

Date: 20080918

Docket: IMM-1543-08

Citation: 2008 FC 1056

Toronto, Ontario, September 18, 2008

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

XIAO ZHEN OU YANG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The present Application concerns a citizen of China who claims refugee protection on the ground of her religion as a Christian. During the course of the hearing of the Application, Counsel for the Applicant argued that the negative decision rendered by the Refugee Protection Division (RPD) is made in reviewable error because the RPD Member (Member) rejected the claim on the basis of a global negative credibility finding without giving clear reasons.

[2] There are three aspects involved in counsel for the Applicant's argument. The first aspect concerns the fact that the Applicant was late filing some critically important documents. During the course of the hearing before the RPD, the Applicant offered an explanation that the documents were late filed because there were problems receiving them from China, and that she wanted to collect them and file them together. During the course of the RPD hearing, the Applicant's explanation was rejected by the Member with the following statement:

PRESIDING MEMBER: Okay. I am going to accept the identity documents, they are critical. I do not accept your explanation as to why they are so late. This business about having to file everything together, that's simply not the case. But they'll get the appropriate weight when they are filed this late.
(Tribunal Record, p.248)

After making this comment, the following exchange took place between Counsel for the Applicant and the Member:

PRESIDING MEMBER: All right. I'll accept it but they'll get the appropriate weight when I get these documents so, okay? So late, the same with that – and the summoning, but they will get the appropriate weight because I don't accept your argument as to why these documents are filed at the very last minute. So I draw a severe negative inference from these late disclosure of documents, okay? So they'll all be entered into the – you have provided me with an exhibit list, Counsel. [Emphasis added]

[...]

COUNSEL: Okay. Well I should just note for the record that I think it's improper for the Board to draw a negative inference to the late disclosure of documents before we have heard any testimony from the claimant with respect to her claim.

PRESIDING MEMBER: I am just saying I draw a negative inference with respect to the documents, not with respect to this lady's evidence.

COUNSEL: Okay, well I don't understand what the inference is based on.

PRESIDING MEMBER: Well when I have- when these documents are so late. Anyway, you have provided me with an exhibit list, I am going to enter that list at this time and I guess C-6 will be the summons?

(Tribunal Record, p. 248 & 249)

I agree with Counsel for the Applicant's argument that, in drawing an unsupported "severe negative inference" the Member exposed an ungrounded and unexplained suspicious mind that the Applicant's claim is fraudulent even before the hearing was completed. As a result, I find that decision is tainted by a manifest unfairness.

[3] In my opinion, the tainting is exposed with respect to the RPD's findings concerning the Applicant's claim that she is a Christian. During the course of the hearing, the Member closely examined the Applicant about her knowledge of the tenets of the Christian Pentecostal faith. In particular one important passage included a questioning about the celebration of the Pentecost as follows:

PRESIDING MEMBER: Okay, you go to a Pentecostal Church, do you not observe the Pentecost?

CLAIMANT: I know the Pentecost day, we call it like the coming of the living water.

PRESIDING MEMBER: Okay. Why did you not mention the Pentecost?

CLAIMANT: Because I have never celebrated.

PRESIDING MEMBER: Well, madam, you have been going to this church for over a year and you have not celebrated?

CLAIMANT: The pastor mentioned Pentecostal but I have never celebrated here.

PRESIDING MEMBER: When does the Pentecost occur?

CLAIMANT: I was told that was 40 days after Jesus resurrected and then the living water arrived.

PRESIDING MEMBER: Okay. So when did Jesus resurrect, what's the holiday we call that? The day the Jesus resurrected, what's the name of the holiday we call that?

CLAIMANT: Christmas.

PRESIDING MEMBER: So Christmas is when Jesus resurrected?

CLAIMANT: No, it was after the Good Friday Jesus resurrected, Jesus died and resurrected. [Emphasis added]

(Tribunal Record, p. 276)

[4] With respect to this questioning, the Member made the following statement in the decision rendered:

The claimant has been asked as to what religious holidays are observed by Christians. The claimant indicated Easter, Christmas, and Good Friday. The claimant was asked if she wished to add to her answer and she replied in the negative. The claimant was then asked as to why she failed to mention the Pentecost, as she attended a Pentecostal church. The claimant indicated that she had never celebrated it. It was pointed out to the claimant that her church letter indicates that she had been attending the Living Water Church since November of 2006 and thus has been attending for over a year, therefore, she would have observed the Pentecost. The claimant stated that the Pastor mentioned it but never celebrated it. I reject this explanation, as the claimant attends a Pentecostal church and thus this religious day would have been observed. The claimant was asked four times to name the day that Jesus resurrected from the dead. The claimant initially had no answer, then said Christmas, then after Good Friday and then said the Pentecost. The panel Member indicated to the claimant that the day was called Easter. The claimant was then asked as to what the significance of Easter is to Christmas. The claimant stated that was the day that Jesus was resurrected and reborn. When asked if she wished to add to her answer, she replied in the negative. I find that the claimant does not possess some basic tenets of Christianity: Although Christ was resurrected on Easter, the

claimant failed to state that he died on the cross for Christians' sins in order for humans to have eternal life, which is a cornerstone of Christianity. The claimant was asked as to what the role of the Holy Spirit was. The claimant stated that it was to protect countries if there were difficulties, which is incorrect. The correct answer is that the Holy Spirit is to lead Christians to wisdom and to have a greater understanding of the Holy Scriptures. The claimant did not know where the Pentecost and Holy Spirit are found in the Bible, being the Book of Acts. The claimant was able to answer some questions about Christianity. However, I find, on a balance of probabilities, that the claimant is not, nor ever was, a Christian as a result of her limited knowledge of the Pentecost (although maintaining she attends a Pentecost church on a regular basis) and her inability to name Easter or the significance of it to Christians, a cornerstone of Christianity. Any knowledge that the claimant has learned about Christianity could easily have been acquired here in Canada in order to manufacture her claim. [Emphasis added]
(Decision, p. 3-4)

[5] In my opinion the RPD's handling of the Applicant's evidence with respect to her knowledge of Christianity is very unfair for two reasons. First, the Applicant gave straightforward testimony about her knowledge of the Pentecost; her pastor had mentioned it, but that she had never celebrated it here. This evidence is un-contradicted. Therefore, I find that the Member's conclusion that "she would have observed the Pentecost" is completely unfounded. There is no question that this finding, read in context, constitutes a negative credibility finding. In my opinion there is no basis for this conclusion.

[6] Second, the fact that the Applicant did not detail the significance of Easter to Christians as the Member expected, proves nothing. I find it was unfair of the member to: ask the question; obtain a relatively straightforward answer; then ask the Applicant whether she had anything to add; obtain the answer "no"; and then criticize the Applicant for not providing the answer that she, the Member,

expected. There is absolutely no basis for the Member to have expected the fulsome answer which she has detailed in her decision. In addition, I find that the failure to give this answer does not ground the global negative credibility finding that the Applicant “is not, nor ever was, a Christian”.

[7] As a result, I find that the decision under review was made in reviewable error.

ORDER

Accordingly, I set aside the decision under review and refer the matter back for re-determination before a differently constituted panel.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1543-08

STYLE OF CAUSE: XIAO ZHEN OU YANG v. THE MINISTER OF
CITIZNESHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 17, 2008

**REASONS FOR ORDER
AND ORDER BY:** CAMPBELL J.

DATED: SEPTEMBER 18, 2008

APPEARANCES:

Vania Campana FOR THE APPLICANT

Laoura Christodoulides FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lewis & Associates
Barristers & Solicitors
Toronto, Ontario FOR THE APPLICANT

John H. Sims, Q.C.
Deputy Attorney General of Canada FOR THE RESPONDENT