Date: 20071022

Docket: IMM-5613-06

Citation: 2007 FC 1087

Ottawa, Ontario, October 22, 2007

PRESENT: The Honourable Mr. Justice Kelen

BETWEEN:

ZI JUN LI
YING CHENG

Applicants

and

THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated September 28, 2006 concluding that the applicants are not Convention refugees or persons in need of protection.

FACTS

[2] The applicants are a married couple claiming refugee protection in Canada on account of their involvement in illegal Falun Gong activities in the People's Republic of China (China). Both applicants were identified by the Board to be citizens of China.

[3] The applicants claim to have begun practicing Falun Gong in December 1998 after being introduced to it by their friend, Qiang Wang. The applicants state that they were attracted to the practice because they felt it would help their back problems and arthritis. They were instructed by Qiang Wang, practiced Falun Gong in the park with others, and talked about their feelings and experiences with Falun Gong every Sunday. The applicants maintain that, gradually, Falun Gong became part of their lives and changed their lives.

[4] On July 12, 1999, the Chinese government announced that Falun Gong was an illegal organization and attempted to suppress its practitioners. Shortly thereafter, the applicants heard that their friend and teacher, Qiang Wang, had been arrested for being involved in Falun Gong. On August 7, 1999, the male applicant was arrested at work and taken to the police station where he was handcuffed, forced to kneel down by the wall, and given nothing to eat. The applicant was asked about his relationship with Qiang Wang and his involvement in Falun Gong. The applicant remained in custody for five days and claims that he was only released after his parents made a payment to the police and after he signed a statement of repentance indicating that he would discontinue practicing Falun Gong. In her Personal Information Form (PIF), the female applicant

also claims to have been arrested on August 7, 1999, and to have been treated in a manner similar to her husband.

[5] After his arrest, the male applicant was fired from his job and was forced to join a class to repent for his involvement in Falun Gong. The male applicant also claims that he has been unable to find regular employment, and that he and his wife have been forced to sell their home.

[6] On July 10, 2005, the applicants sought the aid of an agent and came to Canada in an attempt to gain refugee status.

Decision under review

[7] On September 28, 2006, the Board concluded that the male applicant was not a credible and trustworthy witness and, therefore, that the "claimants were not Falun Gong practitioners in China." The Board's findings were based on several grounds, including:

1) plausibility concerns regarding when and with whom the applicants practiced Falun Gong in China between 1999 and 2005;
2) the applicants' failure to answer questions that any Falun Gong practitioner would reasonably be expected to answer;
3) significant omissions from the applicants' PIFs when compared to the male applicant's testimony before the Board; and
4) the applicants' long delay in leaving China.

ISSUE

[8] The issue raised in this application is whether the Board erred in concluding that the applicants are not Convention refugees or persons in need of protection.

STANDARD OF REVIEW

[9] With respect to the Board's factual findings, including determinations of credibility, the standard of review is patent unreasonableness. Only if the Board's findings are unsupported by the evidence before it will the decision under review be patently unreasonable. Otherwise, the Court will not revisit the facts or weigh the evidence before the Board: *Jessani v. Canada (Minister of Citizenship and Immigration)*, 2001 FCA 127, 270 N.R. 293 at paragraph 16. For plausibility findings, as long as the inferences drawn by the panel are not so unreasonable as to warrant intervention, its plausibility findings are not open to review (*Aguebor v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 732 (C.A.) at paragraph 4).

ANALYSIS

Issue: <u>Did the Board err in concluding that the applicants were not Convention refugees or persons in need of protection?</u>

[10] The Board's decision to reject the applicants' refugee claims centred primarily on the finding that the male applicant was not a credible and trustworthy witness. As the Board stated:

> The [Board] determines that the principal claimant, on a balance of probabilities, is not a credible and trustworthy witness and, on a

> balance of probabilities, the claimants were not Falun Gong practitioners in China….
>
> The panel has serious credibility concerns with respect to the central aspect of the claimants' claims with respect to the claimants' being Falun Gong practitioners.

[11] The applicants submit that three of the Board's credibility findings were flawed. Specifically, the applicants argue that the Board erred in concluding:

1) that it is not plausible that a true Falun Gong practitioner would not practice every day, but only when they had the time;
2) that it is not plausible that the applicants would wait nearly six years before leaving China; and
3) that it is not plausible that the male applicant would meet with fellow Falun Gong practitioners, but not practice together.

[12] With respect to the first submission that the Board erred in finding that it is not plausible that a true Falun Gong practitioner would not practice every day, I am not persuaded that this is a patently unreasonable finding.

[13] In relation to this plausibility finding, the Board stated:

> The panel notes that the principal claimant did testify at his hearing that he did continue to practice Falun Gong in China after July 2005 when he left China but he did not practice every day but when he had time he practiced by himself at home. The panel does not find it plausible that a true Falun Gong practitioner would not practice every day and would only practice when he had time.
>
> (Emphasis added.)

Upon reading the transcript, it is clear that the Board made a patently unreasonable finding of fact in the above passage. The applicant testified he did continue to practice Falon Gong in China after his arrest up until July 2006 (when he left China), but that "after I was released, I didn't practice every day. Whenever I have time, I practiced by myself at home. The error in the Board's reasons is simply the Board mistakenly used the word "after", instead of the word "before". With respect to the plausibility finding, that a true Falon Gong practitioner would practice every day and not when he had time, this is not so unreasonable as to warrant the Court's intervention. It is not unreasonable that a person devoted to Falon Gong would practice every day even in private when he couldn't practice Falon Gong in public.

[14] With respect to the applicants' submission that the Board erred in concluding that it was not plausible that the applicants would wait nearly six years before leaving China, this is a plausibility finding reasonably open to the Board on the evidence, and no reviewable error was committed. If the applicants were being persecuted, they would have tried to leave earlier.

[15] With respect to the applicants' third submission, I find the Board erred in concluding that it is implausible that true Falun Gong practitioners would meet every week but not practice together. In its reasons, the Board states:

> In addition, the principal claimant did testify that he did practice in a group after his release but indicated, "Yes, I met in a group." They met at the [Public Security Bureau] station and yes they met every week but they never practiced together. The panel does not find it plausible that the principal claimant would meet every week with fellow Falun Gong practitioners and not practice together.

In my opinion, after reviewing the testimony at the hearing, it was not reasonably open to the Board on the evidence to reach such a conclusion. The male applicant's testimony outlines that he and the other Falun Gong practitioners met weekly at the Public Security Bureau because they were ordered to do so by the police. These meetings were, according to the applicants, mandated, and not any kind of personal gathering related to the practice of Falun Gong.

[16] However, this error alone is not enough to vitiate the Board's conclusion that the applicants were not persecuted as Falun Gong practitioners, and came to Canada for that reason. As the respondent states, there are a number of other grounds upon which the Board made its determination that the applicants failed to establish their persecution as Falun Gong practitioners, many of which are significant. One such ground warrants mentioning; namely, the fact that there were significant derivations between the applicants' PIFs and the male applicant's testimony before the Board. For instance, the male applicant testified that after his original arrest on August 7, 1999, he was arrested approximately ten other times between 1999 and the end of 2002. Nowhere in the applicant's PIF is there any mention of these subsequent arrests, leading the Board to draw a negative credibility finding with respect to this omission. In my opinion, the Board reasonably concluded that such a significant event "should have been included in the claimant's PIF narrative."

[17] Finally, the applicants also submit that the Board erred in finding that the female claimant is not a Falun Gong practitioner, as there was not "one scintilla of evidence before the Board to support that conclusion." The applicants' argument is premised on the view that the Board cannot determine that the female claimant is not a Falun Gong practitioner based solely on the finding that

the principal claimant is not a credible and trustworthy witness. In support of this argument, the applicants point to *Alam v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 1751 (QL), where Mr. Justice Rouleau held at paragaraph 18:

> **¶ 18** It has been clearly established that a refugee tribunal must have regard to the totality of evidence before it when assessing the credibility of a refugee claimant. The tribunal can reject a claim on the ground that the claimant is not credible but it must state that ground clearly and it must give reasons for the credibility finding.

[18] The respondent, however, asserts that because the female applicant's claim and narrative were substantially similar to her husband's claim, the Board did not need to explain separately the reasons for rejecting her claim. In support of this, I point to *Akramov v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 122, 287 F.T.R. 93, where Mr. Justice Beaudry concluded that since the Board found that the principal applicant had not clearly established the circumstances surrounding his claim, it was not unreasonable for the Board to conclude that the secondary applicants had not established their claims either.

[19] I must therefore conclude that the Board's decision is not patently unreasonable, and that this application must accordingly be dismissed.

[20] Both parties and the Court agree that this application does not raise a question which should be certified for an appeal.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

This application for judicial review is dismissed. No question is certified.

"Michael A. Kelen"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

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