

Federal Court



Cour fédérale

Date: 20120518

Docket: IMM-8334-11

Citation: 2012 FC 610

Ottawa, Ontario, May 18, 2012

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

LIAN ZHI WANG and KAIXIANG XU

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants seek judicial review of a decision of Senior Immigration Officer M. Beauregard (Officer), dated September 20, 2011, refusing the applicants' Pre-Removal Risk Assessment (PRRA) application pursuant to section 112 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). For the reasons that follow, the application is granted.

Facts

[2] The applicants, Lian Zhi Wang (principal applicant) and her son, Kaixang Xu, are both citizens of China. The principal applicant states that she started practicing Christianity due to the

encouragement of a friend, Ms. Hong Zhou, after she was passed over for a promotion and lost her job the following year. She started attending three underground churches every week.

[3] On May 13, 2007, one of the churches she was attending was raided. The principal applicant managed to escape and hid in her uncle's home. She states that the Public Security Bureau (PSB) visited her home and advised her husband that they were looking for her. She also states that her son was suspended from school on May 24, 2007 as a result of this incident. The principal applicant took her son and fled to Canada and continues to attend church here. She states that her husband was fired from his job for her religious activities after she left and that her husband has subsequently disappeared and her only remaining contact in China, Ms. Zhou, has been unable to locate him.

[4] On September 21, 2007, the applicants made their refugee claim. The Refugee Protection Division (RPD) rejected their claims, finding the principal applicant's evidence not credible. The RPD did not believe that the principal applicant attended a house church in China that was raided by the PSB, or that she was a genuine practicing Christian. The applicants made their PRRA application on December 16, 2010.

Decision Under Review

[5] The Officer reviewed the applicants' allegations and the RPD's decision. The Officer noted that the applicants submitted evidence in support of their PRRA application but found that some of that evidence, a letter from the Chinese Alliance Church of Toronto, some photographs and their baptismal certificates, could not be considered because it predated the RPD decision. The Officer

further found that a more recent letter from the Chinese Alliance Church of Toronto could not be considered because it simply reiterated the content of the earlier letter.

[6] Turning to the evidence that could be considered the Officer gave no weight to a letter from Ms. Zhou which advised that members of the prayer group are still harassed, that while the applicant's husband hasn't been found, she is continuing efforts to locate him. The Officer noted that the letter was neither an original document nor was an affidavit submitted. The Officer also noted the absence of any warrants, subpoenas or notice of suspension from the school. Thus, since the letter repeated the story the RPD found not credible and no corroborating evidence was presented, the Officer gave this document no weight.

[7] Having rejected the principal applicant's allegations of persecution in China the Officer went on to consider whether the applicants were at risk due to practicing Christianity since arriving in Canada. In support of this allegation the Officer noted the applicants submitted past Federal Court decisions finding no religious freedom in China and general documentation recounting persecution of Christians in China, particularly in the applicants' province of Guangdong.

[8] The Officer found that certain issues persist in terms of religious freedom but that nonetheless, Christianity is growing in China. The Officer noted that Protestant house churches are not prohibited but public religious services are prohibited unless affiliated with a patriotic religious association. The Officer quoted from some of the documentary evidence finding that millions of people in China practice Christianity and some have observed more tolerance from authorities. The

Officer further noted evidence that Guangdong was recognized as a province that tolerates the practice of house churches. The Officer therefore concluded:

Although I am not questioning the fact that the applicant is currently a practicing Christian, it seems that millions of people share the same Christian faith as the applicant in China despite Chinese government control, which varies from one region to the next. Although some Christians are still the target of repression and persecution, Chinese authorities more specifically target people in leadership positions in prohibited churches. Ms. Wang did not indicate or show that she held this type of position in her church or participated in activities in Canada which would result in her being targeted or being of particular interest to Chinese authorities if she returned to China.

[9] The application was therefore refused.

Standard of Review and Issue

[10] The issue raised by this application is whether the Officer's decision was reasonable:

Dunsmuir v New Brunswick, 2008 SCC 9, [2008] 1 SCR 190.

Analysis

[11] The applicants argue that the Officer failed to consider all the evidence, and that his conclusions are irreconcilable with significant portions of the evidence before him. I agree with the respondent that most of the applicants' submissions amount to a request to re-weigh the evidence, which is not the purview of the Court upon judicial review: *El Ouardi v Canada (Solicitor General)*, 2005 FCA 42 at para 9.

[12] However, the applicants make two submissions that are more compelling: the first is that the Officer erred by relying on the fact that 50 million people practice Christianity in China. This

statistic appears to be relied upon to support the conclusion that the applicants are not at risk, the logic being that such a large number of people would not practice Christianity if to do so would place those people at risk. As the applicants submit, the number of practitioners is itself irrelevant, and furthermore the context of that statistic matters, in a country as large as China 50 million may be a relatively small figure. Thus, I agree with the applicants that the Officer applied a kind of North American logic to this statistical figure and it was unreasonable to infer from it that the applicants are not at risk: *Rahnema v Canada (Solicitor General)*, [1993] FCJ No 1431 at para 20.

[13] The applicants' other persuasive argument relates to the Officer's quotation from a particular document. The Officer purported to cite Response to Information Request (RIR) CHN103500, *China: Situation of Protestants and treatment by authorities, particularly in Fujian and Guangdong (2005 - May 2010)*, to conclude that Guangdong is a more tolerant province than others. The applicants note, however, that the quotation does not appear in that document and they cannot determine the source of the quotation relied on by the Officer.

[14] Part of the applicants' difficulty locating the quotation stems from the fact that, although the application was submitted entirely in English, the PRRA decision was rendered in French and then translated (yet another example of the problems inherent in this practice). The confusion was further compounded by the fact that "catholiques" was erroneously translated to "Protestants" in the English version of the decision.

[15] What the applicants were not able to figure out is that, while the Officer claims to be quoting RIR CHN103500, he actually quotes from RIR CHN103501, *China: Situation of Catholics and*

treatment by authorities, particularly in Fujian and Guangdong (2005 - 2010). Thus, while the Officer should have been (and evidently thought he was) citing a document about treatment of Protestants, he was actually citing a document about treatment of Catholics. The evidence in these respective documents is substantively different. The English version of the document actually cited by the Officer states:

Information on the specific situation of Catholics in Guangdong and Fujian provinces was scarce among the sources consulted by the Research Directorate. However, several sources stated that they believed that authorities in Guangdong and Fujian provinces might be more tolerant than those in other Chinese provinces (Hong Kong Christian Council 14 June 2010; Graduate Student 12 June 2010).

[16] In contrast, RIR CHN103500, which discusses treatment of Protestants in Guangdong, and was specifically emphasized in the applicants' PRRA submissions, states:

Information on the specific situations of Protestants in Guangdong and Fujian provinces was scarce among the sources consulted by the Research Directorate. In the 9 June 2010 telephone interview with the Research Directorate, the President of the CAA stated that east coast provinces are generally "more open" with fewer incidents involving Christians reported to the CAA (CAA 9 June 2010). However, the CAA President also stated that this did not necessarily mean there were fewer incidents, but rather that they were not reported (*ibid.*). In addition, in a letter provided to the Research Directorate, originally sent to a Canadian asylum lawyer on 3 June 2010, the President stated:

With specific reference to the provinces Fujian and Guangdong, it is absolutely incorrect to find that there is religious freedom in these provinces. [...] [T]he persecution may come and go and not be totally predictable, but it is always present. Even the very threat of a government crackdown is a method of persecution. The house churches in Fujian and Guangdong, like all of China, face the constant and fearful risk of being closed and its members punished. Certainly, these provinces do not enjoy religious freedom while all other parts of China do not. (*ibid.* 3 June 2010)

[17] The Officer's finding that Guangdong was more tolerant than other provinces was clearly material to his conclusion that the applicants were not at risk if returned to their home province. The applicants submitted several pieces of documentary evidence on the treatment of Protestants in Guangdong, particularly highlighting RIR CHN103500. The Officer did not consider any of the articles submitted by the applicants and instead of considering RIR CHN103500 he erroneously considered RIR CHN103501, which is about Catholics.

[18] Thus, since the Officer based his finding regarding persecution in Guangdong on evidence that was irrelevant to the applicants' circumstances, the Officer's conclusion was reached without regard to the evidence and the application should be granted.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is granted. The matter is referred back to Citizenship and Immigration Canada for reconsideration before a different Pre-Removal Risk Assessment officer. There is no question for certification.

"Donald J. Rennie"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8334-11

STYLE OF CAUSE: LIAN ZHI WANG and KAIXIANG XU v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto

DATE OF HEARING: May 15, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** RENNIE J.

DATED: May 18, 2012

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