling reason, such a failure is “theoretically” fatal, as Justice LeBlanc found in *Mabonze v Canada (Citizenship and Immigration)*, 2017 FC 309 at para 9, 2017 CarswellNat 1322 (WL Can). It is more than that – such a failure should be practically fatal.

[8] The assertion that the RAD failed to assess the totality of the evidence in respect of identity documents cannot be made out. Whatever the failings of the RPD, the RAD did specifically examine the documents. The Applicant’s argument is with respect to the weight the RAD gave the documents. There is nothing unreasonable about the RAD’s conclusions.

[9] The lack of a summons was troubling to the RAD. Contrary to the Applicant’s argument, the RAD did consider country conditions and the likelihood that in those circumstances, at this location, a summons would issue. Its absence reasonably undermined the Applicant’s credibility.

[10] A fundamental finding against the Applicant was the RAD’s conclusion that his profession of the Shouter faith was not made out. It is an unconventional component of the Christian faith, not easily understood. However, it was fair and reasonable to test the Applicant’s belief (always a delicate matter) to ensure that there is substance behind the profession of faith.

[11] With respect, and despite the capable arguments of counsel, the explanation that the Applicant is “at the early stages of his journey with Christianity” is insufficient to establish that he is even “on the road.” There must be sufficient substance to the claim of belief to satisfy a decision maker even if an Aquinian grasp of theology is not required.

[12] In this case the Applicant's inability to state some of the most fundamental precepts of the Shouters' beliefs is a reasonable basis to doubt both the claim in respect to China as well as the *sur place* portion of the overall claim.

[13] Lastly, in respect to leaving China on his own passport, as noted in this Court's recent decision in *Liang v Canada (Citizenship and Immigration)*, 2017 FC 1020 at para 10, 2017 CarswellNat 6160 (WL Can), each of these cases turn on their facts; not being screened may be dispositive in one case, but not in another due to other factors.

[14] In this instance, the RAD outlined cogent reasons, consistent with other evidence, for not accepting the Applicant's tale. It is not for this Court to disagree.

## IV. Conclusion

[15] For these reasons, this judicial review will be dismissed. There is no question for certification.

**JUDGMENT in IMM-2361-17**

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

"Michael L. Phelan"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-2361-17 |
| **STYLE OF CAUSE:** | ENCI HUANG v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | NOVEMBER 30, 2017 |
| **JUDGMENT AND REASONS:** | PHELAN J. |
| **DATED:** | DECEMBER 27, 2017 |

**APPEARANCES:**

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| David Joseph | FOR THE RESPONDENT |

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