

Federal Court



Cour fédérale

Date: 20120504

Docket: IMM-2216-11

Citation: 2012 FC 503

Ottawa, Ontario, May 4, 2012

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

HAIXHIN ZHANG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The Applicant, a citizen of China, claims refugee protection in Canada as a Christian because of subjective and objective fear that should he be required to return to China he will suffer more than a mere possibility of persecution under s. 96 of the *IRPA*, or probable risk under s. 97.

The present Application concerns the rejection of his claim on what is argued by the Applicant to be a highly contentious practice by the Refugee Protection Division member concerned, Mr. L. Favreau.

[2] The present Application concerns the reception of the Applicant's evidence that he was a practicing Christian in China, and as a practicing Christian in Canada, he is entitled to make a *sur place* claim. In particular, the focus is on the Member's determination that, based on his knowledge of Christian religious doctrine, it is implausible that the Applicant is a Christian.

I. The Applicant's Claim as a Christian in China

[3] In the decision under review the Member provided the following outline of the history to the Applicant's claim:

The claimant alleges that he was first introduced to Christianity by his mother in 2005. Although not initially interested in Christianity at that time, over time he became more interested in the teachings of Christianity. A good friend brought him to his house church for the first time in November 2006. Thereafter he became a member of the church and he regularly attended. In December, 2006 his house church activities were nearly discovered by members of the PSB. As a consequence his regularly [sic] weekly services were reduced to once a month. In December 2007 the claimant traveled to Canada on a visitor's visa. While in Canada he regularly attended services. He received news from China that members of his underground house church were being questioned by members of the Public Security Bureau (PSB) and that his house church leader had been arrested. Fearing that he would be arrested if he were to return to China he filed for refugee protection in December 2008.

(Decision, para. 2)

With respect to the Applicant's sworn evidence that he was a Christian in China, on the basis of perceived conflicts and inconsistencies, the Member made a negative credibility finding to conclude that he was not a Christian in China. Counsel for the Applicant strongly argues that the negative credibility is unreasonable. I find that in reaching a conclusion on the present Application it is not necessary to address this argument because for the these reasons set out below, I find that, as a

matter of law, the Member was in reviewable error in using the negative credibility finding to reject the Applicant's *sur place* claim as a Christian in Canada.

II. The Applicant's Claim as a Christian in Canada

[4] The Member made the following findings on this issue:

Shortly after arriving in Canada the claimant alleges he began attending his mother's church. He later joined the Living Stone Assembly and attended services in Kitchener Waterloo and Toronto. The claimant was asked a number of broad questions concerning his Christian knowledge. The claimant was able to answer some questions and did demonstrate some knowledge of Christianity however, the claimant failed to correctly answer some basic and fundamental questions. The claimant was not able to correctly identify all four of the gospels. He was able to provide names of two of the gospels but was unsure if they were correct. The claimant was asked the names of the Jesus' apostles. The claimant stated that he was not very good with names and could only recall James and Simon. The panel rejects the claimant's explanation. The claimant has 16 years formal education and claims to have been regularly attending Christian services since November 2006. He further claims to read the bible 4 or 5 times a week. It is reasonable to expect that the claimant would be able to recall the four gospels and to provide the names of more apostles. In this regard the panel draws a negative inference.

The claimant was asked if he knew the names of any prayers. The claimant was only able to name the Lord's Prayer. The claimant was asked to recite the Lord's Prayer. The claimant was not able to correctly recite the Lord's Prayer, leaving out two complete sentences and substituting many of his own words. The Lord's Prayer is the most fundamental prayer of Christianity and it is reasonable to expect that a genuine practicing Christian of over four years would be able to recite the prayer from memory without difficulty.

The claimant testified that he reads the bible weekly. In addition, the claimant testified that he has been a Christian since November 2006 and that while in China he regularly attended church services. The claimant also produced letters from Rev. Ko and other pastors [Exhibit C-2] which indicate that the claimant has been attending church regularly since arriving in Canada, While it is true there are

many people who identify themselves as Christian and who have limited knowledge of their religion, the panel must consider if the claimant's limited knowledge is reasonable in his given circumstances. The claimant alleges that when in China, he knowingly put himself in danger of arrest and detention for the sake of his religion. He further claims that he has been a practicing Christian since November 2006 and that he regularly reads the bible. The claimant is a sophisticated individual with 16 years of formal education. The panel finds it reasonable to expect that the claimant would have more Christian knowledge than he was able to demonstrate. Given the foregoing, the panel finds it neither plausible nor credible that the claimant would have such limited Christian knowledge if he truly has been a Christian since November 2006.

The claimant testified that he reads the bible at home. He was asked how often he reads the bible to which he replied "when I have time". He was asked if he reads the bible daily or weekly or monthly. The claimant again provided a vague response. Many times during this hearing, the claimant testified in a vague, evasive and confusing manner with respect to the material aspects of his claim. At times, responses were not forthcoming and to ensure that he was given every opportunity to present his claim, the claimant was given repeated opportunities to answer questions.

While it is difficult to make a judgment regarding the genuineness of a person's religious practice it is necessary in this case. In doing so, the panel considered the totality of the evidence available. Although it is true the claimant does possess some knowledge of Christianity; that knowledge does not necessarily mean he is a genuine practicing Christian. The claimant produced a letters [*sic*] from Rev. Ko and other pastors, and a baptismal certificate which indicates that the claimant was baptized in Canada. These documents can only attest to the claimant's participation in church activities, they do not attest to his motivation. In this regard, recent case law indicates that a pastor's assessment of the genuineness of a person's faith cannot be substituted for the assessment that the panel is required to make [*Wo Ji Coo v Minister of Citizenship and Immigration*, IMM-1303-08, Mosley, 2008 FC 1174]. The panel gives little evidentiary weight to these documents. Having found that the claimant is not being pursued by the PSB and in the context of his Christian knowledge, the panel finds that the claimant was not a practicing Christian in China as he alleges. The panel further finds that the claimant's allegation that he was a practicing Christian in China is not credible and was only for the purpose of supporting a fraudulent claim and

that these credibility findings raise a significant doubt about his general credibility.

Having found that the claimant was not a Christian in China, the panel must consider whether the claimant is a genuine practicing Christian in this Country. There is a requirement for 'good faith' in making a refugee claim. In this regard, R.P.G. Haines, the Chairman of a refugee status appeal panel and A.G. Wang Heed, a member of the United Nations High Commission for Refugees stated in part:

If there is no good faith requirement in the sur place situation, it places in the hands of the appellant for refugee status the means of unilaterally determining the grant to him or her of refugee status.

[Refugee Status Appeals Authority (New Zealand), Refugee Appeal No. 2254/94, RE: HB September 21, 1994. (www.Nzrefugeeappeals.govt.nz/lpdfs/ref19940921_2254.pdf.]

In this regard, the panel cites the following from James Hathaway's *The Law of Refugee Status* with regard to "sur place" claims: An individual who as a stratagem deliberately manipulates circumstances to create a real chance of persecution which did not exist cannot be said to belong to this category [Hathaway, James, *The Law of Refugee Status*, (1991)]. The panel finds, on a balance of probabilities that this claim has not been made in good faith.

Having found that the claimant is not a genuine practicing Christian in China and having found that this claim has not been made in good faith, the panel finds, on a balance of probabilities, and in the context of findings noted above, that the claimant joined a Christian church in Canada only for the purpose of supporting a fraudulent refugee claim. In the context as noted above, and on the basis of the totality of evidence disclosed and in the context of the claimant's knowledge of Christianity, the panel finds the claimant is not a genuine practicing Christian, nor would he be perceived to be in China.

On the basis of the totality of the evidence and the cumulative findings and negative inferences noted above, the panel finds that the claimant has not satisfied his burden of establishing a serious possibility that he would be persecuted or that he would be personally subjected to a risk to his life or a risk of cruel and unusual

treatment or punishment or a danger of torture by any authority in the People's Republic of China.

[Emphasis added]
(Decision, paras. 12 - 20)

[5] Thus, the process engaged by the Member to find that the Applicant failed to prove he is a Christian in Canada has two discrete elements: questioning about knowledge of Christianity; and summary dismissal of the evidence of the Applicant's conduct in Canada.

A. Questioning About Knowledge of Christianity

[6] The issue with respect to this element is whether it is fair for the Member to conduct a subjective analysis of a refugee claimant's knowledge of Christianity and conclude whether he or she is, in fact, a Christian.

[7] While the Member states that it is difficult to make a judgment regarding the genuineness of a person's religious practice, there is nothing in the decision to indicate that the Member struggled with doing so in the Applicant's case. The following is an excerpt from the Member's questioning of the Applicant during the course of the hearing:

MEMBER: I want you to tell me everything you know about Christianity.

CLAIMANT: That is quite a big topic, either can you be more specific about what you want?

MEMBER: Tell me anything you know, anything you know.

CLAIMANT: Like the Ten Commandments.

MEMBER: Okay, well that is not ... Ten Commandments are not distinct to Christianity, but go on.

CLAIMANT: I know some other church also believe in the Ten Commandments, I heard.

MEMBER: Who is the key person, or the key individual within Christianity?

CLAIMANT: Of course, Jesus Christ.

MEMBER: Is that not something that is different? Is that not something you could have told me earlier?

What was Jesus Christ's purpose on earth?

CLAIMANT: He is the only true God, only God of trinity.

MEMBER: What was his purpose on earth?

CLAIMANT: Son of God.

MEMBER: I am sorry?

INTERPRETER: Son of God.

MEMBER: Yeah he is the son of God. Yeah. What was his purpose on earth?

CLAIMANT: He came here to save us, to redeem us. He lived for us and he died for us. To save us, to wash away our sin ... original sin of our own sin. So we could have eternal life.

MEMBER: Are you telling me that Jesus washed away your original sin?

CLAIMANT: All those who believe in him, the original sin.

MEMBER: Well, sir if that is the case, what is the purpose of baptism?

CLAIMANT: It is to ... baptism is to wash away our original sin.

MEMBER: So, which is it? Jesus is sacrificed on the cross that washed away your original sin, or is it baptism?

Which one of those two is correct? Because you have given me two different answers.

CLAIMANT: Baptism.

MEMBER: Baptism was ... washed away our original sin. Okay, so what did Jesus, what was his purpose in death then?

CLAIMANT: He died for us.

MEMBER: What day did he die?

INTERPRETER: I am sorry?

MEMBER: What day did he die?

CLAIMANT: Good Friday.

MEMBER: Are you sure?

CLAIMANT: Yeah, I am sure.

MEMBER: When did Jesus start his ministry?

CLAIMANT: 30.

MEMBER: When he was 30 years old?

CLAIMANT: Right.

MEMBER: You are right.

CLAIMANT: I am right?

MEMBER: Yes you are right.

(Certified Tribunal Record, pp. 187 – 188)

[8] The transcript reads as a debate between scholars on the correct interpretation of Christian theology. Testing an applicant's understanding of religious tenants is fraught with unaddressed extremely serious questions. A brief glimpse into the complexity of the topic should give pause for

thought about questioning a person about his or her religious beliefs, values, and, indeed, knowledge.

[9] The Supreme Court of Canada has grappled with the reality that religion is about belief, and belief is about faith; a phenomenon which is difficult to clarify.

[10] In *Ross v New Brunswick School District No 15*, [1996] 1 SCR 825 at paragraph 70, the Supreme Court states that it “is not the role of [the] Court to decide what any particular religion believes.” And as found in the decision of *Syndicat Northcrest v Amselem*, [2004] 2 SCR 551, at paragraph 39:

... In essence, religion is about freely and deeply held personal convictions or beliefs connected to an individual's spiritual faith and integrally linked to one's self-definition and spiritual fulfillment, the practices of which allow individuals to foster a connection with the divine or with the subject or object of that spiritual faith.

[11] Both *Ross* and *Amselem* hold that regardless of idiosyncrasy, if a certain view is conscientiously held, it is religious. On this point the following view underscores the subjectivity of faith:

[What] counts in law as religious is that which is meaningful to the individual ... the individual's sense of his or her own relationship to the divine or to the object of faith is what lies at the core of law's imagining of religion.

(Benjamin L. Berger, “Law’s Religion: Rendering Culture” *Osgoode Hall Law Journal Summer*, 2007)

[12] The Court has recognized the potential unfairness of RPD religious knowledge testing and has attempted to limit the stringency of this inquiry. In *Dong v Canada (Minister of Citizenship & Immigration)*, 2010 FC 55, at paragraph 20, Justice Kelen found as follows:

In assessing a claimant's knowledge of Christianity, the Board should not adopt an unrealistically high standard of knowledge or focus on a "few points of error or misunderstandings to a level which reached the microscopic analysis": *Attakora v. Canada (Minister of Employment and Immigration) (F.C.A.)*, (1989), 99 N.R. 168, [1989] F.C.J. No. 444 (QL), and subsequent cases: *Huang v. Canada (MCI)*, 2008 FC 346, 69 Imm. L.R. (3d) 286, per Justice Mosley at paragraph 10; *Chen v. Canada (MCI)*, 2007 FC 270, 155 A.C.W.S. (3d) 929, per Justice Barnes at paragraph 16.

Indeed, in *Penghui Wu v Minister of Citizenship and Immigration*, 2009 FC 929, Justice Kelen found that assessing a genuine Christian by way of "trivia" is contrary to law. In *Wang v Minister of Citizenship and Immigration*, 2011 FC 1030, Justice Beaudry determined that a decision of the RPD can be set aside where the claimant was held to an unreasonably high standard of religious knowledge. In *Wang* the applicant was determined not to be a Christian because the RPD found he incorrectly answered questions about "transubstantiation". At paragraph 13, Justice Beaudry has this to say about such a determination:

The Board erroneously determined the applicant's knowledge of the Catholic faith by way of "trivia". In assessing the applicant's knowledge of Christianity, the Board "erroneously expected the answers of the applicant to questions about his religion to be equivalent to the Board's own knowledge of that religion" *Ullah v. Canada (Minister of Citizenship and Immigration)*, 2000 FCJ No 1918, para 11.

[13] The Supreme Court has signalled caution in testing someone's faith. It is plausible that a Christian will have knowledge of Christianity but the degree of knowledge expected must be fair to the individual concerned. If it is to be said that all Christians should know certain facts about the

religion, there must be a verifiable way to establish this expectation. The expectation cannot be so established on a completely subjective basis by a decision-maker. Therefore, if a general expectation is established of persons who claim to be Christians, advance notice of the expectation must be given so the expectation is fair to all who apply. If this results in an advance learning process by persons who wish to claim protection as Christians, so be it. If it is to be said that a certain person who claims to be a Christian should know certain facts about the religion, a reasonable and credible explanation of why this should be the case must be provided.

[14] But a primary question to ask is: in fairness, what does it mean for a person to fail to answer a question about a certain detail of religious dogma? There are many possible answers: the question is not understood so the answer is not responsive; the person possesses a weak memory; a momentary lapse of memory has occurred; the answer was not learned no matter how much study has taken place; the answer is honestly held as correct whether or not it is thought to be so by the questioner; and so on. In my opinion, with these considerations in play, a failure means nothing of value. In the present case this point comes into full focus.

[15] There is no question that the Applicant has been regularly practicing Christianity in Canada since 2007 and has proven knowledge of the religion. In this context, in my opinion, it is absolutely ludicrous and unfair for the Member to have found that the failure to answer as described above can result in a finding that the Applicant is not a Christian. The only thing the failure proves is that the Applicant did not have the expected answer.

[16] Thus, the presumption that a person swears to be of a certain religious faith cannot be rebutted simply on the basis of his or her knowledge of that religion. First, religious knowledge cannot be equated to faith. And second, the quality and quantity of religious knowledge necessary to prove faith is unverifiable. Therefore, a finding of implausibility that a certain person is not of a certain faith because he or she does not meet a certain subjective standard set by a decision-maker is indefensible as a matter of fact.

[17] In addition, in my opinion, as it has been conducted by the Member, questioning on religion is indefensible as a matter of law.

[18] In essence, the practice of religious questioning allows an RPD member to be her or his own expert with respect to what questions to ask and what answers to expect in reply. As identified in the cases cited above, the vagary of this sort of highly subjective practice on the part of a decision-maker is certainly open to abuse. The practice purports to apply some form of stereotype in the mind of an RPD member of what a Christian should know. The determination that satisfactory answers are not supplied is, in essence, the making of an implausibility finding. That is, if the answers on Christian knowledge expected of a refugee claimant are not provided to an RPD member's satisfaction, grounds exist for finding that it is implausible that the claimant is a Christian.

[19] The law with respect to the making of implausibility findings is very clear. Implausibility findings are required to follow a rigorous standard of proof as set out in the following passages from

the decision in *Vodics v Minister of Citizenship and Immigration*, 2005 FC 783 at paragraphs 10 -

11:

With respect to making negative credibility findings in general, and implausibility findings in particular, Justice Muldoon in *Valtchev v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 1131, [at paragraph 7] states the standard to be followed:

The tribunal adverts to the principle from *Maldonado v. M.E.I.*, [1980] 2 F.C 302 (C.A.) at 305, that when a refugee claimant swears to the truth of certain allegations, a presumption is created that those allegations are true unless there are reasons to doubt their truthfulness. But the tribunal does not apply the Maldonado principle to this applicant, and repeatedly disregards his testimony, holding that much of it appears to it to be implausible. Additionally, the tribunal often substitutes its own version of events without evidence to support its conclusions.

A tribunal may make adverse findings of credibility based on the implausibility of an applicant's story provided the inferences drawn can be reasonably said to exist. However, plausibility findings should be made only in the clearest of cases, i.e., if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant. A tribunal must be careful when rendering a decision based on a lack of plausibility because refugee claimants come from diverse cultures, and actions which appear implausible when judged from Canadian standards might be plausible when considered from within the claimant's milieu. [see L. Waldman, *Immigration Law and Practice* (Markham, ON: Butterworths, 1992) at 8.22]

[Emphasis added]

It is not difficult to understand that, to be fair to a person who swears to tell the truth, concrete reasons supported by cogent evidence must exist before the person is disbelieved. Let us be clear. To say that someone is not credible is to say that they are lying. Therefore, to be fair, a decision-maker must be able to articulate why he or she is

suspicious of the sworn testimony, and, unless this can be done, suspicion cannot be applied in reaching a conclusion. The benefit of any unsupported doubt must go to the person giving the evidence.

[20] Thus, in the present case, the Member's conclusion that it is implausible that the Applicant is a Christian must be considered against the standard just described. As articulated by *Zakhour v Minister of Citizenship and Immigration*, 2011 FC 1178 at paragraph 5, a proper implausibility finding is made in the following manner:

Therefore, in the present case, from evidence on the record, the RPD was required to: first, clearly find what might reasonably be expected by way of a Hezbollah response to the Applicant's actions; then make findings of fact about the response that was made by Hezbollah; and, finally, conclude whether the response conforms with what might be reasonably suspected. In the present case this process of critical analysis was not followed. On this basis I find that the RPD's implausibility findings are unsupported speculations, and, therefore, the decision under review is not defensible on the law and the facts.

[Emphasis in original]

Adapting the test to the making of implausibility findings with respect to religious questioning requires an RPD member to follow a three-part process: from evidence on the record find what might reasonably be expected by way of a response to a discrete question; fairly obtain an applicant's answer; and finally, conclude whether the answer conforms with what might be reasonably suspected. The key feature of the test is establishing what answer might be reasonably expected. This feature requires that a credible and verifiable evidentiary basis for the expectation has been established and known.

[21] In the present case the Applicant answered most of the questions posed by the Member to the Member's satisfaction with the implausibility finding being based only on the few questions not

considered to be satisfactorily answered. Because the process of critical analysis as described was not followed, in particular, because there was no established and known credible and verifiable evidentiary basis for the expectation that a certain answer would be provided, I find that the Member's implausibility findings are erroneously made.

[22] As argued by Counsel for the Respondent, I acknowledge that a refugee claimant who relies on religious grounds to claim protection must prove the religious affiliation asserted. I also acknowledge that for the Member to establish and make known a credible and verifiable basis of what to expect by way of answers to questions about the religion prior to religious questioning taking place, claimants may be able to abuse the process by just learning the answers before being questioned. The solution to this dilemma exists in a point of principle: the law will not tolerate anything less than following the correct process, and because the present practice does not conform to the law, and the correct process might result in abuse, the present practice of questioning on knowledge of religion should be abandoned as fundamentally flawed for failure to be based on a verifiable standard.

[23] This is so because it seems to me that knowledge of religious dogma, does not equate to holding religious faith. It's not about the doctrines. The thing that is important is the ethic instilled by the religious teachings that a person takes and lives by. Attending church and quoting scriptures aren't as important as how a person lives his or her life according to the morals and values learned. It also seems to me that on this basis, a process of questioning religious knowledge is a fundamentally flawed fact-finding venture to learn about a person's religious faith. Learning about the person is the only path to the truth.

[24] Professor Hathaway in *The Law of Refugee Status*, (Toronto: Butterworths, 1991) at page 38 provides guidance about how learning about the person who makes a *sur place* claim as a Christian in Canada helps in reaching a fair determination where a person is under suspicion:

In the case of persons who have chosen to be politically active in their state of origin, the authenticity of the political opinion underlying the activism is generally assumed. This is sensible, because an individual would be unlikely to make insincere attacks on her state at a time when she remains within its grasp. The ability of the state to exert control and to punish is an implied barometer of authenticity. In contrast, an individual *outside* the jurisdiction of her state of origin may be subject to no such automatic and effective control mechanism. It is thus more readily conceivable that an oppositional stance could be assumed simply for the purpose of fabricating a claim to refugee status, [See footnote below] and thus not reflect a political opinion as required by the definition. The challenge, then, is to respond to this real evidentiary difference without being dismissive of such protection needs as may arise from the expression of sincerely held convictions at a time when an individual is abroad.

This can be done by canvassing a number of issues. First does the claimant retain close personal connections to family, friends, or institutions in her home state? Insofar as such a nexus exists, it affords a surrogate indicator of sincerity, as the claimant would be less likely to engage in unfounded opposition where persons who are important to her are at risk. Second, are the claimant's statements or actions abroad consistent with her behaviour prior to departure? If so, the consistency affords some evidence of veracity. If there is no consistency, are there valid reasons to explain the claimant's openness or change of views once abroad? Third, can the firmness of the claimant's newly expressed convictions be tested? To the extent that she has a clear understanding of relevant concerns and issues and has become significantly involved in their propagation, it is more likely that she genuinely embraces the belief underlying her statements or actions.

[Footnote from above: "Asylum law protects those who *in good faith* need to be sheltered from persecution. This protection was not meant to encompass those who make political statements for the sole purpose of becoming refugees" [Emphasis added]: K. Petrini, "Basing Asylum Claims on a Fear of Persecution Arising from a Prior Asylum Claim" (1981), 56 *Notre Dame Lawyer* 719, at 729.]

B. Summary Dismissal of the Evidence of the Applicant's Conduct in Canada

[25] As quoted above, the Member acknowledges that the Applicant produced documentary evidence to prove his conduct as a Christian in Canada, including the following:

- Certificate of Baptism
- East Toronto Mandarin Alliance Church's letters regarding the Claimant, his mother and sister
- Letter from Waterloo Region Community Integration Service
- Letters from Living Stone Assembly
- Chester Village Nursing Home's Letter regarding the claimant's mother
- Letter from K-W Chinese Alliance Church regarding the Claimant's brother.

(Applicant's Application Record, Tab B)

[26] Of principal importance is the content of the letter from the Applicant's pastor, Reverend

Ko:

Mr. Haixin Zhang born on March 25, 1954 has been attending our church since his arrival in Canada in December 2007. He first attended the Living Water Road church in Waterloo, where he actively participated in group gatherings and activities, committed to study the Bible and eager to learn.

Mr. Zhang moved to Toronto in June of 2008, and started attending our branch in Toronto, Living Stone Assembly. Again, he has devoted his time and effort to the church, by greeting people, distributing program [sic], and volunteered to help with various functions on a regular basis.

I have known Mr. Zhang since December 2007, and he is very friendly and easy to get along with. He is humble and honest in his interactions with people. Through his interactions with people from the church, Mr. Zhang has adapted well and quickly to a new life style and new environment. He has proven to be a very helpful and caring person as he offers his help to everyone.

I am the Pastor in charge of a number of churches, including Living Water Road in Waterloo and Living Stone in Toronto.

(Certified Tribunal Record, p. 155)

[27] In my opinion, and contrary to the Member's own assertion that the lack of genuineness of the Applicant's religious practice was found on the basis of the totality of the evidence available, the Member committed a cardinal error by not giving due consideration to the Applicant's evidence of his conduct. While the Member is correct that it is for the RPD decision-maker to make a proper determination on the genuineness of an applicant's claim for protection, including cogent opinion evidence, it is a matter of law that any conclusion reached must be made on the totality of the evidence (*Owusu-Ansah v Canada (Minister of Employment and Immigration)*, [1989] F.C.J. No 442 (CA)). However, in the present case, the evidentiary support the Applicant advanced to prove that he is a Christian in Canada was not fairly considered. In particular, Reverend Ko's opinion required careful consideration, which might have included having him testify, and thus to be available for cross examination, if any reason existed for not accepting his written statement as credible.

III. Result

[28] For the reasons provided, I find that the decision under review does not fall within a range of possible, acceptable outcomes, which are defensible in respect of the facts and law.

ORDER

THIS COURT ORDERS that:

1. The decision presently under review is set aside, and the matter is referred back to a differently constituted panel for redetermination.
2. There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2216-11

STYLE OF CAUSE: HAIXHIN ZHANG v THE MINISTER OF
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**REASONS FOR ORDER
AND ORDER:** CAMPBELL J.

DATED: May 4, 2012

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