

Date: 20091015

Docket: IMM-1847-09

Citation: 2009 FC 1052

Toronto, Ontario, October 15, 2009

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

GUANG XI JIN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The present Application concerns a citizen of China who challenges a decision of the Refugee Protection Division (RPD) which rejects his claim for protection on the basis of his religion as a Christian in China.

[2] In support of his claim the Applicant testified before the RPD that he was a member of a house church in China and practiced his Christian faith this way to avoid discovery. On November 12, 2006, the house church was raided and the Applicant and other followers escaped.

[3] On the record before the RPD there is documentary evidence demonstrating that the practice of Christianity is under scrutiny throughout China and Christians are subject to arrests and interrogation.

[4] In reaching its decision, the RPD made this critical finding:

The panel recognizes that persecution of Christians does exist in China and the panel understands the claimant's fear of persecution. However, in the particular circumstances of this claimant, the documentary evidence does not support that there is a serious possibility that he would be persecuted because of his religious belief.

(RPD Decision, p. 4)

[5] As a result, the RPD dismissed the Applicant's claim on the basis of an implausibility finding; it was implausible that the raid occurred as claimed by the Applicant. To support this finding the RPD made the following statement:

Documentation reveals that the treatment of house churches varies regionally. The documentary evidence indicates that Prayer meetings and Bible study groups held among friends and family in homes are not subject to raids. House churches experience difficulty when their membership grows and the claimant testified that the membership of the house church he attended never exceeded eleven members.

The claimant testified the although he had recruited a new believer to the house church, he described himself as a member of the church, testified that he played no leadership role and that services were never held in his home. The documentary evidence indicates that although members have been arrested, the police have concentrated on the arrest and punishment of church leaders and prominent Christians. In 2006 PSB officials detained leaders of house churches for extended periods of time, whole releasing members shortly after interrogating them on the spot. There was also a reported decline in the number of arrests of house church Christians in China in 2006

compared with the previous year. Of the documented arrests of house church Christians, the majority were leaders.

(RPD Decision, pp. 3 - 4)

[6] The standard for making a implausibility finding is stated by Justice Muldoon in *Valtchev v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 1131, at paragraph 7:

A tribunal may make adverse findings of credibility based on the implausibility of an applicant's story provided the inferences drawn can be reasonably said to exist. **However, implausibility findings should be made only in the clearest of cases, i.e., if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant.** A tribunal must be careful when rendering a decision based on a lack of plausibility because refugee claimants come from diverse cultures, and actions which appear implausible when judged from Canadian standards might be plausible when considered from within the claimant's milieu.

[Bold in the original]

[7] I find that the RPD's implausibility finding does not meet the *Valtchev* standard because, on the evidence on the record, the conduct the Applicant experienced in China could be expected on a balance of probabilities. That is, the Applicant's house church experience does occur at various times and places and it is not only church leaders that are persecuted by arrest and detention. As a result, in my opinion, the RPD was in error to find that that "the documentary evidence does not support that there is a serious possibility that [the Applicant] would be persecuted because of his religious belief" (RPD Decision, pp. 4 – 5).

[8] In addition, in the circumstances of the Applicant's claim, I find that the RPD's willingness to disregard the Applicant's testimony on the basis of "documentary" evidence which is said to be more reliable is unwarranted. On this point, in *Guang Yuan Han v. Canada (Minister of Citizenship and Immigration)*, [2009] F.C.J. 978, at paragraph 21, Justice Tannenbaum states as follows:

It stated reason for rejecting the Applicant's evidence is that it prefers the documentary evidence as not having "a personal interest in the outcome of the hearing" (Board decision, p. 5). While this is a purported "reason" for rejecting the applicant's evidence, it is one that this Court has repeatedly found to constitute a reviewable error. As pointed out by Justice Snider in *Cointinho v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1037, this is "tantamount to stating the documentary evidence should always be preferred to that of a refugee claimant's because the latter is interested in the outcome of the hearing. If permitted, such reasoning would always defeat a claimant's evidence" (at para 7) (see also *Sanchez v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1336 at para 54-59).

[9] As a result, I find the RPD's decision is made in reviewable error.

ORDER

Accordingly, I set aside the decision under review and refer the matter back to a differently constituted panel for redetermination.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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