

Date: 20080226

Docket: IMM-2203-07

Citation: 2008 FC 253

Ottawa, Ontario, February 26, 2008

PRESENT: The Honourable Barry Strayer, Deputy Judge

BETWEEN:

WENYI ZHOU

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

Introduction

[1] This is an application for judicial review of a decision made on March 30, 2007 by a Pre-Removal Risk Assessment Officer (Officer) which determined that the Applicant would not be subject to risk of persecution, danger of torture, risk of life or limb or risk of cruel and unusual treatment or punishment if returned to China.

Facts

[2] The Applicant is a woman born in China in 1973 and is a citizen of that country. She came to Canada in September, 1999 on a Student Visa. She made a refugee claim at that time but withdrew it in February 2000 because she now says it was based on a fabricated story. Apparently, she withdrew her claim in order to make an application for permanent residence. When that failed, she sought an extension of her visitor's visa. She then made a further refugee claim on the basis that since her arrival in Canada she had become a Christian, had come to be known publicly as such, and feared persecution as a Christian if she returned to China. This application was dismissed by the Immigration and Refugee Board (Refugee Protection Division) (Board) on August 25, 2003. After hearing the Applicant's testimony and observing her demeanour, and considering testimonial letters from the administrator for a Christian publication called *Herald Monthly*, testimonials from her Church, and certain conflicts in her evidence as to where she had worked prior to 1999 in China, the Board found her to be "totally devoid of any credibility or trustworthiness". It concluded that "there is not a scintilla of truth to the story that the claimant has narrated". It therefore dismissed her refugee claim and also found that she was not a person in need of protection. In early 2007 she submitted an application to be found a person in need of protection.

[3] The Officer who determined this application noted that the Applicant was relying essentially on the same risks as she had articulated before the Board: namely that she is a devoted Christian and works as a journalist for *Herald Monthly* and fears the Chinese authorities if she returns to China. The Officer recognized that she had provided a substantial package of materials relevant to current

country conditions in China and the Officer confirmed that he had read this material. The Officer also referred to many letters from others confirming that she is a genuine Christian who volunteers in the community and works as a journalist for Chinese Christian newspapers, that she is of good character and has a good knowledge of the Bible. The Officer also noted documents indicating that the Applicant donates money to her Church. Also submitted were articles in Chinese written by the Applicant for a Christian magazine but they were provided without a translated copy. While the Officer could thus confirm that she had authored certain articles he had no idea of what these articles might say and gave them little weight in determining any bearing they might have on the risk to her in returning to China. He observed that “evidence of more articles is not evidence of new risk developments”. The Applicant submitted photographs of herself at various events, mostly if not all, church-related and at least one going back to her Baptism in 2000, well before the Board hearing on the refugee claim. In respect to this material, the Officer concluded that the photos pre-dating the Board hearing are not “new evidence” and those that post-date the Board hearing showing the Applicant singing in the choir and attending a rally do not amount to new risk developments nor do they indicate that the Applicant is a Christian leader with a profile sufficient to attract the attention of Chinese authorities. With respect to the reports on country conditions the Officer did not find that the conditions in China for Christians had worsened notably since the Board determination of her refugee claim. He noted that among other things, the documentary evidence indicated that the Government of China recognizes several religions including the Protestant and Catholic religions and that it registers places for formal worship. While it does not interfere with private family worship at home, it may interfere with assemblages for worship in non-licensed or unregistered premises. It so interferes sometimes by arresting leaders and harassing worshippers. The material

also indicated that the extent of religious freedom continues to vary widely within China, that officially sanctioned religious activity continues to increase in most areas, and that religious activity has grown not only among the five recognized religions but among others as well. The Officer noted that he had no evidence before him that the Applicant intended to participate in unregistered Church activities rather than at government-approved venues. The Officer therefore concluded that such new evidence as was presented did not demonstrate to his satisfaction new risks having arisen since the dismissal of the Applicant's refugee claim in August, 2003.

[4] The Applicant attacks that decision on two grounds. First it is said that the Officer denied procedural fairness and erred in law by not convening an oral hearing. Second, the Officer committed a reviewable error by failing to take into consideration the documentary evidence and submissions of the Applicant while selectively relying on country reports which provide evidence to the contrary.

Analysis

[5] On the question of whether an oral hearing should have been directed, I believe the standard of review should be correctness: either this involves a question of law or a question of fairness and in either case, that should be the standard of review. Having said that, I am satisfied that the Officer here made no reviewable error.

[6] The *Immigration and Refugee Protection Act* provides as follows:

<p>Consideration of an application for protection shall be as follows:</p> <p>...</p> <p>(b) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;</p>	<p>Il est disposé de la demande comme il suit :</p> <p>...</p> <p>b) une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires;</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

The “prescribed factors” are set out in *Immigration and Refugee Protection Regulations* as follows:

<p>167. For the purpose of determining whether a hearing is required under paragraph 113(b) of the Act, the factors are the following:</p> <p>(a) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;</p> <p>(b) whether the evidence is central to the decision with respect to the application for protection; and</p> <p>(c) whether the evidence, if accepted, would justify allowing the application for protection.</p>	<p>167. Pour l'application de l'alinéa 113b) de la Loi, les facteurs ci-après servent à décider si la tenue d'une audience est requise :</p> <p>a) l'existence d'éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui concerne la crédibilité du demandeur;</p> <p>b) l'importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection;</p> <p>c) la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection.</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

It will be noted that essential to the factors requiring a hearing is that there be an issue of the Applicant's credibility.

[7] It is first important to recall what the purpose of such a determination by a PRAA Officer is. It is well recognized that it is to assess risks that a person could face if they were to be removed to their native country, in light of new facts arising after the Board's decision on the refugee claim. It is not intended to be an appeal of the Board decision: *Perez v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No. 1778; *Kaybaki v. Canada (Solicitor General of Canada)*, [2004] F.C.J. No. 27; *Raza v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No. 1779. As pointed out in *Kaybaki*, the evidence presented to the Officer should be new evidence, and not evidence that should have been presented to the Board. Its purpose is to assess new risk development arising after the refugee hearing and it should not become a second refugee hearing. In the present case the Officer was not considering whether the Board was wrong and whether the Applicant should now be found to be credible. Instead, he had to determine whether there had been new risks develop since August, 2003.

[8] I am satisfied that to accomplish this the Officer was not obliged to pass further judgment on the credibility of the Applicant. Indeed to do so would amount to an appeal from the Board on that point. In fact, the Applicant, in her Memorandum of Fact and Law at para. 61, submits that the Officer made no credibility findings and I believe that was the proper course for him to follow. As a result there was no credibility issue before the Officer compelling him to hold an oral hearing.

[9] With respect to whether the Officer committed a reviewable error in his conclusions on the evidence, this involves questions of fact for which the standard of review should be patent unreasonability. I find nothing patently unreasonable in the conclusions the Officer reached on the evidence as indicated above. In particular, I do not find in the voluminous documentary evidence proof on a balance of probabilities that the Applicant will suffer persecution upon her return to China. The picture is a mixed one and varies from one part of the country to another. We know not what particular role the Applicant is determined to play in Chinese Christianity. The Officer was certainly entitled to come to the conclusion which he did.

Disposition

[10] I will therefore dismiss the application for judicial review. While there was some discussion with counsel about a certified question they agreed that none was required and none will be certified.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. The application for judicial review be dismissed.

“B.L. Strayer”
Deputy Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2203-07

STYLE OF CAUSE: WENYI ZHOU
Applicant
and
THE MINISTER OF CITIZENSHIP AND IMMIGRATION
Respondent

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: 13-FEB-2008

REASONS FOR : STRAYER, D.J.

DATED: February 26, 2008

APPEARANCES:

MS. CATHRYN SAWICKI
MS. MARGHERITA BRACCIO

FOR THE APPLICANT
FOR THE RESPONDENT

SOLICITORS OF RECORD:

GREEN AND SPIEGEL
Barristers and Solicitors
Toronto, Ontario
JOHN H. SIMS, Q.C.
Deputy Attorney General of Canada
Toronto, Ontario

FOR THE APPLICANT

FOR THE RESPONDENT