

Federal Court



Cour fédérale

Date: 20110630

Docket: IMM-6475-10

Citation: 2011 FC 811

Toronto, Ontario, June 30, 2011

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

YONG HANG YANG

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Yong Hang Yang seeks judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board which found that he was neither a Convention refugee nor a person in need of protection.

[2] The Board found that Mr. Yang's story regarding his alleged involvement with a "House Church" in China to be totally lacking in credibility. It did accept that he was now a practicing Christian, but found that he could practice his faith in Fujian province.

[3] Mr. Yang asserts that he was denied a fair hearing by the Board as it referred to documentary evidence that was not properly before it at the time of the hearing, without giving him an opportunity to respond. He further submits that the Board erred in finding that he would not face a serious possibility of persecution in China.

[4] For the reasons that follow, I find that Mr. Yang was not denied procedural fairness as a result of the Board's treatment of the documentary evidence. I am also satisfied that the Board did not err in its assessment of the risk faced by Mr. Yang should he return to China.

Background

[5] Mr. Yang is a 38-year old man from Fujian province, China. Prior to leaving China, Mr. Yang was employed as a construction worker. He arrived in Canada on May 29, 2008, and made a claim for refugee protection.

[6] Mr. Yang states that he was first introduced to Christianity in the spring of 2008 through a close friend. His friend invited Mr. Yang to attend an unregistered house church. Mr. Yang did not go to church with his friend right away, because he knew that house churches were illegal in China. A few days later, Mr. Yang agreed to go with his friend. The service was held in a house and was attended by 10 people. Mr. Yang subsequently volunteered his services as a construction worker to the church and did renovations to the houses that were used by the church.

[7] On April 27, 2008, Mr. Yang was unable to go to church because he had to finish some urgent work. He claims that he received a call from a church member who told him that the church had been raided by Public Security Bureau officers. Some of the members escaped, but the pastor and Mr. Yang's friend had been arrested. The caller advised Mr. Yang to go into hiding.

[8] Mr. Yang went to his aunt's house to hide. Later that night, Mr. Yang's wife called him and told him that the PSB had come to their home looking for him. The officers had interrogated Mr. Yang's wife about his illegal religious activities and his assistance in renovating the house churches. The PSB returned to the home several times in search of Mr. Yang.

[9] Mr. Yang believed that he could no longer stay safely in China, and came to Canada with the assistance of an agent. Upon his arrival in Toronto, Mr. Yang joined a Protestant church, and was baptized on September 27, 2008.

The Board's Decision

[10] The Board found Mr. Yang's story of what occurred in China not to be credible. There were inconsistencies in his evidence that lead the Board to conclude that he had failed to establish a credible factual basis for his claim.

[11] The Board also rejected Mr. Yang's *sur place* claim. Although it accepted that he is now a practicing Christian in Toronto, it did not find that Mr. Yang would face a serious possibility of persecution were he to return to Fujian province. The Board noted that Fujian has the most liberal

policies regarding religious practice in all of China, especially with respect to Protestant Christianity. The Board further found that there was little evidence of persecution of ordinary house church members in Fujian province.

Analysis

The Board's Use of New Evidence

[12] Mr. Yang submits that the Board committed a breach of natural justice and procedural fairness by relying on a document that was released almost two and a half months after his hearing. This document was not disclosed to Mr. Yang at any point prior to the release of the Panel's decision, and he was given no opportunity to respond to this evidence.

[13] Mr. Yang's hearing before the RPD took place on April 12, 2010. In its decision, the Board referred to the 30 June 2010 version of Response to Information Request (RIR) CHN103500.E from the National Documentary Package (30 July 2010) entitled: "Situation of Protestants and treatment by authorities, particularly in Fujian and Guangdong" (2005 – May 2010). The document is an updated version of the RIR CHN100387.E, dated 7 September 2005, which was contained in the 17 March 2010 National Documentation Package that was before the Board at the time of Mr. Yang's refugee hearing.

[14] The respondent submits that this was simply a typographical error, and that the Board inadvertently cited the newer version of the document. Moreover, the respondent points out that Mr. Yang has not pointed to statements in this newer document that were not in the earlier version.

[15] Where an issue of procedural fairness arises, the task for the reviewing Court is to determine whether the process followed by the decision-maker satisfied the level of fairness required in all of the circumstances: see *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339, at para. 43.

[16] It is a breach of procedural fairness for a decision-maker to base his or her decision on evidence that was not properly before the Board, without giving the applicant an opportunity to respond: *Muthusamy v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 1333, 50 A.C.W.S. (3d) 475 at para. 2; *Bonilla v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 889, [2010] F.C.J. No. 1106.

[17] However, it is clear that reference to the June 2010 document was merely a typographical error on the part of the Board. The reference in question describes the document as being part of the March 17, 2010 National Documentation package. This is obviously an error, as a document from June of 2010 would not have been in existence in March of that year.

[18] Moreover, a close reading of the Board's decision and the 2005 and 2010 RIR's reveals that the statements in the Board's decision about the treatment of Protestants by the Chinese government, particularly in Fujian province, were derived, almost verbatim, from the 2005 RIR, even though they were attributed to the 2010 document.

[19] That what the Board had before it was the 2005 document is further confirmed by the fact that it is the 2005 document and not the 2010 document that is contained in the Certified Tribunal Record.

[20] Although the Board did err in the way that the document was cited, I am satisfied that the document actually relied upon by the Board was in fact the 2005 RIR, with the result that there was no breach of procedural fairness in this case.

The Board's Assessment of Risk

[21] While the Board found that Mr. Yang was not credible in relation to his claims of persecution in China, it accepted that he is now a practicing Christian. The Board found, however, that he would not face a serious possibility of persecution if he were to return to China.

[22] Mr. Yang submits that the Board erred in its consideration of risk because it only considered the risk that he would face if he were to practice his religion as a mere member of an underground house church, without considering that he could be at risk if he were to choose to proselytize or become a church leader.

[23] The Board was required to consider the risk faced by an individual with the profile of the applicant. There was no evidence before the Board that Mr. Yang's understanding of his religious obligations required him to proselytize, nor was there any evidence that he aspired to a leadership position within his church. As a consequence, the risk that he would face if he were returned to China had to be assessed on the basis that he would be a mere member of a house church.

[24] The Board found that Mr. Yang would not face a serious possibility of persecution if he were to worship in a small unregistered house church. In coming to this conclusion, the Board

examined the country condition information before it, observing that there was little evidence that Protestant Christians were persecuted in Fujian province.

[25] The Board acknowledged the existence of documents in the record that referred to the closure of house churches in Fujian province, and explained why it chose to give them little weight. This distinguishes this case from the situation that faced the Court in *Liang v. Canada (Minister of Citizenship and Immigration)*, 2011 FC 65, [2011] F.C.J. No. 74, where this evidence did not appear to have been considered by the Board.

[26] As a consequence, I am satisfied that the Board's finding that Mr. Yang would not face a serious possibility of persecution should he return to China is reasonable.

Conclusion

[27] For these reasons, the application for judicial review is dismissed.

Certification

[28] Neither party has suggested a question for certification, and none arises here.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed.
2. No serious question of general importance is certified.

“Anne Mactavish”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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