Federal Court  Cour fédérale

**Date: 20121019**

**Docket: IMM-2-12**

**Citation: 2012 FC 1218**

**Ottawa, Ontario, October 19, 2012**

**PRESENT: The Honourable Madam Justice Gleason**

**BETWEEN:**

**DE GUANG CHEN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant is a Chinese citizen and prior to his arrival in Canada resided in the Liaoning Province in China. The applicant came to Canada in 2009 and upon arrival made a refugee claim. He claims to be a Christian and to fear persecution due to his religion if he were returned to his home province in China. The Refugee Protection Division of the Immigration and Refugee Board [the RPD or the Board] dismissed the applicant's refugee claim. The RPD found that the applicant's evidence regarding an alleged raid on his house church in China and the alleged arrest of fellow house church members was not credible. It also held that the applicant would not be exposed to risk

if he were returned to Liaoning Province because the documentary evidence before the Board established that the applicant could practice Christianity in a house church without fear of persecution if he were returned to that province.

[2] The RPD first issued its Reasons and Decision in this matter on December 13, 2011. After the applicant filed his application for leave and judicial review, in which he claimed that the Board had relied on undisclosed documentary evidence in reaching its decision, the RPD issued Amended Reasons on January 4, 2012. In its Amended Reasons, the RPD amalgamated a few paragraphs, corrected a number of footnotes to correctly cite to the National Documentation Package that was before it and made three amendments to the text of the decision.

[3] In this application for judicial review, the applicant asserts that the Board's decision must be set aside because it was *functus officio* once it issued the December 13, 2011 Reasons and Decision and could not amend them in the manner it did. The applicant further asserts that in apparently relying on country documentation in its first decision that was not contained in the document package disclosed to the applicant, the RPD violated the principles of natural justice and adopted "boilerplate" reasoning.

[4] As is more fully discussed below, none of these submissions has merit. The amendments made by the Board do not alter its original decision in any meaningful way and were made to correct a slip; accordingly, the doctrine of *functus officio* is inapplicable. Insofar as concerns the alleged violation of the principles of natural justice, the applicant has not demonstrated any material difference between the first and second decisions nor between an out-dated country documentation

package that the RPD might have referred to in its first decision and the actual documentation package that the Board referred to in the second decision. In essence, all that happened was that the Board corrected some careless references and footnotes and slightly amended the text of its decision, to more accurately summarize the evidence before it. This type of correction does not give rise to a reviewable error and, indeed, results in a decision that accurately reflects the documentation before the Board as opposed to a boilerplate decision as the applicant alleges.

**Review of the Board's Amendments**

[5] There were four types of amendments made by the Board:

- the purely clerical, which involved amalgamation of paragraphs;
- deleting inaccurate footnote references (which appear to not correspond to any of the documents contained in the documentation package regarding Liaoning Province that was before the RPD and might have referred to an outdated package) and replacing them with accurate references;
- amending references from portions of the materials before the Board to cite to other portions of those materials; and
- changing the text of the Reasons in three places so that it conformed to the wording used in the National Documentation Package that was before the Board.

In terms of the latter changes, it is useful to set out what appeared in the first and second decisions, to compare the two: [1]

1. New paragraph 7 (old paragraph 10)

[1] When necessary to understand the context, the surrounding text that remained unchanged is reproduced

**FROM:** The website of the State Administration for Religious Affairs (SARA) states that family and friends holding meetings at home (as distinct from formal worship in public venues) need not register with the government. However, there were many reports that police and officials of local Religious Affairs Bureaus (RABs) disrupted home worship meetings claiming the participants disturb neighbours or social order or belong to an "evil religion".

**TO:** The website of the State Administration for Religious Affairs (SARA) states that family and friends holding meetings at home (as distinct from formal worship in public venues) need not register with the government. Respect for this policy at the provincial, county and local levels was uneven and there were several reported cases of local officials disrupting religious meetings in private homes.

2. New paragraph 7 (old paragraph 10)

**FROM:** Documentation also highlights, "Members and leaders of unregistered Protestant groups in China continue to face harassment and harsh punishment, including detention, fines, beatings, confiscation of property, arrest and mistreatment and torture in custody." The documentation also reported that arrests for harassment of peaceful Protestant religious activity occurred in at least 17 provinces and two municipalities, with most incidents occurring in Henan, Xinjiang, Shangdong, Hebei and Zehjiang provinces.

**TO:** Documentation also highlights, "The government actively harasses, detains, fines, mistreats and imprisons members and leaders of unregistered Protestant groups".

3. New paragraph 8 (old paragraph 11)

**FROM:** Their report identifies five main targets of persecution: House church leaders, house churches in urban areas, forcing churches to quit worship meetings, severe punishment through long term imprisonment and heavy fines on church leaders and believers, and tighter control of the Three-Self Church.

**TO:** Their report identifies five main targets of persecution: House church leaders, house churches in urban areas, attacks on Christian Human Rights lawyers groups, violent abuse, torture and use of mafia tactics and severe crackdown on Three-Self Patriotic Movement churches that do not accept government control.

[6] Especially when read in context, none of these changes is material to the applicant's claim or to the Board's treatment of it. There is no difference in meaning, in my view, between the old and new texts in the first two of the above excerpts and the applicant does not fall within any of the five main targets of persecution in either version of the text in the third of the foregoing excerpts. Thus, these amendments are insignificant.

[7] Insofar as concerns the amendments made to the footnote references, the applicant has been unable to point to documents that the Board might have referenced in its first version of the decision

that are in any way different in content from those referenced in the second version of the decision, that were contained in the National Documentation Package that was before the RPD. Indeed, it would appear impossible for such demonstration to be made because the RPD did not change the text of its decision when it amended the footnote references but, rather, merely corrected pinpoint cites to the documentation, all of which support the statements made in the decision. In my view, this amounts to nothing more than correcting a clerical error or a slip. Likewise, correction to the pinpoint citations in the footnotes from one spot to another in the documentation that was before the Board is nothing more than correction of a clerical error. Here as well, the corrections support the statements made by the Board in the text of its decision.

[8] Thus, the amendments made by the Board from the first to second version of the decision do not change its meaning or content in any material way.

**The RPD was not *Functus***

[9] The doctrine of *functus officio* applies to decision-makers who lack statutory authority to amend their decisions and operates so as to prevent a decision-maker from changing a decision it has rendered. There are two exceptions to the general rule that a tribunal cannot amend its decision: where the decision-maker amends the decision to address a slip and where the decision-maker amends the decision to correct an error in expressing its manifest intention (*Chandler v Alberta Association of Architects*, [1989] 2 SCR 848, 62 DLR (4th) 577 [*Chandler*]). While the doctrine of *functus officio* applies to the RPD (*Avci v Canada (Minister of Citizenship and Immigration)*, 2003 FCA 359, 313 NR 307), it is applied less strictly than in the case of a court decision as the policy

reason behind the doctrine – the need for finality – is of lesser concern where there is no possibility of appeal (*Chandler* at para 77).

[10] In numerous cases, tribunals have been found to be entitled to make amendments or clarifications much more significant than those made by the RPD in this case. For example, in *Capital District Health Authority v Nova Scotia Government and General Employees Union*, 2006 NSCA 85, 271 DLR (4th) 156, an interest arbitrator was found to possess jurisdiction to amend his initial wage award to clarify that catch-up payments were not to be made to those at the top of the wage scale. Justice Cromwell, then of the Nova Scotia Court of Appeal, wrote for the Court and described the issue that arose in that case as follows:

> … the issue submitted to the board was compensation. The board's job was to settle the terms of the collective agreement of the parties on this issue. Until it had done that, the board's job is not finished. The focus of the debate between the parties is whether, as the applicant contends, the board's supplemental award was simply finishing its job by making more clear what had been its manifest intent in the main award or whether, as the respondent submits … the board in effect changed its mind and altered its initial award.
>
> (at para 45)

The initial award had merely ordered the employer to make catch-up payments to employees generally. The supplemental award, which limited those payments to those who were not at the top of the wage grid, was found to not run afoul of the *functus* doctrine.

[11] To similar effect, in *Canadian National Railway Company v National Transportation Agency* (1989), 96 NR 378 (FCA), the agency was found to possess jurisdiction to detail more precisely the types of documents it had ordered disclosed in its initial decision on the point.

[12] The New Brunswick Court of Appeal considered what is captured by the "slip" exception in *Lodger's International Ltd v O'Brien*, 145 DLR (3d) 293, 45 NBR (2d) 342, which was relied upon by the Supreme Court of Canada in *Chandler*. The New Brunswick Court stated (at para 29):

> There is no doubt that a court can correct clerical or mathematical errors and other minor slips or omissions in an order so long as the alterations are confined to expounding its manifest intent […] and it is equally clear that a similar rule applies to orders of administrative bodies.

[13] In *Nozem v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1449 [*Nozem*], the applicant was mistakenly given a notice of decision with respect to his refugee claim that indicated that his application for protection had been accepted. Two months later, the applicant received a full decision denying his refugee claim. After reviewing the full record, Justice Lemieux concluded that the Board was not *functus officio* when issuing the second decision because the first notice of decision was issued by administrative error.

[14] Similarly, in *Tinney v Canada (Attorney General)*, 2010 FC 605 at para 18, [2010] FCJ No 744 [*Tinney*], Justice Zinn found that the Canadian Human Rights Commission had merely sent a notification in error to a claimant indicating that his complaint would be referred to the Canadian Human Rights Tribunal, when in fact the Commission had reached a negative decision in his file, and that it was open to the Commission to correct that error.

[15] In my view, the amendments the Board made in this case were in the nature of correcting slips or clerical errors and, indeed, were less glaring than those in the *Nozem* and *Tinney* cases. The applicant has not cited any case where amendments like those made here were found to violate the

*functus officio* doctrine. Accordingly, the amendments fall within the first exception to the *functus* doctrine. As a result, the applicant's first argument must be dismissed.

**No Denial of Natural Justice**

[16] As noted, the applicant also argues that the Board's decision should be set aside because its reliance on outdated information violates the applicant's right to be informed of its case to meet.

[17] There are several problems with this argument. First, there is no evidence that any materials other than those listed in the National Documentation Package were in fact before the Board when it rendered its decision. It is possible that it considered the country documentation in the record, and merely made a clerical error (possibly through copying from a previous judgment that relied on an earlier documentation package) in drawing up its formal judgment. Secondly, and more fundamentally, there is nothing to demonstrate that if the Board had in fact considered outdated documentation that it was in any way materially different from that contained in the National Documentation Package it disclosed to the applicant. As already noted, it would appear impossible for this to have been the case since the Board did not alter its reasons in any material way and the documentation before it supports its reasons. Third, as a general principle, there is no denial of natural justice if the Board relies on publicly available country documentation in reaching its decision, especially where such documentation is not materially different from the documents it has disclosed as part of the National Documentation Package. An analogy may be drawn in this regard to decisions of this Court which have determined that PRRA officers cannot be criticized for relying upon country documentation that is publicly available but not specifically disclosed to a claimant (see e.g. *Sinnasamy v Canada (Minister of Citizenship and Immigration)*, 2008 FC 67 at para 9,

[2008] FCJ No 77; *Manvalpillai v Canada (Minister of Citizenship and Immigration)*, 2005 FC 584).

[18] As for the suggestion that the RPD adopted "boilerplate reasoning", even if the Board copied portions of its decision from an earlier RPD decision (which there is no proof of its having done), the reasons given all relate to the applicant's claim and the situation in Liaoning Province. They therefore are proper. In *Cordova v Canada (Minister of Citizenship and Immigration)*, 2009 FC 309 at para 24, [2009] FCJ No 620 (Snider), Justice Snider rejected:

> […] the Applicant's suggestion that the use of "boilerplate passages" in the Board's decision renders it unreasonable by default. On the whole, the Board's state protection analysis addresses the correct question of whether a journalist such as the Applicant would be at risk. It is self-evident that much of the analysis will be the same for any given country. Provided that the "boilerplate" is based on the documentary evidence and addresses the particular evidence and position of a claimant, the Board's repetition of certain passages from other decisions is not, in and of itself, an error.

This reasoning applies equally in this case.

[19] Thus, the applicant's second argument likewise fails and accordingly this application must be dismissed.

[20] No question for certification under section 74 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 was proposed and none arises in this case.

## JUDGMENT

**THIS COURT'S JUDGMENT is that**:

1. This application for judicial review of the RPD's Decision is dismissed.

2. No question of general importance is certified.

3. There is no order as to costs.

"Mary J.L. Gleason"

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-2-12 |
| **STYLE OF CAUSE:** | *De Guang Chen v The Minister of Citizenship and Immigration* |
| **PLACE OF HEARING:** | Toronto, Ontario |
| **DATE OF HEARING:** | July 18, 2012 |
| **REASONS FOR JUDGMENT AND JUDGMENT:** | GLEASON J. |
| **DATED:** | October 19, 2012 |

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