Date: 20080417

Docket: IMM-2329-07

Citation: 2008 FC 499

Ottawa, Ontario, April 17, 2008

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

YEI WAH LAU

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] The Applicant seeks judicial review of a PRRA decision which denied her application for protection from removal to China. This application places the Applicant on the "horns of a dilemma": to succeed in her contention that the PRRA Officer ignored or misunderstood certain evidence, the Applicant must introduce the evidence or materials ignored, but those materials, an

IRB Response to Information Request (RIR), contain evidence consistent with the Officer's conclusions.

II. BACKGROUND

[2] Ms. Lau is a Chinese citizen who came to Canada in 1987. Her refugee claim was declared abandoned in 1994. In 2006, the Applicant filed a PRRA application claiming fear of persecution because (a) she was a Christian, (b) she had two children in contravention of China's family planning policies, and (c) she left China illegally.

[3] Ms. Lau did not specify to which Christian denomination she belonged nor did she indicate an intention to join either a registered church or an underground church. The Officer assessed her risk in a variety of scenarios but concluded that there was no more than a mere possibility of persecution.

[4] In regard to the Applicant's alleged violation of China's family planning policies, the Officer found that people returning to China with foreign-born children were generally exempt from these domestic policies. Even if Ms. Lau was subject to these policies, the Officer concluded that she would face a support fee (tantamount to a fine) which was not itself persecution.

[5] Lastly, the Officer found, based on documentary evidence, that for being an illegal emigrant, Ms. Lau faced no more than a small fine or a brief period of incarceration.

III. ANALYSIS

[6] While the parties agreed that the standard of review was patent unreasonableness, these submissions were before the decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9. Although the standard of review is now clearly reasonableness, nothing turns on the distinction between the two standards.

[7] The Applicant objects to the fact that the Officer chose to rely on passages from a U.S. DOS Report despite the existence of the IRB's own RIR document which the Applicant says supports her claim of religious persecution, at least at unregistered churches. The core of the Applicant's complaint is that the Officer was selective in the use of publicly available documents.

[8] The difficulty with the Applicant's position is that (aside from having to put materials in this application that were not before the Officer to show that relevant publicly available documents were missed) the RIR provides evidence that religious persecution is localized. The RIR, while showing that some unregistered churches face persecution, contains evidence that persecution is localized and not a general condition in China. Further, Guangdong, the province from which the Applicant originates, is one of the most liberal areas in China and therefore persecution of any kind is unlikely.

[9] The Applicant's position was further undermined by the fact that she never declared to which church she belonged.

[10] Therefore, on the issue of religious persecution, it cannot be said that the Officer's decision was unreasonable.

[11] The Officer's findings in respect of the breach of family planning policies were based on the documentary evidence. The Applicant complains that the Officer gave no reasons for her conclusion that the fee was not persecution. However, with the burden of establishing persecution resting on the Applicant, Ms. Lau failed to put forward any evidence that the fee was so large as to amount to persecution, either as a general proposition or in regards to herself personally.

[12] Moreover, the Officer's finding that the law against illegal emigration is one of general application and not persecution is consistent with the decision in *Cheung v. Canada (Minister of Employment and Immigration) (F.C.A.)*, [1993] 2 F.C. 314.

[13] As to the decision as a whole, it was balanced and thorough. The conclusions reached were open to the Officer on the evidence.

IV. CONCLUSION

[14] Therefore, this judicial review will be dismissed. There is no question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed.

"Michael L. Phelan"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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