

Federal Court



Cour fédérale

**Date: 20101215**

**Docket: IMM-2154-10**

**Citation: 2010 FC 1289**

**Toronto, Ontario, December 15, 2010**

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

**BETWEEN:**

**SEN LIN LI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The present Application concerns a decision of a Member of the Refugee Protection Division (RPD) in which the Applicant's claim for refugee protection was dismissed on a finding that the Applicant had not established his identity. The Applicant's claim for protection is based on his subjective and objective fear of persecution and risk as a Christian citizen of China.

[2] In support of his claim, the Applicant tendered into evidence a number of documents to establish his identity: a Chinese Resident Identity Card in his name which the RPD Member found

to be fraudulent on the basis of an uncontested forensic analysis; an original Hukou and an original marriage certificate each in his name; and photocopies of his wife's and son's Identity Cards. With respect to each of these documents the RPD Member applied expert knowledge to find that they displayed deficiencies on their face, and these perceived deficiencies were applied to support the negative identity finding made. Indeed, the Applicant's explanations of the circumstances under which he acquired the false Identity Card and the reasons for his belief that no deficiencies existed in the documents submitted were not accepted:

I find that the claimant has not provided any reasonable explanations for the problematic documents disclosed and lacking that, I find that he has not established his identity and therefore I reject his claim.

(Decision, paragraph 11)

[3] In my opinion, the conduct of the hearing leading to this conclusion exposes a fundamental fact-finding error.

[4] The transcript of the hearing conducted before the RPD Member reveals that both the RPD Member and Counsel for the Applicant have expert knowledge of identity issues arising with respect to refugee claimants from China. The RPD Member's expertise played out during the course of the hearing by the Member stating his understanding of what might be expected of the identity documents supplied by the Applicant, with Counsel for the Applicant responding with arguments intended to dissuade the RPD Member from making negative findings. It is easy to conclude that the RPD Member's confidence in his knowledge allowed him to quickly engage on the identity issues during the course of the hearing and, following the hearing and submissions by Counsel for the Applicant, to immediately orally render the negative decision which was subsequently committed to writing. In my opinion, a rush to judgment facilitated the error made.

[5] It is uncontested that a Hukou is an important identity document and no finding was made by the RPD Member that the original Hukou submitted by the Applicant was not his. With respect to the Hukou the Member found as follows:

The claimant disclosed a Hukou but as I noted earlier, there is a place for the signature and name for the person who registered the Hukou. Neither the signature nor the name appears on the pages of the Hukou disclosed. Counsel noted that quite often some personal information in various boxes in the Hukou page is not provided and I agree. However, the signature and the name of the person who registered the Hukou are different. In my experience it is always provided.

(Decision, paragraph 8)

[6] However, after the hearing, and after oral reasons were provided, Counsel for the Applicant pointed to evidence which had not been considered by the RPD Member before finding that the Hukou was deficient, and which appears to directly address the deficiency concern. This exchange is appended to the written decision presently under review immediately following paragraph 11 as quoted above:

**POST-DECISION EXCHANGE**

COUNSEL: I am sure that this will displease the panel but in light of the panel's comments about the *hukou*, I am just examining the original document and I see a faint stamp, which I have asked the interpreter to translate. There is a faint stamp beside -- first of all, the Chinese characters say, a person who...

INTERPRETER: Undertaker's stamp.

COUNSEL: Undertaker's stamp, which I presume does not need to...

INTERPRETER: The stamp says that, say a police officer, Li Chuan Xian (ph).

COUNSEL: So there is a stamp that indicates a civil police named. You can see it is quite faint but it is in the *hukou* beside the area where the undertaker, I think has been translated as person who issued -- is that what you mean by undertaker?

INTERPRETER: The person who was responsible for processing this document.

COUNSEL: Okay.

MEMBER: Is there a name?

INTERPRETER: Li Chuan Xian (ph).

MEMBER: Okay. I have this information that was not available earlier but I find it is not sufficient to change the decision.

[Emphasis added]

[7] In my opinion, once presented with evidence which showed that the finding at paragraph 8 of the reasons was made in probable error and, as such, was very much to the benefit of the Applicant's effort to prove his identity, the RPD Member was required to carefully reconsider the evidentiary value of the Hukou. To meet this obligation it was necessary for the Member to clearly state why the new information was "not sufficient". Because no reason is given, I find that the decision under review as unreasonable.

**ORDER**

The decision under review is set aside and the matter is referred back for redetermination by a differently constituted panel.

There is no question to certify.

“Douglas R. Campbell”

---

Judge

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

**DOCKET:** IMM-2154-10

**STYLE OF CAUSE:** SEN LIN LI v. THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** December 14, 2010

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

**DATED:** December 15, 2010

**APPEARANCES:**

Shelley Levine FOR THE APPLICANT

Prathima Prashad FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

LEVINE ASSOCIATES FOR THE APPLICANT  
Barristers & Solicitors  
Toronto, Ontario

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