

Federal Court



Cour fédérale

**Date: 20100331**

**Docket: IMM-907-09**

**Citation: 2010 FC 349**

**Ottawa, Ontario, March 31, 2010**

**PRESENT: The Honourable Mr. Justice Mainville**

**BETWEEN:**

**YUQIANG CAO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This concerns an application brought by Yu Qiang Cao (a.k.a. Yuqiang Cao) (the “Applicant”) pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act* for judicial review of a decision by a panel of the Refugee Protection Division of the Immigration and Refugee Board (the “Panel”) dated February 9, 2009 and bearing RDP file number TA5-05671 that determined that the Applicant was not a convention refugee and was not a person in need of protection because of his religious beliefs as a member of a Christian house church.

[2] For the reasons set out below, this application shall be denied.

### **Background**

[3] The Applicant is a citizen of the People's Republic of China. He claims he has a well-founded fear of persecution should he be returned to his country of citizenship by reason of his religious beliefs as a member of a Christian house church. He also claims to be a person in need of protection in light of the risks he faces in China because of his beliefs.

[4] The Applicant arrived in Canada as an international student on December 22, 2004. He filed for refugee protection on April 21, 2005.

[5] The Applicant states that he became a Christian in March of 2004 and participated in church services in China in a small house congregation. After coming to Canada on a student visa, he attended church services. He asserts that in April of 2005 his father informed him that police authorities searched his home in China following accusations concerning the Applicant's involvement in illegal religious activities and in spreading illegal religious rumours to China. He also learnt that three members of his church in China had been arrested.

[6] His claim was first rejected by the Immigration and Refugee Board (Refugee Division) on June 27, 2006. However that decision was quashed by Justice Hughes on November 1, 2007 and remitted back to another panel for reconsideration.

[7] A new Panel heard the matter on January 7, 2009, and in a decision dated February 6, 2009, again rejected the claim.

### **The Decision under Review**

[8] The Panel found that the Applicant was a Christian and could have attended an underground church in the People's Republic of China. However, the Panel did not find credible the Applicant's testimony that his small house church in China had been raided based on the circumstances of this church and on the documentary evidence before the Panel. The Panel also found that a receipt submitted by the Applicant for items seized by the Public Security Bureau to be fraudulent.

[9] The Panel noted that the Applicant had indicated that his house church in Guangdong province did not discuss the overthrow of the Chinese government, did not embarrass the government or the Chinese Communist party in any way, and was not associated with any foreign churches, nor published any materials. The Applicant had also indicated that his house church had eight members. The Panel noted that country documentation indicated that small house churches do not need to register and thus are not considered illegal in the People's Republic of China, and are in any event for the most part tolerated. Consequently, the Panel thus found that the testimony of the Applicant that there were raids on his house church not to be credible.

[10] The Panel further reviewed the country documentation to conclude that the Applicant could return to the People's Republic of China and practice Christianity freely, considering the vast and increasing numbers of Chinese citizens now doing so without fear of persecution.

[11] The Panel thus concluded that the claim had not been made in good faith.

**Position of the parties**

[12] The Applicant is self-represented and submitted an Application record, including an affidavit and a written memorandum of argument. However, the Court file indicates that the registered mail envelope containing the notice of the hearing on the merits of this application was refused. The hearing notice was subsequently sent to the Applicant by regular mail to his address of record. The Applicant was not present at the hearing on this application held in Toronto on March 25, 2010, though the Court delayed the hearing for 45 minutes in order to provide the Applicant an additional opportunity to make his presence known. The hearing was thus finally held without the Applicant. In reaching this decision, I have reviewed and taken into account the Applicant's affidavit and written memorandum of argument submitted into the Court record.

[13] The Applicant's principal argument is that the documentary evidence does not support the Panel's finding that small house churches are legal in China, but rather indicates that in some parts of China small house churches are simply tolerated. The Applicant adds that the Panel failed to consider substantial documentary evidence establishing that the persecution of Christians in China is ongoing and actually increasing. To support these arguments, the Applicant refers to various reports.

[14] The Applicant also challenges the Panel's finding that the receipt he submitted was forged, since the Panel came to this conclusion principally on the basis of the fact the document was handwritten and on the assumption that fraudulent documents were common in China. The Applicant asserts that the Panel acted improperly in so finding.

[15] The minister argues that the Panel's decision was reasonable, and notes that the Panel's decision was based on the lack of evidence of persecution of house churches in Guangdong province. The minister noted that none of the Applicant's material challenged the Panel's findings in relation to Guangdong province.

[16] As for the credibility findings of the Panel, the minister argues that these were based on the evidence submitted and were thus reasonable findings in the circumstances of this case.

### **Standard of review**

[17] The applicable standard of review for refugee determination decisions based on issues of credibility and assessment of evidence has consistently been held to that of reasonableness: see, among other decisions, *Aguebor v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 732 (QL); [1993] 160 N.R. 315; and *Wang v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1153; [2008] F.C.J. No. 1433 (QL) at para. 4. As noted in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at paragraphs 57 and 62, it is not required in every case to determine the proper standard of review when such standard has been satisfactorily

determined by jurisprudence. I will therefore proceed to this judicial review of the decision of the Panel on a standard of reasonableness.

### **Analysis**

[18] The principles applicable to this case have been clearly set out in *Jiang v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 635; [2008] F.C.J. No. 808 (QL) at paragraph 15:

Case law establishes the obligation incumbent upon the Board to make a determination on the central element of the claim. In a line of jurisprudence following *Chen v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 480, [2002] F.C.J. No. 647(QL), this Court has consistently held that even when the Board has determined that an Applicant's claim of religious persecution in his country of origin is not credible either because he was found not to have been a member of the particular religious group, or because he was found not to be persecuted, the Board still must determine either implicitly or explicitly whether he is now in fact a member of that group and whether he would face persecution upon their return (*Li v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 266, [2008] F.C.J. No. 338 (QL); (*Huang v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 132, [2008] F.C.J. No. 164 (QL); (*Li v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 544, [2007] F.C.J. No. 739 (QL); (*Lin v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 510, [2007] F.C.J. No. 692 (QL); (*Liu v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 695, [2006] F.C.J. No. 880 (QL); (*Yang v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 971, [2003] F.C.J. No. 1236 (QL).

[19] The Panel in this case did make a finding as to the Applicant's Christian practices in China and as to his Christian convictions in Canada. The Panel also carried out an analysis and made findings as to the whether the Applicant might encounter religious persecution if sent back to China.

[20] It is trite law that factual findings of administrative tribunals must not be disturbed on judicial review save exceptional circumstances. This Court must not revisit the facts or weigh the evidence: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 51 and 53: “Where the question is one of fact, discretion or policy, deference will usually apply automatically”; *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339, at para. 46: “More generally it is clear from s. 18.1(4)(d) [of the *Federal Courts Act*] that Parliament intended administrative fact finding to command a high degree of deference”.

[21] In this case the Panel’s credibility findings fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. Indeed it was reasonable for the Panel to conclude that the receipt submitted by the Applicant was fraudulent in the circumstances of this case. The fact the document was entirely handwritten rather than a printed form, the documentary evidence concerning the prevalence of forged documents in China, and the Panel’s finding as to the lack of credibility of the Applicant’s claims of persecution all make this specific finding reasonable in these circumstances.

[22] Concerning the conditions for the practice of the Christian faith in small house churches in China, it is not the function of this Court to reassesses the available documentation on country conditions. This Court must rather ensure that the Panel has examined whether the Applicant might encounter religious persecution if sent back to China, and second, it must also ensure that the Panel’s conclusions in this regard are reasonable, i.e. fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[23] In this case the Panel did carry out the required assessment, and issued reasonable reasons supporting its findings based on its analysis of the available documentation.

[24] Consequently the application for judicial review is denied.

[25] No question was proposed for certification and none is warranted in this case.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that** the application for judicial review is denied.

"Robert M. Mainville"

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-907-09

**STYLE OF CAUSE:** YUQIANG CAO v. MCI

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** March 25, 2010

**REASONS FOR ORDER  
AND ORDER:** Mainville J.

**DATED:** March 31, 2010

**APPEARANCES:**

Absent

SELF-REPRESENTED  
APPLICANT

David Knap  
Toronto, Ontario

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Nil

SELF-REPRESENTED  
APPLICANT

JOHN H. SIMS, Q.C.  
Deputy Attorney General of Canada

FOR THE RESPONDENT