

Federal Court



Cour fédérale

Date: 20120124

Docket: IMM-3011-11

Citation: 2012 FC 95

Ottawa, Ontario, January 24, 2012

PRESENT: The Honourable Mr. Justice Scott

BETWEEN:

YIXIN CHEN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This is an application by Yixin Chen (the Applicant), pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001 [IRPA], for judicial review of a decision of the Immigration and Refugee Board (the Board), rendered on March 30, 2011, in which the Board concluded that the Applicant is neither a Convention refugee nor a person in need of protection as contemplated by sections 96 and 97 of the *IRPA*.

[2] For the reasons that follow, this application for judicial review is dismissed.

II. Facts

[3] The Applicant, a 23 year old woman from the Republic of China, alleges that she fears persecution based on her practice of Falun Gong.

[4] After her graduation from the No. 65 High School in Guangzhou, she failed her university entrance examination in July 2008. She then started to look for work but was unsuccessful. As time went by, she started to experience frustration, depression and insomnia.

[5] On New Year's Day 2009, she was introduced to Ms. Meifang Yang, her mother's friend, who was apprised of her situation and invited the Applicant to her home, suggesting that she could offer some help.

[6] The next day, the Applicant met Ms. Hong Li in Ms. Yang's house. They both introduced her to the practice of Falun Gong. They explained that Falun Gong is a mind body practice that sets truth, compassion and tolerance as its highest ideal.

[7] After reading Zhuan Falun, the Applicant's interest in Falun Gong increased. She started learning the five sets of Falun Gong, in February 2009, and in the next three months, the

Applicant's condition improved drastically. Her insomnia was cured and she no longer felt depressed or frustrated. She was practicing with Ms. Yang and Ms. Li's group.

[8] On November 15, 2009, the Applicant received a phone call from Ms. Li informing her that Ms. Yang and her group of instructors had been arrested by the Public Security Bureau [PSB]. Ms. Li suggested that the Applicant go into hiding.

[9] The Applicant immediately fled to her friend's house in a suburb of Guangzhou City. While in hiding, the Applicant learned that the PSB had been to her parent's house to arrest her. The PSB also threatened her parents in order to find out where she was hiding.

[10] Her parents arranged a flight to Canada for her escape. She arrived in Canada on January 3, 2010, and made a refugee claim on January 6, 2010.

[11] The Board found the Applicant had failed to provide sufficient credible evidence to support her claim that she was a genuine Falun Gong practitioner in China and in Canada. It also concluded that the Applicant was not credible. Consequently, it was found that the Applicant did not face a serious possibility of persecution or that she would face a risk to her life, or a risk of cruel or unusual treatment or punishment, or a danger of torture should she return to China.

III. Legislation

[12] Sections 96 and 97 of the *IRPA* provide as follows:

<p>Convention refugee</p> <p>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,</p> <p style="padding-left: 40px;"><i>(a)</i> 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</p> <p style="padding-left: 40px;"><i>(b)</i> not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.</p>	<p>Définition de « réfugié »</p> <p>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 :</p> <p style="padding-left: 40px;"><i>a)</i> 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;</p> <p style="padding-left: 40px;"><i>b)</i> soit, si elle n’a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.</p>
<p>Person in need of protection</p> <p>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 have a country of nationality, their country of former habitual residence, would subject them personally</p> <p style="padding-left: 40px;"><i>(a)</i> to a danger, believed on substantial grounds to exist,</p>	<p>Personne à protéger</p> <p>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 a la nationalité ou, si elle n’a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :</p> <p style="padding-left: 40px;"><i>a)</i> soit au risque, s’il y a des motifs sérieux de le</p>

of torture within the meaning of Article 1 of the Convention Against Torture; or

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 de ce pays,

(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.

Person in need of protection

Personne à protéger

(2) A person in Canada who is a member of a class of persons prescribed by the regulations

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait

as being in need of protection is also a person in need of protection.

partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

IV. Issue and standard of review

A. Issue

[13] This case only raises one issue:

- *Did the Board err in determining the Applicant was not credible?*

B. Standard of review

[14] A credibility finding is a question of fact that is reviewable on a standard of reasonableness (see *Lawal v Canada (Minister of Citizenship and Immigration)*, 2010 FC 558, [2010] FCJ No 673 at para 11). The Court must determine “whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (see *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] SCJ No 9 at para 47).

V. Parties' submissions

A. Applicant's submissions

[15] The Board found that the Applicant had a good grasp of the Falun Gong theory. In spite of the Applicant's knowledge of Falun Gong, the Board concluded that it was obtained "[...] for the purposes of putting forward a non-genuine claim" (see the Board's decision at para 29). It is a reviewable error on the part of the Board to speculate on the fact that an Applicant gained knowledge of Falun Gong, only to put forward a fraudulent claim according to the Applicant, who refers to *Zhang v Canada (Minister of Citizenship and Immigration)*, 2008 FC 533 at para 13 [*Zhang*], where the Court writes that

... it is possible that Ms. Zhang acquired her knowledge of falun Gong in Canada. It is equally possible that her knowledge was acquired in China. There was no proven fact, and certainly none cited by the Board, from which the Board could infer that it was more probable that Ms. Zhang's knowledge was acquired in Canada. It was, therefore, speculative, and not grounded in the evidence, for the Board to dismiss Ms. Zhang's knowledge about Falun Gong.

[16] In her memorandum, the Applicant also relies on *Song v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1321 at para 69 [*Song*], to argue that the Board erred in basing its decision on mere speculation, given the absence of evidence before the Board to support its conclusion.

[17] The Board also rejected the Applicant's claim that she failed her university entrance examination on the basis that "... the [Applicant]'s ability to cite Zhuan Falun "chapter and verse" was not consistent with the intellectual ability of someone whose performance in high school was

mediocre at best” (see the Board’s decision at para 12). The Applicant submits there was no evidence before the Board to establish that the Applicant’s knowledge of Falun Gong theory is a sign of superior intellectual skills which would enable her to successfully pass her entrance examination for admission to university.

[18] The Board adversely inferred that the Applicant was not credible on the basis that she failed to adduce evidence that she actually wrote her entrance exams for college. In *Zheng v Canada (Minister of Citizenship and Immigration)*, 2007 FC 974, the Court concluded that the lack of corroborative evidence cannot sustain a negative credibility determination.

[19] Furthermore, according to the Applicant, the Board erroneously made adverse credibility findings on technical omissions in her Personal Information Form [PIF]. The Applicant testified that no benefits will accrue to those who practise Falun Gong with attachments such as seeking healing. On the other hand, she also stated that her original intention in practising Falun Gong was to cure her insomnia and depression. The Applicant submits that she provided a reasonable explanation during the hearing for the omission, having stated that she was “able to gradually let go of her attachments” and that “her thoughts and views changed over time” (see the Board’s decision at para 16).

[20] The Board rejected the Applicant’s explanation on the ground that she had not indicated her change of views on Falun Gong in her PIF. The Applicant alleges that it is a technical omission. According to the Applicant, cases such as *Li v Canada (Minister of Citizenship and Immigration)*, 2006 FC 868, and *Afonso v Canada (Minister of Citizenship and Immigration)*, 2007 FC 51, both

apply to the case at bar. In both these instances, the Court concluded that an omission of that nature should not be fatal to a claim, as a direct contradiction would be.

[21] Overall, the Applicant claims the Board subjected the evidence she adduced to a microscopic analysis and in the process, failed to address the real issues. In *Djama v Canada (Minister of Employment and Immigration)*, [1992] FCJ No 531, the Court concluded that the Board exaggerated the importance of a few details and lost sight of the substance that was the basis of the claim.

[22] The Applicant claims the Board made numerous microscopic examinations of the evidence she presented. The Board found that she failed to mention that she had been instructed to keep the Zhuan Falun book hidden and omitted to include this fact in her PIF. The Board also found that it was implausible that Applicant would start practising Falun Gong by reading the book. Finally, it concluded that it was implausible that she would receive mail from China under her own name since she was wanted by the Chinese authorities (see the Board's decision at paras 13, 14, 15 and 18). The Applicant submits that these findings are not determinative in the present case.

[23] Additionally, the Board refused to assign any weight to a document signed by the Applicant's alleged fellow Falun Gong practitioners. According to the Applicant the Board applied the wrong standard of proof to its analysis when it required that she establish the authenticity of her faith. "[...] The civil standard of proof is the appropriate means by which to measure the evidence" (see *Alam v Canada (Minister of Citizenship and Immigration)*, 2005 FC 4 at para 8 [*Alam*]).

[24] Finally, the Applicant underlines the fact that the Board questioned the authenticity of the Applicant's Resident Identity Card [RIC] although it had found, in paragraph 5 of its decision, that the same identity document was genuine.

B. Respondent's submissions

[25] The Respondent alleges that the Board's credibility findings were reasonable. The findings of fact and credibility are within that Board's purview and a reviewing court should be hesitant to interfere unless the Applicant can demonstrate the unreasonableness of the decision. Respondent submits that when a credibility finding is based on numerous points, the reviewing court's analysis does not involve determining whether each point in the Board reasoning meets the reasonableness test (see *Zheng v Canada (Minister of Citizenship and Immigration)*, 2007 FC 673; *Jarada v Canada (Minister of Citizenship and Immigration)*, 2005 FC 409; *Aguebor v Canada (Minister of Employment and Immigration)*, (1993) 160 NR 315 (FCA); *Dehghani v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 587; *Alizadeh v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 11; and *Sheikh v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 238 [*Sheikh*]).

[26] The deficiencies in the Applicant's evidence were serious and went directly to the heart of the Applicant's claim that she was wanted by the Chinese authorities because she practised Falun Gong. The Board determined the Applicant had not provided credible or trustworthy evidence and made a number of findings that undermined the Applicant's credibility. The Board, according to Respondent, properly sought documentary evidence. It then found insufficient corroborating

documentary evidence in this instance (see *Sheikh* cited above; *Bin v Canada (Minister of Citizenship and Immigration)*, 213 FTR 47, 2001 FCT 1246 at para 21 [*Bin*]; *Amarapala v Canada (Minister of Citizenship and Immigration)*, 2004 FC 12 at paras 10-12; and *Matsko v Canada (Minister of Citizenship and Immigration)*, 2008 FC 691 at para 14 [*Matsko*]).

[27] The Respondent provides examples of failures by the Applicant to adduce documentary evidence that corroborates her version. The Applicant alleged that she turned to Falun Gong as a result of failing her entrance examination. She did not provide sufficient documentary evidence to demonstrate that she ever wrote university entrance exams, or how she failed the tests. The Board did not accept her explanation that she did not know that such evidence would be required for the hearing. The Respondent submits that the Board's finding was reasonable given that the Applicant was represented by counsel and that she provided similar documents, such as her high school grades to the Board.

[28] The Board also found that the Applicant had failed to provide sufficient corroborating evidence that she was a genuine Falun Gong practitioner. The Applicant provided a document signed by 18 individuals who practiced Falun Gong exercises with her in Milliken Park. The Board assigned little weight to the document since the signatories did not confirm the Applicant was a genuine Falun Gong practitioner nor did they indicate how long she had been practising at Milliken Park or whether they knew her personally. As the Applicant admitted herself, she had signed her name on similar lists for other individuals, without knowing them or their ideologies. The Respondent alleges that the Board reasonably drew a negative inference (see *Yang v Canada*

(Minister of Citizenship and Immigration), 2003 FC 971 and *Li v Canada (Minister of Citizenship and Immigration)*, 2007 FC 544 [*Li*]).

[29] The Board canvassed whether the Applicant had participated in activities that could demonstrate that she is a genuine Falun Gong practitioner. She testified that she was not a member of the Falun Dafa Association of Toronto and that she never joined a group in Toronto to study Zhuan Falun. She also testified that she never participated in any demonstrations (see *Yang* cited above).

[30] The Respondent alleges that, based on the totality of evidence, it was reasonable for the Board to find that the Applicant had not met her burden or provided credible or trustworthy evidence in support of her claim.

VI. Analysis

- ***Did the Board err in determining the Applicant was not credible?***

[31] Determining the credibility of an Applicant is factual in nature. “The jurisprudence is clear in stating that the Board’s credibility and plausibility analysis is central to its role as trier of facts and that, accordingly, its findings in this regard should be given significant deference” (see *Lin v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1052, [2008] FCJ No 1329 at para 13).

[32] The case raises only one issue. The Applicant was found not to be credible since she failed to present any trustworthy evidence to support her claim before the Board. The Applicant alleges that the Board rejected her claim that she failed her college entrance examination on her ability to recite verses from Zhuan Falun which is not consistent with her alleged academic performance. The Applicant argues that this conclusion is mere speculation. The Court agrees with the Applicant that the Board erroneously speculated when it made a correlation between the Applicant's academic performance and her ability to recite parts of Zhuan Falun. However, this error is not determinative in this instance.

[33] The Applicant submits that the Board subjected her evidence to a microscopic analysis and in the process, failed to address the real issues. In support of its decision, the Board cited a number of deficiencies in the Applicant's evidence. The Court considers these deficiencies material since they go to the very heart of Applicant's claim. The Board reasonably concluded that the Applicant's contradictory testimony related to her RIC affected her overall credibility. At the hearing, the Board asked the Applicant if she was carrying her RIC with her when she left China.

Member: So, you carried your resident identity card with you when you left China?

Claimant: Yes.

Member: Your personal information form, question 22 says your resident identity card is in China and you can get it in three months. That is different from your testimony today. Can you please explain that?

...

Claimant: I do not know how to explain.

[34] She also testified, in her PIF, that she began practising Falun Gong for the purpose of healing her depression and insomnia. However, at the hearing, she testified that one cannot practice

Falun Gong for the purpose of healing. When confronted with this inconsistency, she alleged that she changed her approach to Falun Gong because she was able to let go of her attachments.

[35] She also failed to mention in her PIF that she was told to keep the Zhuan Falun book hidden.

[36] In *Basseghi v Canada (Minister of Citizenship and Immigration)*, [1994] FCJ No 1867, Justice Teitelbaum writes, in paragraph 33, that “it is not incorrect to say that answers given in a PIF should be brief but it is incorrect to say that the answers should not be complete with all of the relevant facts. It is not enough for an applicant to say that what he said in oral testimony was an elaboration. All relevant and important facts should be included in one's PIF”. The oral evidence should go on to explain the information contained in the PIF. In *Arunasalam v Canada (Minister of Citizenship and Immigration)*, [2001] FCJ No 1451, 2001 FCT 1070 at para 47, Chief Justice Blais writes “Furthermore, whether the Board notified the applicant that omissions from the PIF arising during the hearing are of significant importance would not change the fact that the applicant omitted facts in his PIF. Even if the Board had told him about it, the Board would still have been entitled to rely on the omissions to make findings of credibility”.

[37] The contradiction with respect to the RIC was important .The Applicant did not provide any explanation to justify the contradiction. Consequently, this failure tainted her credibility. However, the real contradiction stands on the fact that the Applicant changed her views about her Falun Gong practice and omitted to explain it in her PIF. This matter is central to the Applicant’s claim since it affects the authenticity of her practice. Her explanation as to why she changed her views did not alter the fact that she omitted a crucial element of her claim in her PIF.

[38] The Applicant argues that the Board exaggerated the importance of a few details and lost sight of the real issue. Even though, the Court finds that the Board made a frivolous inference in concluding that the Applicant would not start practising Falun Gong by reading the Zhuan Falun Book, the Board reasonably assessed that receiving mail from China under her own name undermined the Applicant's allegation that she was wanted by the Chinese authority.

[39] Having found credibility issues, the Board then looked for documentary evidence. The jurisprudence holds that where a claimant's story is found to be flawed because of credibility findings, the lack of corroboration is a valid consideration for the purposes of further assessing credibility (see *Matsko* and *Bin* cited above). The Board concluded there was insufficient corroborating documentary evidence. Firstly, the Applicant did not provide the Board with documentary evidence showing that she wrote the entrance examination. The Board refused her explanation that she did not know that such evidence would be required for the hearing. The Board reasonably made a negative inference since this document could have supported her allegation as to why she became depressed and turned to Falun Gong practice.

[40] The Board assigned little weight to the document signed by 18 of the Applicant's fellow practitioners. The document did not indicate for how long the Applicant practised at Milliken Park or if she personally knew some of her fellow practitioners. She admitted having signed this kind of document before. She also admitted that out of the 18 signatories, she personally knew only one of them. The Applicant provided pictures showing her practising Falun Gong at Milliken Park. The

Board found that while the photos may demonstrate that she attended practices, they did not demonstrate that she was a genuine Falun Gong practitioner.

[41] It was reasonable for the Board to come to this conclusion. In *Liu v Canada (Minister of Citizenship and Immigration)*, 2006 FC 695 at para 43-44 [*Liu*], the Court concluded that, even though the Board never made an explicit credibility finding, this did not constitute an error. “In this case, the Board did analyze evidence of the principal applicant's attendance of Falun Gong events in Toronto, but it came to the conclusion that its probative value was low, since the principal applicant admitted the pictures were taken specifically for the hearing and that anyone could attend this event” (see *Liu* cited above at para 44). The context of *Liu* is similar to the case at hand. However, contrary to *Liu*, where the Board's inferences were found to be unreasonable, it is clear that in the present case, that the Board's credibility findings in its assessment of the Applicant's claim were reasonable.

[42] The Applicant argues the Board applied the wrong standard of proof by requiring that she provide evidence that she is a genuine Falun Gong practitioner. The Applicant cited *Alam* to support her argument. The Board did not erroneously impose a standard of proof on the Applicant. Instead, it inferred that the Applicant lacked credibility and is not a genuine Falun Gong practitioner.

[43] The Board reasonably concluded that the Applicant's knowledge of the Falun Gong was obtained for the purpose of putting forward a non-genuine claim. And contrary to *Zhang* and *Song* cited above, there was evidence from which the Board could infer that the Applicant's knowledge was acquired only for the sake of making a refugee claim.

VII. Separate analysis under section 97 of the IRPA

[44] In its decision, the Board did not conduct a separate analysis under section 97 of the *IRPA*. It concluded that, since the Applicant was not credible over all. The Board found that she would not be personally subject to a risk to her life, or a risk of cruel and unusual treatment or punishment, or a danger should she return to China.

[45] In *Kaleja v Canada (Minister of Citizenship and Immigration)*, 2011 FC 668, [2011] FCJ No 840 [*Kaleja*], Justice Near writes, in paragraph 34 of his decision, that “The jurisprudence on this issue is mixed, but, as per Justice Mosley at para 22 of *Soleimanian v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1660, 135 ACWS (3d) 474, “this Court seems to have come to a consensus that a separate section 97 analysis is not required if there is no evidence that could go to establishing that the person is in need of protection ...”

[46] In *Kaleja*, the Court found there was no other ground on which to conduct an analysis under section 97. “Evidence for both sections was the same, co-mingled and intended to support either finding, but was found to be insufficient to do so” (see *Kaleja* at para 35). There was no need in the present case for the Board to conduct a separate analysis. “While it may have been prudent to do so, it was not necessary for the Board to go to further step and state definitively that the applicant would not suffer persecution if returned to China because she is not a genuine practitioner” (see *Li* cited above at para 22).

VIII. Conclusion

[47] In light of the underlying credibility issues, it was reasonable for the Board to conclude that the Applicant is neither a convention refugee nor a person in need of protection. This application for judicial review is hereby dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. This application for judicial is dismissed; and
2. There is no question of general importance to certify.

"André F.J. Scott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3011-11

STYLE OF CAUSE: YIXIN CHEN
v
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AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 24, 2011

REASONS FOR JUDGMENT: SCOTT J.

DATED: January 24, 2012

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