

Federal Court



Cour fédérale

Date: 20120104

Docket: IMM-3177-11

Citation: 2012 FC 9

Ottawa, Ontario, January 4, 2012

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

WENJING QIN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 (Act) for judicial review of the decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated 13 April 2011 (Decision), which refused the Applicant's claim for protection under sections 96 and 97 of the Act.

BACKGROUND

[2] The Applicant is a citizen of the People's Republic of China (PRC), and comes from Tianjin. She is a Christian and attended an underground house-church in the PRC. She attends a Baptist church in Canada. She first came to Canada on a visitor's visa in June 2008 for work; she stayed until October 2008, when she returned to the PRC. The Applicant applied for a second visitor's visa, which was issued on 14 November 2008 and was valid until 16 May 2009. She came to Canada a second time for work on 22 November 2008. At that time, she intended to stay in Canada until 4 December 2008.

[3] While she had lived in the PRC, the Applicant was introduced to Christianity in April 2008 and began attending an underground Christian house-church in May 2008. She attended weekly and participated in worship services. She says that, while she was still in Canada, the Public Security Bureau (PSB) discovered her underground church in China and raided it on 11 January 2009. Her husband, who was still living in the PRC, told her about what had happened. He told her that on 14 January 2009 the PSB had come to their home and asked him where she was. He also told her that on 18 January 2009, three members of her house-church had been arrested, detained, and sentenced to prison terms.

[4] The Applicant believed that the PSB was looking for her because of what her husband had told her. She claimed protection in Canada on 20 February 2009. She says her husband told her that the PSB again came to her home on 23 February 2009. On 25 February 2009, the Applicant's employer in the PRC dismissed her from her employment, saying in a letter that "this employee [was] involved in the illegal church in the PRC and the P.S.B. ever (*sic*) came for investigation at this company, which affected the reputation of this company." The Applicant believes that the PSB

remains interested in her for her religious activities, in part because PSB officers have gone to other house-church members' homes.

[5] To support of her claim, the Applicant provided a number of documents to the RPD. She submitted a Personal Information Form (PIF) on 9 March 2009. She also submitted a National Identity Card from the PRC on 20 July 2010. She submitted a copy of the dismissal letter from her employer on 24 March 2011 and an amended PIF on 28 March 2011.

[6] The RPD heard the Applicant's claim for protection on 7 April 2011. At the hearing, the Applicant, her lawyer, a Refugee Protection Officer, an interpreter, and the RPD panel member were all present. The RPD said at the hearing that it was satisfied that the Applicant was a practising Christian in the PRC and Canada. The RPD made its Decision on 13 April 2011 and gave notice to the Applicant on 26 April 2011.

DECISION UNDER REVIEW

[7] The RPD found that the Applicant was neither a Convention refugee nor a person in need of protection. It found that her allegations of a raid on her house-church in the PRC, her story of pursuit by the PSB, and her reasons for staying in Canada after 4 December 2008 were not credible. The RPD also found that the Applicant would be able to practise Christianity in the congregation of her choosing in Tianjin and did not face a serious possibility of persecution in the PRC for doing so.

Identity

[8] The Applicant established her personal identity based on the documents she had submitted, including her Resident Identity Card. The RPD also found that, based on her knowledge of

Christianity and a letter from Reverend Daniel Clark, the pastor of the church she attends in Canada, she had established her identity as a Christian.

Credibility

[9] The RPD noted that the Applicant has 17 years of formal education and that claimants may face difficulties because of cultural differences, the atmosphere of a hearing, and the stress of answering questions. It said that it had taken these factors into account in assessing the Applicant's credibility, along with her age and background.

Delay in Leaving Canada

[10] The RPD noted that the Applicant had come to Canada on a work visa in November 2008. She was supposed to return to PRC on 4 December 2008, but she had not done so. At the hearing, the RPD asked the Applicant why she did not leave as planned; she explained that the project she had come to Canada to work on was not complete as of 4 December 2008, so she stayed past her expected departure date. Based on several negative inferences as to her credibility, the RPD found that her explanation for why she had not left on 4 December 2008 was not credible.

[11] First, the RPD drew a negative inference from the fact that she was unable to provide documents to demonstrate why the work project could not be completed on time. When the RPD asked at the hearing whether the Applicant could show that the project actually went over time, she said she could not request documents from her company because she had been dismissed. She testified that her company had an office in Markham, Ontario, so the RPD asked why she did not request documents from the local office. She said that she had tried to contact them, but was unable

to. The RPD also asked at the hearing why she did not mention her unsuccessful attempts to obtain documents from the Markham office when asked if she could get documents to demonstrate that the project actually went over time. Given that she has 17 years of education and is a confident and articulate person, the RPD found that the Applicant should have been able to provide a reasonable explanation for not requesting documents which would show that her project actually took longer than expected. Because she could not provide a reasonable explanation, the RPD drew a negative inference as to her credibility.

[12] Second, the RPD drew a negative inference as to the Applicant's credibility from her lack of effort to obtain documents from the local office of her company in Markham. At the hearing, the Applicant testified that she had telephoned the company and sent them emails, but had not received a response. The Applicant also testified that she had gone to the place where her company's office was, but it had changed locations. When she asked the people at that location if they knew where her company had moved to, they could not help her. The RPD found that the Applicant had the means and ability to take other steps to locate her parent company, but had not done so, so it drew a negative inference as to her credibility.

[13] Third, the RPD noted the Applicant's failure to ask local companies her employer had worked with for documents which would confirm that the project had run over time. The RPD said that, when asked why she did not do this, her answers were vague and convoluted and that she failed to provide a reasonable explanation, so it drew a negative inference as to her credibility.

[14] Based on these three negative inferences as to her credibility, the RPD found that the Applicant's testimony about why she did not return to the PRC on 4 December 2008 was not credible.

Pursuit by the PSB

[15] The RPD also found that the Applicant's allegation that the PSB had raided her house church was not credible. It found that there was no persuasive evidence that any members of her house-church in the PRC had been arrested and concluded that she was not being pursued by the PSB.

[16] The RPD found that the Applicants statement that the PSB had shown her husband a warrant when it went to her house in the PRC on 23 February 2009 was not credible. At the hearing, the RPD asked the Applicant if the PSB officers had shown her husband anything to say that they were looking for her. She said that they had displayed their badges. The RPD then asked if they had shown her husband a warrant or a summons. She confirmed that they had. When the RPD asked the Applicant why she did not initially mention the warrant and why she omitted this detail from her PIF, she said she was nervous. In the Decision, the RPD rejected her explanation, saying she did not appear nervous at the hearing, the question was clear and ambiguous, and her answer did not explain the omission from her PIF. On this basis, the RPD found that her mention of the warrant was not credible.

[17] The RPD also found the Applicant's testimony about what the PSB officers had done when they searched her home was not credible. At the hearing, the following exchange occurred:

RPD: So, on that first day when they came to your house, what did the PSB do?

Applicant: They just went to look for me and ask my husband where I was and my husband say [*sic*] I have gone abroad. And then they ask [*sic*] my husband when I will be back and my husband said that he did not know. And then they ask [*sic*] what kind of social activities I do and then they ordered my

husband that the moment I went back, I have to report to the PSB station and to help them with the investigation.

RPD: So besides talking to your husband, did they do anything else?

Applicant: No

RPD: They did not search your home?

Applicant: No, they did not search.

[...]

RPD: Did they ever search your home?

Applicant: According to what I heard from my husband, the moment they entered the house they were just looking around.

RPD: Did they look into all the bedrooms and under... in the closets or under the bed?

Applicant: All they did was that whatever door was closed, they would push it open and have a look.

RPD Well is that not searching?

Applicant: I thought search means that it is a formal kind of thing that they do have to go through every place.

[18] The RPD found that there was a discrepancy between her statement that the PSB had not searched her home and her statement that they pushed doors open and looked into rooms. The RPD rejected her explanation that she thought a search meant something formal. The RPD said that, in this passage, the Applicant's testimony was internally inconsistent and evolved to try to explain away an obvious inconsistency. It therefore found that her testimony was not credible.

[19] In addition to her oral testimony, the RPD also looked to documentary evidence to confirm the Applicant's allegation that she was being pursued by the PSB. It noted that she had not provided any corroborating evidence for her allegation that members of her house-church had been arrested, detained, and sentenced to prison.

[20] The RPD examined the letter that the Applicant had provided in support of her claim. The letter purported to be from her employer's office in the PRC and said that she was dismissed because of her underground church activities. The RPD noted that the Applicant had not provided this letter at the same time as her other documents and rejected her explanation that her consultant had forgotten to send it. The RPD said that the letter was central to the Applicant's claim and its importance would be self-evident. The RPD also noted that the Applicant had not mentioned the letter in either her original PIF or the amended PIF she filed on 28 March 2011 after she submitted the letter. The RPD drew a negative inference from her failure to mention the letter in either PIF and placed little weight on the letter.

[21] Based on its findings, the negative inferences it drew, and the lack of evidence of arrests of other members of her house-church, the RPD found that the claimant's testimony about being pursued by the PSB was not credible. The RPD found that the Applicant is not being pursued by the PSB for her underground church activities.

Risk of Persecution

[22] After assessing the credibility of the Applicant's narrative, the RPD turned to the risk of persecution she faces in the future. To conduct this analysis, the RPD referred to the country documentation that it had available to it.

[23] The RPD noted that the Executive Secretary of the Hong Kong Christian Counsel said in 2010 that Chinese Authorities have demonstrated a high degree of tolerance to Christian activities in general and toward non-registered Christian groups.

[24] The RPD found that there was no persuasive evidence of persecution of Christians in Tianjin – the Applicant’s home city – in any of the documentation it had on religious persecution in the PRC. It found that, though there were incidents of persecution against Christians in other areas of the PRC, it had no evidence that there was persecution in Tianjin. The RPD noted that a 2009 report from the U.S. State Department, the *International Religious Freedom Report (IRFR)*, showed arrests and persecution in Beijing, Shanghai, the Xinjiang Uyghur Autonomous Region, Jilin province, Hebei province, Henan province, Zhejiang province, Guangdong province, Anhui province, Hubei province, Sichuan province, Heilongjiang province, Inner Mongolia, and Shandong province. Though there was persecution of Christians in these areas, the IRFR did not mention any incidents in Tianjin. The RPD noted that an incident was reported where authorities had attempted to dismantle a building where Christian meetings were held, but said that the authorities could have expropriated the building for development purposes. The RPD found that, if there were recent arrests or incidents of persecution of Christians in Tianjin, there would be documents from reliable sources that would show this.

[25] The RPD also noted that the IRFR says that the extent of religious freedom in the PRC varies in different areas of the country. That report says that unregistered groups have expanded and most groups are unregistered. Those groups which are unregistered also no longer operate in strict secrecy. The RPD found that, in some areas, officials did not do much to interfere with worship or other activities of unregistered churches. The RPD also noted a 2006 article from the Christian

Century Foundation – *Church and State in China* – which says that only gatherings of forty or more people are required to register. It further noted a report from the UK Home Office – *Country of Origin Information Report: China* – which said that religious meetings of family and friends do not need to register. The Applicant had said her church was small.

[26] The RPD considered the Applicant’s description of her house-church, its location in Tianjin, and the documentary evidence before it. On the basis of these factors, the RPD found that the house church she attended was never raided by the PSB and she is not wanted by the PSB. The RPD said that it was guided in its assessment of the documentary evidence by this Court’s decisions in *Yu v Canada (Minister of Citizenship and Immigration)* 2010 FC 310 and *Li v Canada (Minister of Citizenship and Immigration)* 2010 FC 205.

[27] The RPD also considered whether there was a risk that the Applicant would actually suffer harm if returned to the PRC. Following *Chan v Canada (Minister of Employment and Immigration)*, [1995] 3 SCR 593, relevant factors in this analysis include both the laws in place in a claimant’s country of reference and the manner in which those laws are applied. The RPD found that, because the laws in Tianjin were not enforced in the same way they were in other areas of the PRC, the Applicant would be able to practise Christianity in the congregation of her choosing in Tianjin. The RPD found that she would not face a serious possibility of persecution in Tianjin on the basis of her Christian practice.

[28] The RPD noted that at the hearing the Applicant had pointed to a 2008 chart from the China Aid Association (China Aid). That chart identified Beijing as one of the areas with the worst persecution of Christians; the Applicant had submitted the risk in Tianjin would be similar to that in Beijing because they are only an hour apart, by car. The RPD rejected this submission, saying that

the sources it had relied on were more recent and originated from a variety of independent sources which could be expected to have knowledge of the situation of Christians in Tianjin.

[29] Based on all of its previous findings, the RPD found that the Applicant was not a Convention refugee under section 96 of the Act or a person in need of protection under section 97 of the Act.

STATUTORY PROVISIONS

[30] The following provisions of the Act are applicable in this proceeding:

Convention refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

...

Person in Need of Protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not

Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

...

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle

have a country of nationality, their country of former habitual residence, would subject them personally	a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :
(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or	a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;
(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if	b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,	(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection
(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,	(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and	(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.
[...]	[...]

ISSUES

[31] The Applicant raises the following issues in this application:

- a. Whether the RPD's credibility findings were reasonable;
- b. Whether the RPD's finding that she would be able to practise Christianity in Tianjin was reasonable;
- c. Whether the RPD's interpretation of persecution was reasonable.

STANDARD OF REVIEW

[32] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9, held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[33] In *Elmi v Canada (Minister of Citizenship and Immigration)* 2008 FC 773, at paragraph 21, Justice Max Teitelbaum held that findings of credibility are central to the RPD's finding of fact and are therefore to be evaluated on a standard of review of reasonableness. Further, in *Hou v Canada (Minister of Citizenship and Immigration)* 2005 FC 1586, Justice John O'Keefe held at paragraph 23 that the standard of review on a finding of credibility was patent unreasonableness. Also, in *Aguebor v Canada (Minister of Citizenship and Immigration)*, [1993] FCJ No 732 (FCA) the Federal Court of Appeal held that the standard of review on a credibility finding is reasonableness. The standard of review on the first issue is reasonableness.

[34] In *Sarmis v Canada (Minister of Citizenship and Immigration)* 2004 FC 110, at paragraph 11, Justice Michel Beaudry held that the standard of review on the assessment of persecution was patent unreasonableness. Also, in *Cornejo v Canada (Minister of Citizenship and Immigration)* 2010 FC 261, Justice Michael Kelen held at paragraph 17 that the standard of review on the assessment of subjective fear of persecution was reasonableness. Justice O'Keefe made a similar finding at paragraph 20 in *Brown v Canada (Minister of Citizenship and Immigration)* 2011 FC 585. The standard of review on the second issue is reasonableness.

[35] In *Rajudeen v Canada (Minister of Employment and Immigration)*, [1984] FCJ No 601, (1984) 55 NR 129 (cited to NR), the Federal Court of Appeal referred to the Living Webster Encyclopedic Dictionary and held at page 133 that persecution is

To harass or afflict with repeated acts of cruelty or annoyance; to afflict persistently, to afflict or punish because of particular opinions or adherence to a particular creed or mode of worship.

[36] This definition was followed by Justice Eleanor Dawson in *Tolu v Canada (Minister of Citizenship and Immigration)* 2002 FCT 334 at paragraph 16. Further, in *Canada (Minister of Citizenship and Immigration) v Hamdan* 2006 FC 290, Justice Johanne Gauthier held at paragraph 17,

With respect to the mixed question of facts and law as to whether or not specific acts of discrimination amount to persecution, the standard of reasonableness simpliciter applies....

[37] Justice Yvon Pinard followed a similar approach in *Prato v Canada (Minister of Citizenship and Immigration)* 2005 FC 1088 at paragraph 8. In this case, the RPD was called on to interpret persecution within the meaning of section 96. Based on the foregoing, the standard of review on the third issue is reasonableness.

[38] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with “the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.” See *Dunsmuir*, above, at paragraph 47, and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraph 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the “range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

ARGUMENTS

The Applicant

The RPD’s Credibility Finding was not Reasonable

[39] The Applicant notes that the RPD drew an adverse inference from what it said was a contradiction in her testimony about what the PSB officers did when they went to her home on 23 February 2009. She first said that they did not search the house, then later said that they pushed open doors in her house and looked into rooms. The RPD rejected her explanation at the hearing that she thought “search” meant a formal search. The Applicant says that the RPD did not explain why she ought to have thought that looking into rooms in her house was the same as a search where officers went through everything in the house. Because it did not explain its reasoning, the RPD’s conclusion on credibility based on this inconsistency was unreasonable.

[40] The Applicant also says that the RPD’s credibility finding was unreasonable based on the weight it put on the dismissal letter she submitted. The RPD rejected the Applicant’s explanation for

why she did not submit the letter with her other documents: that her consultant had forgotten to send it. The Applicant says that there is no link between the importance of the letter to her claim, which the RPD focussed on, and her consultant's inadvertent error in not submitting this document. The Applicant further says it was unreasonable for the RPD to give little weight to the letter because it was not mentioned in her PIF. She says the dismissal would be self-evident from the letter itself, which was submitted to the RPD at roughly the same time as the amended PIF.

The RPD's Finding that the Applicant Could Practise Christianity was Unreasonable

[41] The Applicant says that the RPD's conclusion that she could practise her Christian faith in the church of her choosing was unreasonable. She says that the RPD only analysed evidence which supported its conclusion and did not analyse contrary evidence. The RPD also pointed to no evidence which suggested there was actual freedom of religion in Tianjin, which makes its conclusion on this issue unreasonable

[42] When it concluded that the Applicant would be able to practise Christianity in Tianjin, the RPD relied on a report from the Hong Kong Christian Counsel. The Applicant notes that Hong Kong is part of the PRC and that the RPD should not have relied on a report from an organization which is in the PRC.

[43] The RPD relied on the IRFR to show that unregistered Christian groups in the PRC no longer always operate in strict secrecy. The Applicant says that this report also shows that religious persecution still often occurs in the PRC. Though enforcement of laws restricting religious freedom varies by location in the PRC, the IRFR does not show that those laws are not being enforced at all or that some areas are free of persecution. The Applicant also notes that the IRFR says the Chinese

Government does not acknowledge that any arrests are made for religious activities, so not all incidents of religious persecution are recorded. Further, arrests for religious activities are often classified as “disturbing the social order” to hide the fact that they are actually about religious persecution. The IRFR does not show what the RPD said it shows, so the RPD’s conclusion that the Applicant would be able to practise Christianity in Tianjin was unreasonable.

[44] The Applicant also notes that the RPD relied on information from the State Administration for Religious Affairs – an arm of the Chinese Government – to show that small Christian groups, consisting only of family and close friends, need not register. Contrary to the RPD’s conclusion that this showed her group would not be subject to the interest of the PSB, the Applicant says that the IRFR shows that small groups are sometimes raided by the PSB, even though they are not officially required to register.

[45] The RPD did not refer to any evidence supporting its finding that the Applicant faced no risk in Tianjin. She says that it was improper for the RPD to rely on *Yu* and *Li*, above, because those cases are not appeals, but judicial review applications; although the conclusions may be similar, the record was likely very different. The conclusion that the risk of persecution in Tianjin was low was unreasonable.

The Respondent

[46] The Respondent says that the RPD’s conclusions on credibility and the risk to the Applicant of persecution in Tianjin were reasonable, so the Decision should stand.

The RPD's Credibility Findings Were Reasonable

[47] The Respondent says that findings of fact, including the evaluation of credibility, are within the specialised expertise of the RPD, so its findings should be afforded deference. In this case, the RPD based its credibility determination on the lack of corroborating evidence, discrepancies and omissions from both the Applicant's PIF and oral testimony, and the Applicant's vague and inconsistent answers at the hearing.

Lack of Corroboration

[48] Though the Applicant said in her oral testimony that the PSB officers had showed her husband a warrant when they went to her house on 23 February 2009, she did not provide any corroborating evidence. She also did not provide any evidence corroborating her allegation that three members of her house-church in Tianjin had been arrested and sentenced to lengthy prison terms. Further, the Applicant did not corroborate her explanation of why she did not leave Canada on 4 December 2008. The Respondent says that, in *Adu v Canada (Minister of Employment and Immigration)*, [1995] FCJ No 114 at paragraph 1, this Court held that it may be reasonable for the RPD to expect claimants to provide evidence corroborating their stories. The lack of documents without a reasonable explanation can go to credibility. In this case, the lack of corroborating documents was a reasonable basis for the RPD to conclude that the Applicant was not credible.

Discrepancies and Omissions

[49] The RPD found that the Applicant was inconsistent in her testimony about what the PSB officers had shown her husband when they went to her house on 23 February 2009. First, she said

that they had shown their badges; then, when asked if they had shown a warrant or a summons, she confirmed that they had. When asked to explain why she did not mention the warrant when first asked, the Applicant said she was nervous. In addition, the Applicant changed her answer about what the PSB officers did at her home: she first said that they did nothing but speak to her husband; she later said that they pushed open doors and searched the house.

[50] The Respondent says that the RPD reasonably gave little weight to the dismissal letter the Applicant submitted because she did not mention the dismissal in her PIF, because she did not disclose it with her other documents, and because the letter is unsigned.

[51] The Respondent relies on *Kaleja v Canada (Minister of Citizenship and Immigration)* 2011 FC 668, *Nyayieka v Canada (Minister of Citizenship and Immigration)* 2010 FC 690, and *Zupko v Canada (Minister of Citizenship and Immigration)* 2010 FC 1319. These cases teach that a claimant's failure to mention important facts in his/her PIF which are later described at the hearing is a legitimate basis for the RPD to draw a negative inference as to his/her credibility. The Applicant failed to mention her dismissal and the details of the search of her home in her PIF. She later raised these allegations at the hearing, so it was reasonable for the RPD to look unfavourably on these omissions (see *Sanchez v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 536 at paragraphs 8 and 9).

Vague and Evasive Answers

[52] The Respondent points out that the Applicant was not a forthcoming witness. She gave vague answers, and her testimony evolved in an effort to try to explain obvious inconsistencies. The jurisprudence of this court holds that evasiveness and failing to respond can reasonably ground a

negative credibility finding, so the RPD's Decision was reasonable in this regard (see *Juarez v Canada (Minister of Citizenship and Immigration)* 2010 FC 890 at paragraph 26 and *Higbogun v Canada (Minister of Citizenship and Immigration)* 2010 FC 445 at paragraph 29).

[53] The RPD was reasonable in making an overall adverse credibility finding based on the negative inferences that it drew. It was reasonable for it to reject the Applicants explanation for not disclosing the dismissal letter and for the RPD to draw a negative inference from inconsistencies in her testimony about the search of her home. The Applicant only disagrees with the RPD's conclusions on credibility and the weight it assigned to the evidence. Disagreement is not an appropriate basis to quash a decision.

The Conclusion on Risk was Reasonable

[54] The RPD considered all the evidence for and against the Applicant's claim for protection and gave reasons for preferring some pieces of evidence over others. The RPD also gave thorough, clear consideration to the evidence and made factual findings based on that evidence. It found that:

- a. The Executive Secretary for the Hong Kong Christian Council said there is a high degree of tolerance in the PRC for non-registered groups;
- b. There were no reports of arrests of Christians in Tianjin;
- c. The IRFR said unregistered religious groups have expanded and most do not operate in secret;
- d. The IRFR said unregistered groups act in public;
- e. 50 to 70 Million Chinese worship in unregistered churches;
- f. The UK Home Office Report said prayer meetings and groups do not need to register;

g. The situation in Tianjin does not reflect the situation in other areas.

[55] The Respondent notes that the Applicant was unable to provide sources to support the risk she faced in Tianjin, so the RPD reasonably relied on other documents. The Respondent notes that, in *Li*, above, at paragraph 55, I said that

The points raised by the Applicant go to emphasis and interpretation of evidence given by the Applicant and the relevant country documentation. In the end, it all comes down to matters of weight for the Board and not for this Court.

[56] Because the Applicant only challenges the weight the RPD assigned to the evidence, it is not appropriate for the Court to intervene in this case.

The Applicant's Reply

[57] The Applicant emphasizes that the RPD made a specific finding that she is a Christian and practised her faith both in the PRC and in Canada. It also relied on China Aid's 2010 *Annual Report of Persecution by the Government on Christian House Churches within Mainland China: January 2009-December 2009* (2010 China Aid Report) which detailed an incident where authorities had dismantled a building where a Christian group had met. The RPD said that it was possible the authorities simply expropriated that building for development. The Applicant says that the RPD failed to explain why China Aid – an organization dedicated to reporting on persecution of Christians in China – would report on dismantling a building for expropriation, when expropriation for development has nothing to do with ChinaAid's mandate. She also notes that the RPD said that, though the authorities attempted to dismantle the building, no Christians were arrested.

[58] In *Dong v Canada (Minister of Citizenship and Immigration)* 2010 FC 575, Justice Sean Harrington wrote at paragraph 17 that

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.

[59] The Applicant says that the RPD unreasonably set the bar for persecution at arrest, so the Decision should be quashed. Given the RPD's finding she is a Christian, it was obligated to weigh both the positive and negative evidence going to her claim, and it unreasonably failed to do so. She relies on *Liu v Canada (Minister of Citizenship and Immigration)* 2010 FC 135, where Justice James O'Reilly wrote at paragraph 13 that

In light of the equivocal nature of the documentary evidence, it was important that the Board refer to and weigh both the evidence supporting Ms. Liu's claim and that which contradicted it. Looking at the Board's findings as a whole, I must conclude that its decision was unreasonable.

The Applicant's Further Memorandum

The RPD's Interpretation of Persecution was Unreasonable

[60] At the hearing, the Applicant testified that, to translate her faith into her daily life, she read the Bible, prayed, and shared the gospel. She says that when the RPD considered the risk of persecution, it was implicitly looking only for evidence of arrests and destruction of property and did not consider that persecution is broader than these actions.

[61] In *Fosu v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 1813, Justice Pierre Denault wrote at paragraph 5 that

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.

[62] Also, in *Husseini v Canada (Minister of Citizenship and Immigration)* 2002 FCT 177, Justice François Lemieux held that the RPD must analyze whether limiting the public practice of religion amounts to persecution. In *Zhang v Canada (Minister of Citizenship and Immigration)* 2009 FC 1198, Justice Yves de Montigny found at paragraph 19 that it was an error for the RPD to focus on the number of arrests of Christians as an indicator of the likelihood of persecution. The Applicant says that these cases show that persecution includes a broader array of risks than the risk of arrest or being put in jail. She says that persecution includes the state’s limitation of public practise of religion.

[63] In this case, the RPD unreasonably equated the risk of persecution with the risk of being arrested and put in jail. The Applicant says that the fact that her house-church had to take precautions to avoid detection by the authorities shows the risk of persecution she faces. She notes that one of the ways she practises her faith, as she testified at the hearing, is by spreading the gospel. In the PRC, there is a ban on public proselytizing, which restricts her practise of her faith and this amounts to persecution. When the RPD focussed its analysis of the risk of persecution on the risk of arrest or jail, it made an unreasonable decision. The RPD erred in its assessment of whether the

Applicant would face more than a mere possibility of persecution, because it based its analysis on an unduly limited interpretation of persecution.

The Respondent's Further Memorandum

The RPD Correctly Assessed Persecution

[64] The Respondent says that the RPD's approach to the question of persecution was reasonable. The RPD looked at the general situation in Tianjin and noted the areas where arrests and crackdowns on Christians had occurred. *Lakhani v Canada (Minister of Citizenship and Immigration)* 2008 FC 65 at paragraph 44 teaches that this is a reasonable approach. The RPD did not look only at arrests and the destruction of buildings, as the Applicant has asserted. The RPD wrote, at paragraph 24 of the Decision that

[The] panel notes again that there has been no persuasive evidence of recent arrests or incidents of persecution of Christians in Tianjin and in any of the documentation regarding religious persecution in China.

[65] The Respondent says that the words "incidents of persecution" in the above passage shows the RPD had more in mind than just arrests and the destruction of buildings. The RPD relied on the IRFR and reasonably concluded that the Applicant could practise her Christianity in the congregation of her choosing. Although the Applicant disagrees with the RPD's conclusion, this does not provide the basis for judicial review.

ANALYSIS

[66] As regards credibility, the Applicant only refers to two aspects of the reasons. In my view, the Applicant's objection to the way the RPD handled the search issue cannot be looked at in isolation. When the whole credibility issue is examined it is clear that the RPD had good grounds not to believe the Applicant that the PSB was looking for her. The CTR transcript shows the Applicant changing her answers to fit subsequent questions, even as regards the "search" issue. That analysis was based upon a series of inconsistencies, and most of them were far more serious than the issue about whether the Applicant gave different evidence, or whether the PSB searched her home.

[67] The Applicant's complaint about the way the RPD handled the letter of dismissal from her employer is really just an attempt to have the Court re-examine and re-weigh the facts that the RPD used to arrive at its negative inference. The letter was unsigned (a factor taken into account by the RPD) and the Applicant has not really explained away her failure to refer to the important issue of her dismissal for religious reasons in her PIF. In my view, there is nothing unreasonable about the RPD's conclusions on this point.

[68] All in all, I do not think that the Applicant has established that the negative credibility finding was unreasonable. However, this finding did not dispose of the claim, and the important issue is the RPD's analysis of future risk upon her return to Tianjin. The RPD's analysis of whether the Applicant could practise her religion and worship as she wishes in Tianjin is a fairly conventional one. The RPD points out that persecution of Christians is not uniform throughout

China and looks specifically at the situation in Tianjin. As it said, “the supporting documentary evidence for the claimants home city of Tianjin indicates the risk of persecution for practicing (*sic*) Christians is very low.” Finding no reports of arrests or other forms of persecution in Tianjin – and a great deal of reporting about persecution elsewhere in China – the RPD concludes that Tianjin is a tolerant location and the Applicant will be able to follow her chosen form of worship there without interference from the authorities.

[69] The Applicant questions these conclusions, but her assertions about what the evidence says about the persecution of Christians in China is not specific to Tianjin and her attempts to discredit the reports relied upon are not convincing. It may be possible to question the impartiality of some of the sources, but there is a clear, credible basis for the RPD’s findings. The RPD’s approach in this instance is not out of step with the decisions in *Yu and Li*, above, and *Yang v Canada (Minister of Citizenship and Immigration)* 2010 FC 1274.

[70] Also, in my view, the RPD does not make the mistake identified in *Dong*, above, by only referring to arrests. The RPD refers to incidents of persecution generally, although arrests are a significant part of the picture.

[71] In the end, the Applicant can only point to the 2010 China Aid Report which mentions that in Tianjin some Korean Christians have been expelled, and that, in Jinghai County, authorities had attempted to tear down the meeting building of the Immanuel Church. The full context of these events is not given so that we have no explanation for why the authorities may have acted as they did and the significance of such action for general Christian practise in Tianjin. We also do not

know whether these actions would amount to persecution in terms of Convention and Canadian refugee law. Further, the significance these events have for the Applicant in this case is unclear, since she has provided no convincing evidence that she has been prevented in the past from practising her religion in the PRC in the way she wishes to practise it, including spreading the gospel.

[72] Against these two references, the RPD had to consider the following:

1. The fact that the China Aid Report refers to Tianjin separately means that it is meaningful to treat the city as a distinct area for purpose of examining religious freedom. It also means that Tianjin has been taken notice of, and the only incidents reported are the ones referred to where the evidence is unclear as to the significance of what occurred;
2. The general absence of evidence for religious persecution in Tianjin in a country where there is significant variance in the approach the authorities take to religious practise, but where there are some 50 to 70 million Christians who practise in house churches;
3. The Applicant had practiced her religion in China since early 2008, including her activities of spreading the gospel (she is no more specific than this) and could provide no convincing evidence that she had been persecuted and prevented in any way from worshiping and spreading her religion in any way she chose.

[73] The full range of documentation examined by the RPD consistently makes it clear that religious tolerance in China varies significantly from area to area. Against the total evidentiary background, the Applicant asks the Court to find that the RPD acted unreasonably when it concluded that:

- a. The risk of persecution for practising Christians in Tianjin is very low; and
- b. There was no serious possibility of persecution if she were to return to Tianjin to practise her religion.

[74] Bearing in mind the *Dunsmuir* test, the Court cannot say that the Decision was unreasonable in this regard. I repeat what I said in *Yang*, above, when dealing with similar issues involving an applicant from Fujian:

33 Generally speaking, the Applicant says it was unreasonable for the RPD to conclude that a lack of reports of arrests or other persecution means that the Applicant can practise her religion as she wishes to practise it in Guangdong. However, in *Nen Mei Lin v. Canada (Minister of Citizenship and Immigration)*, (February 4, 2010), IMM-5425-08 at page 3, the Court appears to have found this a reasonable conclusion in relation to Fujian Province: “it was reasonable for the Board to conclude that if such persecution had occurred in Fujian, it would have been documented.” Also, see *Yu*, above, at paragraph 32.

34 The Applicant also points out that the RPD appears to have overlooked certain specific references to persecution in Guangdong as well as general references to persecution of Christians in China that do not exclude Guangdong.

...

37 The RPD also referred to the Liangren Church incident but discounted this as not being sufficiently well-documented to allow any conclusions about whether it was indicative of persecution of Christians in Guangdong. In *Jiang v. Canada (Minister of Citizenship and Immigration)* 2010 FC 222, Justice Lemieux dismissed a review application involving a claimant from Fujian

Province and accepted the Respondent's argument that “the documentary evidence shows where the applicant lives there are minimum restraints, people practice generally freely and those who may be affected unduly do not fit [the applicant's] profile.”

38 The documentary evidence in *Jiang* included information concerning one person who had been arrested, but the RPD had concluded that only one example of an arrest in Fujian was not sufficient evidence that the claimant would face persecution. Much the same can be said for the situation in the present case in so far as the Liangren Church incident is concerned.

...

41 Two recent decisions of the Court address similar issues to the ones raised in the present case. First, Justice Crampton in *Nen Mei Lin*, above, at page 3, provides guidance that could also, for the most part, be applied to the present case involving Guangdong:

The documentary evidence reviewed and explicitly discussed by the Board in its decision reveals that Christians have continued to be arrested in many areas of China in recent years. However, in the documentation before the Board, no mention was made of arrests or any of the other types of persecution alleged by the Applicant, in her home province of Fujian. Given, the significant detail set forth in that documentation regarding the dates and locations of those arrests and the other steps taken to discourage Christian activity in China, it was reasonable for the Board to conclude that if such persecution had occurred in Fujian, it would have been documented.

The fact that a very small number of Catholics were arrested in 2002, 2003 and 2005 in Fujian did not render the Board's decision unreasonable, particularly given (i) the fact that the Applicant is a protestant; (ii) the increased tolerance towards Christians in China in recent years that is reflected in the extensive evidence before the Board; (iii) the fact that that prayer meetings and Bible study groups among friends and families are legal and do not need to be registered with the authorities in China; (iv) the undisputed evidence that “local

authorities ... usually tolerate activities of unregistered Christian groups”; and (v) the nature of the Christian activities engaged in by the Applicant in Canada, which were specifically considered by the Board.

42 Second, Justice Zinn in *Yu*, above, at paragraphs 31 and 32, provides further guidance on the facts before me, even though I am dealing with Guangdong and not Fujian Province:

31. In this case, the only evidence that was provided to the Board that the applicant’s house church was raided was his own testimony. There was no corroborative evidence of any sort provided. Although he had otherwise been found credible, in that the Board accepted his evidence that he was a Christian and attended a house church in Fujian, there was other evidence before the Board that brought his evidence of the raid into question.

32. The other evidence was documentary evidence. It was not directly contradictory of the applicant's testimony in that it did not say that no house churches had ever been raided in Fujian Province. That is hardly surprising as one is unlikely to find a report that something has not happened because it is events, not non-events, that are reported. Nonetheless, the documentary evidence does lead to an inference that no such raid occurred. It leads to this inference, as the Board noted, for many reasons, including the following:

1. There is a large discrepancy in the treatment of house churches in China. In some parts of the country house churches with large memberships meet openly with no objection, while in other areas, house churches with small memberships are targeted by the authorities.
2. Protestant Christians who attempt to meet in large groups, or who travel within China and outside China for religious meetings are more likely to be targeted by authorities.
3. There is documentary information of religious persecution of house churches and their adherents

from many areas of China, including many remote areas, but there is little such evidence of such persecution in Fujian Province.

4. The evidence of religious persecution in Fujian Province that exists relates to the Catholic Church.

43 When read as a whole, I think the RPD is saying that the documentation does not suggest that the Applicant, if returned to Guangdong, could not practise her religion freely as she appears to want to practise it. Given the evidence before the RPD, I cannot say that this conclusion was unreasonable within the meaning of *Dunsmuir*.

[75] I can find no reviewable error in the RPD's treatment of future risk to the Applicant if she returns to China.

[76] Counsel agree there is no question for certification and the Court concurs.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is dismissed.
2. There is no question for certification.

“James Russell”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-3177-11

STYLE OF CAUSE: WENJING QIN

- and -

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

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DATE OF HEARING: December 7, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** HON. MR. JUSTICE RUSSELL

DATED: January 4, 2012

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