

Federal Court		Cour fédérale
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**Date: 20100526**

**Docket: IMM-5203-09**

**Citation: 2010 FC 575**

**Toronto, Ontario, May 26, 2010**

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

**BETWEEN:**

**FENG ZHU DONG**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] It may well be that Ms. Dong was not even in China when she alleges she was persecuted by the authorities for being a member of an underground Christian church. She may well have been in Peru. However, the decision of the presiding member of the Refugee Protection Division of the Immigration and Refugee Board is so rife with error, speculation and conclusions without analysis that this application for judicial review must be granted.

[2] According to Ms. Dong, after completing high school in 2005, including three years of English classes, she was unable to find employment. For all intents and purposes, she sat around her parents' house for the next two years reading books. The following year, after becoming widowed, her aunt joined an underground church and after a number of months spread the gospel to her niece, Ms. Dong.

[3] The applicant joined the church, which after a short while was raided. She escaped and, with the aid of a smuggler, made it to Toronto where she claimed refugee status.

[4] The member found that she was not credible, and that in any event she was not in need of protection.

[5] He found it impossible to believe that a person with twelve years of formal education could not find a job in China. However, no analysis of the job market was carried out.

[6] Ms. Dong did not bring with her any documentation showing that she actually had been in China after December 2005. The Panel did not believe that a person of her status would not have left, and brought with her, a paper trail.

[7] She failed to mention in her Personal Information Statement (PIF) that she had had a boyfriend and that they had broken up. It seems that claimants can never get it quite right. A

negative finding of credibility followed. The PIF cautions claimants to stick to the essentials. Who would have thought that an earlier broken romance was relevant to this claim?

[8] The Member thought that the aunt should have spread the gospel earlier than she did. The answer, which had to be surmise, was that the aunt wanted to have a better understanding of Christianity before talking about it. Why should a negative inference be drawn from what someone else did?

[9] There was some legitimate issue, and confusion, concerning Ms. Dong's real Chinese passport, and counterfeit Hong Kong passport, but not enough to dismiss the claim.

[10] On arrival in Toronto, she gave a written statement in which she said that the authorities had come to her parents' house to arrest her on the Tuesday following the church raid which occurred the second Sunday in December. In the Intake Notes the officer said she had claimed the authorities had come to her house on the Sunday itself. Obviously she would not have deliberately given two contradictory statements at the same time. The proper conclusion is that the Intake Notes are incomplete.

[11] The Member was certainly on to something when analyzing her trip from Changle, People's Republic of China, to Toronto. According to her PIF, she left Changle on 20 December 2007 and arrived in Canada on 25 December 2007. The flight to Toronto was her fourth flight. Her testimony was that she had used her Chinese passport on the first flight and thereafter her fake Hong Kong

passport. The Panel assumed that the first stop was Hong Kong. There is no basis in the record to support this outright speculation. In any event, according to the PIF, she spent overnight at the first destination, overnight at the second destination, arrived at the third destination 22 December and only left for Canada on 25 December. The information from the authorities at the airport at Toronto is that she had arrived on a flight from Lima, Peru.

[12] The Member found it unbelievable that she had no idea where she was on four flights over a period of five days. I also find it hard to believe, but no questioning was carried out, i.e. did she remain at the airports? Did she stay at a hotel, what airlines were flown, what happened to her boarding passes and ticket stubs, what kind of food did she eat, what was the ambient temperature, and so on?

[13] All this led the Member to conclude that she was not a member of an underground church in Fujian Province, as she claims.

[14] However the Member went on to analyze Ms. Dong's knowledge of Christianity. He conceded she had a good knowledge thereof but said she was confused with respect to the commandment to honour thy father and thy mother: since they were opposed to her joining an underground church, she should not have done so. It would seem that Ms. Dong had a better knowledge of Christianity than the Member. A true believer, while respecting and honouring his or her parents, must follow the way, the truth and the light.

[15] The Member analyzed a great deal of documentation with respect to arrests of Christians and reports of house-church crackdowns. No arrests were noted as being in Fujian Province. Although reference was made to reports of house-church crackdowns in a number of provinces, the Member did not mention Fujian, although there is reference to that very fact in the Board's own Responses to Information Requests of 22 June 2007.

[16] The Member further went on to say that if the claimant returned to China, she could attend the Government's sponsored Patriotic churches. She would find the same bible and the same beliefs in God and Jesus Christ. She would be able to attend the Patriotic church without fear of arrest or detention. This statement reflects a fundamental misconception of freedom of religion, one of the grounds for protection cited in the United Nations Convention and found in Section 96 of the *Immigration and Refugee Protection Act*. One is entitled to select one's own place of worship, and one's sect.

[17] The Member seems to be of the impression that a religious adherent is not subject to persecution if only her place of worship is destroyed, but she is not subject to arrest. Freedom of religion includes the right to go public, the right to spread the gospel, the right to bear witness. As Mr. Justice Denault stated in *Fosu v. Canada (Minister of Employment and Immigration)*, 90 F.T.R. 182, 27 Imm. L.R. (2d) 95, basing himself on the Handbook of Procedures and Criteria for Determining Refugee Status, United Nations High Commissioner for Refugees:

It appeared from a careful analysis of the evidence and the decision in the case at bar that this Court should intervene. I feel that the Refugee Division unduly limited the concept of religious practice, confining it to "praying to God or studying the Bible". The fact is

that the right to freedom of religion also includes the freedom to demonstrate one's religion or belief in public or in private by teaching, practice, worship and the performance of rites. As a corollary to this statement, it seems that persecution of the practice of religion can take various forms, such as a prohibition on worshipping in public or private, giving or receiving religious instruction or, the implementation of serious discriminatory policies against persons on account of the practice of their religion. In the case at bar I feel that the prohibition made against Jehovah's Witnesses meeting to practise their religion could amount to persecution. That is precisely what the Refugee Division had to analyze.

[18] For all these reasons, judicial review shall be granted and the matter referred back for re-determination. There is no serious question of general importance to certify.

**ORDER**

**FOR REASONS GIVEN;**

**THIS COURT ORDERS that:**

1. The judicial review is granted.
2. The matter is referred back to another Panel of the Refugee Protection Division of the Immigration and Refugee Board for re-determination in light of these reasons.
3. There is no serious question of general importance to certify.

“Sean Harrington”

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Judge

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

**DOCKET:** IMM-5203-09

**STYLE OF CAUSE:** FENG ZHU DONG v. M.C.I.

**PLACE OF HEARING:** TORONTO, ONTARIO

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

**REASONS FOR ORDER:** HARRINGTON J.

**DATED:** MAY 26, 2010

**APPEARANCES:**

Hart A. Kaminker FOR THE APPLICANT

Khatidja Mooloo FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Hart A. Kaminker FOR THE APPLICANT  
Barrister & Solicitor  
Toronto, Ontario

Myles J. Kirvan FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Toronto, Ontario