

Date: 20071005

Docket: IMM-5282-06

Citation: 2007 FC 1030

Ottawa, Ontario, October 5, 2007

PRESENT: The Honourable Madam Justice Dawson

BETWEEN:

WEN HUI LI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Wen Hui Li claims to be a citizen of the People's Republic of China (China) and to have a well-founded fear of persecution in China because he is a Falun Gong practitioner. Mr. Li's claim for refugee protection was dismissed by the Refugee Protection Division of the Immigration and Refugee Board (RPD or Board) because he failed to provide sufficient credible or trustworthy evidence to establish his identity.

[2] This application for judicial review of that decision is dismissed because Mr. Li failed to establish that the Board's identity finding was patently unreasonable and failed to establish that the Board erred by failing to consider all of the evidence.

[3] Mr. Li asserts that the Board committed the following errors:

1. The Board erred by describing the passport Mr. Li used to leave China as being "a false Chinese passport".
2. The Board erred by drawing a negative inference from Mr. Li's failure to corroborate his travel itinerary to Canada.
3. The Board erred by rejecting the documents tendered by Mr. Li to establish his identity.
4. The Board erred by giving no weight to a copy of a summons Mr. Li said was issued against him in China.
5. The Board erred by failing to consider the merits of Mr. Li's claim for protection in respect to the issue of his identity.

STANDARD OF REVIEW

[4] The first four asserted errors go to findings of fact made by the Board. Those findings are to be reviewed on the standard of patent unreasonableness. The final asserted error is one of law, reviewable on the standard of correctness.

APPLICATION OF THE STANDARD OF REVIEW TO THE DECISION

1. Did the Board err by describing the passport Mr. Li used to leave China as being "a false Chinese passport"?

[5] In his original Personal Information Form (PIF), Mr. Li described this passport to be genuine. At the hearing, Mr. Li amended his PIF to describe the passport as being of unknown authenticity. He testified that he was given the passport by his snakehead and that it looked to him to be genuine. Mr. Li, therefore, argues that the Board erred by describing the passport as false or fraudulent.

[6] In my view, this submission ignores Mr. Li's further testimony that he was never issued a genuine passport by the government of China and that, in September of 2005, his wife was told that the passport was false. In view of that evidence, the Board's characterization of the passport as false or fraudulent was not patently unreasonable.

2. Did the Board err by drawing a negative inference from Mr. Li's failure to corroborate his travel itinerary to Canada?

[7] Mr. Li argues that the Board erred by connecting its negative finding about his failure to substantiate his travel itinerary with the issue of his identity. Further, the Board's interpretation of the decisions in *Ramanathan v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 1062, and *Kazadi v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 349, is said to be erroneous.

[8] In my view, the Board did not err as alleged. The Board's analysis of Mr. Li's identity was related to its assessment of his credibility. It was not patently unreasonable for the Board to draw a negative inference regarding Mr. Li's credibility based upon the fact that he had no passport, plane ticket, or boarding pass. Those documents would have provided, at the least, evidence about where Mr. Li's journey to Canada commenced. See, for example, *Elazi v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 212, and *Kazadi*, cited above.

[9] As for the Board's reference to *Ramanathan* and *Kazadi*, both decisions were relevant to the RPD's decision because they discussed the importance of corroborative evidence and travel documents. However, it is important to remember that the appropriateness of any inference drawn by the RPD in a particular case depends not so much upon the jurisprudence as it does upon the evidence before the Board. In this case, the negative inference was grounded in the evidence before the RPD.

3. Did the Board err by rejecting the documents tendered by Mr. Li to establish his identity?

[10] The documents in question are his hukou, his resident identity card, Mr. Li's daughter's birth certificate and his marriage certificate.

[11] With respect to the hukou, the Board:

- drew a negative inference from the fact that the type of household on the hukou was said to be "Family". Documentary evidence stated that the status of a household is categorized as agricultural (rural) or non-agricultural (urban);
- drew a negative inference from the fact that the section pertaining to "No. Of Household" was left blank. This information was said to be the most important information found on a hukou;
- drew a negative inference from the fact that Mr. Li testified that his parents lived at the same address as he did, yet they had their own hukou. The documentary evidence stated that a household cannot have two non-identical hukou's;
- noted that the documentary evidence indicated that the use of fraudulent hukou documents was common in China.

[12] Each of these findings of the Board was supported by the evidence. As such, the findings were not patently unreasonable. Additionally, the first negative inference was supported by Mr. Li's own oral evidence that his household type was "rural".

[13] The resident identity card was acknowledged by the RPD to exhibit the expected security features. However, the documentary evidence indicated that:

The Resident ID card is a uniform legal document issued by the state to identify the status of the civilian ... An important official identity document ... [b]oth counterfeit cards and fraudulently obtained but legitimately produced cards are obtainable and in circulation, and ... possession of a legitimately produced identity card does not guarantee that it was legitimately obtained.

[14] Mr. Li testified that he had received two resident identity cards, that he never read the cards and that he had no need to worry about his card expiring because the government would issue a new card when required. The Board rejected that testimony, finding that a genuine resident of China would know the general information with respect to the frequency of issuance of resident identity cards. When coupled with the evidence that the hukou was fraudulent and the evidence that fraudulently obtained but legitimately produced resident identity cards are obtainable and in circulation, the Board gave no probative value to the resident identity card. Again, I find the RPD's conclusion was grounded in the evidence and was not patently unreasonable.

[15] The Board's reliance upon both Mr. Li's oral evidence about the card and the documentary evidence regarding the prevalence of fraudulently obtained identity cards makes this finding distinguishable from the impugned finding Mr. Li relies upon in *Lin v. Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. No. 15.

[16] Documentary evidence before the Board established that a genuine birth certificate would contain the name of the child's mother and father, their race and their resident identification number. The RPD drew a negative inference from the fact that the daughter's birth certificate did not contain the identification numbers of her parents and accorded no probative value to the certificate. This inference was nourished by the documentary evidence and so was not patently unreasonable.

[17] The Board went on to draw a further negative inference from the fact that Mr. Li produced an original copy of the birth certificate on the basis that the documentary evidence stated that the relevant government office retained records of birth certificates. In my view, the documentary evidence did not support this negative inference because it did not establish that parents would not be provided with an original certificate. However, in view of the failure of the birth certificate to contain all of the required information, I find this error was not material to the Board's decision. The RPD had a valid reason for giving no weight to the birth certificate.

[18] Finally, the RPD gave no weight to Mr. Li's marriage certificate because it was obtained on the strength of the resident identity card and the hukou. Manifestly, it would have been preferable for the Board to have addressed this document directly, as opposed to dismissing it on a derivative basis. However, given the Board's finding with respect to Mr. Li's credibility (for example, no challenge is made to the Board's finding that it was incredible that Mr. Li would not be able to recall the false identity he had assumed in order to travel to Canada) and its treatment of the other identity documents, I am satisfied that the marriage license was not by itself capable of establishing Mr. Li's identity. Thus, any error with respect to the Board's treatment of this document was not material to its decision.

4. Did the Board err by giving no weight to a copy of the summons?

[19] Mr. Li also produced a summons that he said was left with his family in China, which required him to appear before the People's Court in respect of his involvement in an illegal Falun Gong gathering.

[20] In order to find that the summons was not a reliable document, the Board relied upon inconsistencies between it and samples of summonses attached to a Response to Information Request. The evidence of the sample summonses provided a proper evidentiary basis for the RPD's conclusion and its finding cannot be said to be patently unreasonable.

5. Did the Board err by failing to consider the merits of Mr. Li's claim to protection in respect to the issue of his identity?

[21] Mr. Li argues that the Board erred by failing to consider the merits of his claim in respect of the determination of his identity. He says that if he provided particularly compelling evidence about his experience in China, such evidence would have had a bearing on the Board's assessment of the identity issue.

[22] I agree that, as a matter of law, the issue of an applicant's identity should be determined on the totality of the evidence before the RPD. See, for example, *Lin v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No. 104 at paragraph 10. However, in the present case, aspects of Mr. Li's testimony were found to be incredible. Further, the Board was not obliged to refer to all of the evidence before it. Mr. Li has failed to point to any particularly telling evidence about his experiences in China from which the Court might infer that the Board failed to consider all of the evidence before it. It follows that he has failed to establish that the Board did not consider the totality of the evidence.

[23] For these reasons, the application for judicial review is dismissed.

[24] Counsel posed no question for certification, and I am satisfied that no question arises on this record.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is dismissed.

“Eleanor R. Dawson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5282-06

STYLE OF CAUSE: WEN HUI LI, Applicant

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION, Respondent

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 18, 2007

**REASONS FOR JUDGMENT
AND JUDGMENT:** DAWSON, J.

DATED: OCTOBER 5, 2007

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