Date: 20080922

Docket: IMM-937-08

Citation: 2008 FC 1052

OTTAWA, Ontario, September 22, 2008

PRESENT: The Honourable Max M. Teitelbaum

BETWEEN:

MING LIN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) for judicial review of the Immigration and Refugee Board, Refugee Protection Division (the Board) dated February 6, 2008. The Board determined that the Applicant, Mr. Ming Lin, is neither a Convention refugee nor a person in need of protection within the meaning of sections 96 and 97 of the Act.

[2] The applicant is a citizen of the People's Republic of China (China).

[3] The applicant claims to be a Falun Gong practitioner. According to the applicant, in November 2004 he sought the advice of a medical professional due to the pain resulting from a gastric ulcer. He was advised to take time off of work. He claims that he reduced his work schedule but was unable to take time off due to the demands of his company. The applicant claims that in March 2005 a friend suggested Falun Gong as a way of dealing with his stress. The applicant says that he was aware that the practice was banned by the Chinese government, but that his friend assured him that precautions were taken. The applicant claims that he begun practising in mid-March 2006, and that he later brought a colleague into the practice of Falun Gong. The applicant claims that the practice of Falun Gong was the best way he found to recover from his ulcer.

[4] The applicant and this colleague, along with eleven other participants, arrived in Canada on a business trip on October 25, 2006. They arrived in Montréal on the night of October 28, 2006. According to the applicant, the leader of the group had taken everyone's passports. Once the group was checked into the hotel that night, she allegedly returned the passports to each of the participants except the applicant and his colleague. That same night, the applicant claims to have received a telephone call from his wife who indicated that the applicant's friend, who had introduced the applicant to Falun Gong, had been arrested. Further, the applicant states that his wife told him that his friend's wife told her that the applicant and his colleague would be arrested by the Public Security Bureau ("PSB"). The applicant alleges he believed that there was a connection between his passport not being returned and the threat of arrest in China. He and his colleague left Montréal that night for Toronto to make their refugee claims. The applicant claims that he later learned from his wife that the PSB visited his home in China in late December, 2006.

[5] In a decision dated February 6, 2008, the Board found that the applicant was not a refugee nor a person in need of protection as he was not a credible witness.

[6] Firstly, the Board found the applicant not to be credible in his Personal Information Form ("PIF") narrative, his Record of Examination ("ROE"), or his oral testimony regarding his claimed identity as a practitioner of Falun Gong and the alleged pursuit of the applicant by agents of the PSB. The Board drew several negative inferences from inconsistencies in the applicant's evidence. In particular, the Board drew a negative inference from inconsistencies in the applicant's claimed date of diagnosis of his gastric ulcer as well as the applicant's testimony regarding his reduction in work load as a result of the diagnosis. Further, the Board held that the applicant's testimony and PIF concerning his knowledge and appreciation of the risk and potential consequences of practicing Falun Gong in China were inconsistent. The Board also drew a negative inference from the inconsistencies between the applicant's oral testimony, PIF and ROE regarding the PSB's access to a list of practitioners, the PSB's knowledge that he was a Falun Gong practitioner, and that the PSB was pursuing him.

[7] The Board found that the applicant's testimony regarding the confiscation of his and his colleague's passports, but no one else's, and the association the applicant made between this event and the alleged police pursuit in China, to be implausible. From this finding, the Board drew a negative inference.

[8] The Board also drew a negative inference from the timing of the amendment of his PIF regarding the alleged police visit to his home in China. The claimant allegedly received this information on December 26, 2006, but did not disclose it in the form of an amendment to his PIF until January 29, 2008. Notwithstanding the fact that an applicant can normally make an amendment to one's PIF, it is permissible for the Board to question why a delay of 13 months was required to make the amendment and to conclude, as in the present case, that it was done to enhance the present refugee claim.

[9] Finally, the Board drew a negative inference with respect to the seriousness of the applicant's practice of Falun Gong. The Board held that the knowledge that the applicant did have of Falun Gong was acquired in Canada and only for the purpose of supporting a refugee claim.

[10] This application raises the following issue:

a. Was the Board unreasonable in its findings that the applicant was not a refugee nor a person in need of protection?

[11] The following provisions of the Act are relevant on this application for judicial review:

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	96. A qualité de réfugié au sens de la Convention -- le réfugié -- la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa na-tionalité, de son appartenance à un groupe social ou de ses opinions politiques :

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or
(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans le-quel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or
(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la tor-ture;
b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,
(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,
(iii) the risk is not inherent or incidental to lawful sanctions,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
(iii) la menace ou le risque ne résulte pas de sanctions

unless imposed in disregard of accepted international standards, and	légitimes -- sauf celles infligées au mépris des normes internationales -- et inhérents à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

[12] Recently, the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, [2008] S.C.J. No. 9, 2008 SCC 9 held that there are now only two standards or review: correctness and reasonableness (*Dunsmuir* at para. 34). A determination of the applicable standard of review involves a two-step process. First, the Court should consider past jurisprudence to determine whether the appropriate standard of review has already been established. Where this search proves fruitless, the Court should undertake an analysis of the four factors comprising the standard of review analysis. (*Dunsmuir* at para. 62).

[13] In the present case, the Applicant attacks the Board's implausibility and credibility findings. These determinations are factual in nature. The jurisprudence is clear in stating that the Board's credibility and plausibility analysis is central to its role as trier of facts and that, accordingly, its findings in this regard should be given significant deference. The post-Dunsmuir jurisprudence has held that the appropriate standard of review applicable to credibility and plausibility assessments is that of reasonableness (*Saleem v. Canada (Minister of Citizenship and Immigration)*, 2008 FC

389 at para. 13; *Malveda v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 447 at paras. 17-20; *Khokhar v. Canada (MCI)* 2008 FC 499 at paras. 17-20).

[14] In *Dunsmuir*, at para. 47, the Supreme Court gave instruction on applying the reasonableness standard. Reasonableness is concerned with the existence of justification, transparency and intelligibility within the decision-making process, specifically, "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law".

[15] The applicant alleges that the Board made unreasonable errors by drawing negative inferences from the discrepancies between the applicant's original and amended PIFs, ROE, and oral testimony. Firstly, the applicant alleges that the Board was mistaken in its reasons in finding that the evidence of the applicant's health problems and his response to medical advice was inconsistent between the applicant's PIF, his documentary evidence, and his oral testimony. The Board stated that there was a discrepancy between the applicant's PIF, which listed the date of diagnosis as late-December 2004, and the medical form submitted by the applicant, which listed the date of diagnosis as November 5, 2004. The applicant correctly points out that the date of diagnosis was amended in the applicant's PIF on January 29, 2008. However, the Board's negative inference was not unreasonable. While the applicant's PIF was amended to correct the date of diagnosis, there was an inconsistency between the original PIF and the oral testimony. The Board is entitled to take into account this inconsistency and was reasonable in drawing its negative inference. The mere fact that the Board failed to refer to the amended PIF when rendering its decision does not

necessarily signify that it ignored evidence, if a review of the reasons suggests that the tribunal did consider the totality of the evidence (*Hassan v. Canada (Minister of Employment and Immigration)*, [1992] F.C.J. No. 946 (F.C.A.)).

[16] The applicant also argues that the Board misstated the absence of evidence in the PIF in regard to the applicant's doctor's medical advice and the applicant's response to it. The applicant takes issue with the Board's statement that "none of this was mentioned in the PIF". The applicant argues that this statement was incorrect given that there was mention that the doctor suggested that the applicant take time off work, and that the applicant was unable to do so. This is not a reasonable interpretation of the Board's reasons. The Board acknowledged in its reasons that the applicant's PIF mentioned that his doctor advised him to take time off work, but that he was unable to do so. In the statement highlighted by the applicant, the Board noted that none of the evidence from his oral testimony regarding the applicant reducing his work hours in response to that advice was contained in his PIF. The Board did not see the oral testimony on his response to the medical advice as merely constituting an addition to the information already provided in the PIF. The Board's negative inference was drawn from the inconsistencies between the applicant's oral testimony and the applicant's PIF. The Board is entitled to draw a negative inference from this inconsistency (*Canada (Minister of Citizenship and Immigration) v. Richards*, [2004] F.C.J. No. 1467, 2004 FC 1218).

[17] The applicant submits that the Board committed an error in drawing a negative inference from the applicant taking over a year to amend his PIF to include his claim that he received information that the PSB visited his home in China on December 29, 2006. It is the applicant's

position that because amendments to PIFs are permitted by rule 5 of the *Refugee Protection Division Rules*, SOR/2002-228 ("the Rules"), no negative inference should be made from the timing of an amendment of a PIF. Firstly, the Rules provide for amendments of PIFs under subsection 6(4), not 5. Further, while subsection 6(4) of the Rules allows for the amendment of an individual's personal information, the simple ability to amend a PIF narrative does not prohibit concerns of credibility that may arise from such an amendment (*Aragon v. Canada* (Minister of Citizenship and Immigration), 2008 FC 144). It is established in the jurisprudence that the Board is entitled to compare a PIF to an applicant's testimony and to make credibility findings based on inconsistencies and omissions (*Khalifa*, above). Likewise, in the case at hand, the Board was reasonable in drawing a negative inference in regard to credibility where the applicant's PIF was amended over a year later to include information central to his claim, specifically information relating to the PSB visiting his home in China.

[18] The applicant further submits that the Board committed an error in drawing a negative inference from the inconsistencies it perceived in the applicant's oral testimony regarding his awareness and appreciation of the risks associated with practicing Falun Gong before he allegedly became a practitioner. Firstly, the applicant argues that the Board failed to take into account the evidence contained in the applicant's PIF, which the applicant submits is consistent with the part of applicant's oral testimony in which he stated that he had been aware of long prison sentences and severe punishments. The fact that the applicant's PIF accorded with part of the applicant's oral testimony does not affect the reasonableness of the Board's negative inference drawn from the inconsistencies within the oral testimony. Secondly, the applicant argues that the Board was overly

microscopic in considering the evidence; specifically, that the Board failed to appreciate the context of the applicant's answers. The applicant submits that the questions at the oral hearing focussed on his awareness before he began to practice Falun Gong and failed to appreciate that the applicant's understanding of the risks associated with the practice would have been different once he had allegedly joined the movement. While the Federal Court of Appeal held in *Attakora v. Canada (Minister of Employment & Immigration)*, [1989] F.C.J. No. 444 that the Board should not take an "over-vigilant in its microscopic examination of the evidence", it is not evident that the Board's consideration was in any way overly microscopic. The Board was not unreasonable to draw the negative inference that it did.

[19] The applicant further takes issue with the Board's finding that given the likelihood of capture and severe punishment, it was implausible that the applicant would take up Falun Gong to reduce stress. The applicant argues that the fact that people are still being arrested in China for practising Falun Gong is *prima facie* evidence that people are still taking up the practice to create tranquility, despite fear of capture. It was not unreasonable for the Board to draw this negative inference. Firstly, the apprehension of Falun Gong practitioners is not *prima facie* evidence of the motivation of those practitioners. Secondly, as the respondent submitted, a negative inference can be reasonably drawn where it is implausible that a person would act in a way to put him and his family in harm's way (*Rani v. Canada*, 2006 FC 73). Thirdly, when assessing credibility, the Board is entitled to rely upon criterion such as rationality and common sense (see *Shahamati v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 415). In the case at hand it was reasonable for the Board to draw a negative inference from the implausibility that a person would

begin to practice Falun Gong to reduce stress when the risk associated with the practice would likely cause additional stress.

[20] The applicant submits that the Board erred in finding that it was implausible he would have observed that the group leader returned the passports of all of the members except the applicant and his friend, and further that it was implausible the applicant made a connection between this event and the PSB's alleged pursuit. The applicant alleges that the connection was mere speculation on his part and that, even if proven wrong, it does not undermine his claim. As the respondent submitted, the Board can reasonably consider the implausibility of refugee's claim and reject on grounds that it was implausible that agents of persecution would behave in this way (*Ariyaputhiran v. MCI*, 2002 FCT 1301, per Blanchard J., at para. 17). In this case, the Board was not unreasonable in its assessment of the plausibility of this aspect of the applicant's claim. Further, the Board was not unreasonable to draw a negative inference from this implausibility given that this was a central element of the applicant's claim.

[21] Finally, the applicant argues that the Board's assessment that the applicant's knowledge of Falun Gong was acquired merely to support a refugee claim was erroneous. The applicant submits that the assessment was based on the numerous errors allegedly committed by the Board in respect to the perception of the facts and the negative inferences drawn. A general finding of a lack of credibility on the part of the applicant may extend to all relevant information emanating from his testimony (*Sheikh v. Canada (Minister of Employment and Immigration)*, [1990] 3 F.C. 238, (1990) 71 D.L.R. (4th) 604 (C.A.)). Since this Court has already determined that the Board did not commit

any unreasonable errors in assessing the applicant’s general credibility, the Board’s finding in regard to the applicant’s knowledge of Falun Gong cannot be characterized as unreasonable.

[22] Overall, the Board's credibility analysis "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" pursuant to *Dunsmuir*, above, at para. 47.

[23] For the preceding reasons, this application for judicial review is dismissed. No question of general importance was submitted for the purpose of certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application of judicial review is dismissed.

"Max M. Teitelbaum"
Deputy Judge

FEDERAL COURT

SOLICITORS OF RECORD

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