

Federal Court



Cour fédérale

**Date: 20190802**

**Docket: IMM-44-19**

**Citation: 2019 FC 1013**

**Ottawa, Ontario, August 2, 2019**

**PRESENT: Mr. Justice Annis**

**BETWEEN:**

**LIN YANG**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] This is an application for judicial review of the decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada, dated December 11, 2019 brought pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

II. Facts

[2] The Applicant is a 38-year-old citizen of China. She has one son from her first marriage and two Canadian-born children with her current husband. She fears persecution in China based on her Christian faith and her violation of the Family Planning Policy.

[3] The Applicant's alleged claim of persecution relates to her Christian underground activities. These began in early December 2010, when she suffered depression upon discovering that her husband had a long-standing affair with another woman. The Applicant attended a non-registered house church with 20 members, which apparently, assisted her with her depression.

[4] On April 15, 2012 the Applicant's church was raided, at which time she fled to her mother's cousin's home to hide.

[5] While in hiding, the Applicant learned from her mother that the Public Security Bureau [PSB] had visited her home and that they had arrested three members of the church. The PSB continued to search for her at her house as well as at close relatives' homes. Recently, the Applicant alleges having learned that the PSB continues to be in pursuit of her.

[6] The Applicant married an individual who is awaiting an appeal from a removal order. They have two Canadian-born children. Despite having three children, the Applicant and her husband wish to have more children. The Applicant fears being subject to forced sterilization if

removed to China, or, in the alternative, being forced to use any form of contraception that would result in her being heavily fined if not complied with.

[7] The Applicant further states that she continues to practice her Christian faith in Canada and was baptized on November 14, 2012.

[8] The RPD dismissed the application based upon adverse credibility findings, namely the Applicant's identification as a Christian, and the objective country condition evidence.

### III. Standard of Review

[9] All issues raised by the Applicant involve the review of the RPD's assessment of evidence in support of its factual findings. Assessment findings of fact are subject to the reasonableness standard of review, but accorded the highest deference. The Court is not entitled to reweigh the evidence. The factual findings can be set aside only when the error is plain to see in the clearest of cases. This only applies to the inference drawing step of an inferential finding of fact which must not entail a reasonableness analysis. A factual finding based upon the assessment of evidence is sufficient if there is some evidence to support it (see *Njeri v Canada (Citizenship and Immigration)*, 2009 FC 291 at para 11; *Kallab v Canada (Citizenship and Immigration)*, 2019 FC 706 at paras 40-41 [*Kallab*]; *Jean Pierre v Canada (Immigration and Refugee Board)*, 2018 FCA 97 at paras 51-53; *Housen v Nikolaisen*, 2002 SCC 33).

[10] Credibility conclusions are generally based on the accumulation of a number of disparate adverse factual findings. Accordingly, the factual finding errors must not only be plain to see, but also of an overriding nature in order to set aside a general credibility finding.

[11] However, alleged errors of assessment findings of fact are to be distinguished from process finding facts. They are reviewed on a standard of correctness (*Kallab* at para 32).

#### IV. Analysis

[12] The Court is of the view that in a large measure it is being invited to reweigh the evidence, as opposed to being presented with errors that are plain to see in terms of being unsupported by any evidence of probative value. On that basis, I conclude that in most respects, the Applicant has failed to demonstrate plain fact-finding errors, such that the application must be dismissed.

##### A. *US Visa*

[13] The initial questioning of the Applicant was with respect to information provided for the acceptance of her US Visa application, which she acknowledged was false. I find that to some extent the Applicant's submissions did not recognize that the RPD was attempting to determine what her knowledge was on the false statements contained in the visa application, inasmuch as this aspect of the factual finding was not considered. The RPD's question was with respect to the requirement that corrections to false visas be made to the record immediately, and certainly not later than when the refugee claim is made (see *Wang v Canada (Citizenship and Immigration)*)

2016 FC 972). In pursuing this question, the RPD found that the Applicant was hesitant in responding to questions, and not forthcoming until pressed by the panel.

[14] The Applicant submits that she had been forthright from the very beginning of her claim and that it contained errors, but that was not the RPD's concern, which was rather what information was she aware was false. By acknowledging that she was aware of some of its contents, this contradicted her statement that she did not sign and did not read the visa application, although knowing its contents were false. Moreover, in reading the transcript, which the Court was not referred to by the Applicant regarding this issue, I find that answers did not flow easily to the RPD member's question and required some effort to obtain the requested information.

B. *Summons*

[15] The RPD concluded that the alleged actions taken against the Applicant were very serious based on her evidence that three of her fellow 20 church members had been arrested, and that the PSB made numerous visits to her home to arrest her. With this background in mind, the RPD found it improbable that the PSB would employ a non-coercive summons with a limited time of application to appear to answer questions, when coercive summons can be issued in cases of non-compliance.

[16] Normally, I would agree that not much turns on the form of summons used to have someone attend the office of the PSB. But in circumstances where it would appear that most likely she would be arrested by the fact that three of her fellow church members had already

been detained, the recourse to a non-coercive summons with a termination time of less than 24 hours to appear would not be the appropriate document for that purpose. The RPD concluded that her allegations were “inconsistent with the objective evidence in the record with regard to the provisions of the PSB.” The Applicant did not challenge this conclusion at the hearing based upon the country condition evidence.

[17] In addition, Article 82 of the relevant legislation regarding summons, being that referred to in the purported summons, required that reasons and grounds be provided for summoning. There were none found on the alleged summons in question. In addition, the provision indicated that “anyone who refuses to accept the summons without sufficient reasons or evades the sum and may be summoned by force”, is consistent with the RPD’s conclusions that this was not the appropriate summons for the purpose of arresting a person. The Applicant has not demonstrated any error with respect to this adverse credibility finding, besides arguments that the RPD cannot rely upon this type of evidence because it is not always applied or applied differently in various provinces of China.

C. *Objective Evidence of Christians in Hunan Province*

[18] The RPD conducted an extensive review of the country condition evidence pertaining to Christians in Hunan Province where these events took place. It concluded that it indicated that Hunan Province has one of the more liberal policies amongst regions of China in the treatment of small non-registered church groups. For example, arrests were noted in 2008 through 2010 without mention of incidence of persecution in that province. The evidence in 2011 indicated that there had been one arrest in the entire province. The RPD also noted that egregious

incidences of persecution were often mentioned in the reports, and none had occurred in Hunan Province. The member relied upon jurisprudence of the Court that “it was reasonable for the Board to conclude that if persecution members of underground churches occurred... it would have been documented” (*Yang v Canada (Citizenship and Immigration)*, 2010 FC 1274; *Lin v Canada (Citizenship and Immigration)*, 2009 FC 254 at para 3).

[19] The RPD further relied upon objective evidence describing the profile of house churches subject to persecution, none of which applied to the Applicant’s church or her personal profile as a mere participant in the church. Mention of persecution also tended to be in more remote areas of China than Hunan Province.

[20] In conclusion, I find the foregoing reasons more than sufficient evidence upon which the RPD could support its factual finding that the Applicant was unlikely to be subject to persecution, given the unregistered and small size of her congregation, her profile and the near-total absence of persecutory evidence supporting these events occurring in Hunan Province.

[21] The Applicant contested the RPD’s conclusions based on a “report” in a Response to Information Request [RIR] that some undescribed persecution of “evil cult” practitioners had occurred in 2014 in a number of provinces, including Hunan Province. However, the only actual confirmation in the RIR was a single circumstance where two pastors from an unregistered church in Zhengzhou were detained on cult-related charges. This generally supports the conclusion that when detention of Christian churches occurred in China, the United States religious freedom organizations reported the incidents.

[22] Beyond that, the Applicant criticized the RPD for failing to consider information from American organizations describing the decline of freedom of religion conditions and related human rights in China since 2017, as a result of President Xi Jinping's consolidation of power. However, reference in the Applicant's memorandum to China experiencing "some of the darkest days" for religious believers was pointed out by the Respondent to actually refer to 2016 as marking 50 years since the Cultural Revolution occurred, which was considered the darkest days for China's religious and faith believers. In addition, the evidence of declining freedom of religion is not associated with any aspects of this trend affecting Hunan Province or someone with the Applicant's profile or that of her church. I do not find any form of reviewable error in the RPD's factual findings, which are essentially those of assessing the weight of the evidence.

[23] Additional issues of lesser significance were left to the Court's assessment of the Applicant's written materials. These concern credibility findings relating to the absence of incidental adverse consequences of her flight caused to family members, her evolving testimony concerning PSB visits, and the improbability of the unreported arrest of fellow church members as a factual conclusion when similar egregious treatment was referred to in the country condition documentation. Otherwise, given the credibility concerns cited above, the RPD concluded that the Applicant was not wanted by the PSB for her alleged practice, nor for any other reason.

[24] The Applicant also attempted to raise a *sur place* claim based on a letter from her pastor and baptismal certificate. However, this evidence was discounted given the foregoing credibility issues. In addition, a *sur place* argument would not be considered significant unless the



Applicant had demonstrated that her conduct would have been brought to the attention of Chinese authorities, none of which was presented.

[25] Finally, the Applicant submitted that her application should be allowed on the basis that she wanted to have additional children and could not do so if removed to China. The Court agrees that such an argument is speculative, in that it may be raised by any claimant of childbirth age without the means to ensure that the stated intention would be acted upon. Moreover, there is considerable evidence suggesting that even the two children limit is not enforced, and if so, with no unduly burdensome fines. In addition, there are now reports of concerns over the plummeting birthrates occurring in China that suggest family planning policies may be reversed: for example, *China worries over plummeting population amid reports deaths outstripped births for first time*, <https://www.independent.co.uk>, Jan 2, 2019). Any forward-looking evaluation of this issue appears to be of diminishing significance.

V. Conclusion

[26] For the foregoing reasons, the application is dismissed. No question is certified for appeal.

**JUDGMENT in IMM-44-19**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed  
and no question is certified for appeal.

“Peter Annis”

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Judge

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

**DOCKET:** IMM-44-19

**STYLE OF CAUSE:** LIN YANG v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JULY 9, 2019

**JUDGMENT AND REASONS:** ANNIS J.

**DATED:** AUGUST 2, 2019

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