

Federal Court



Cour fédérale

**Date: 20130326**

**Docket: IMM-5888-12**

**Citation: 2013 FC 311**

**Ottawa, Ontario, March 26, 2013**

**PRESENT: The Honourable Mr. Justice Rennie**

**BETWEEN:**

**JIN XIANG CHEN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The applicant seeks to set aside a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada (the Board) which found that he is neither Convention (United Nations' *Convention Relating to the Status of Refugees*, [1969] Can TS No 6) refugee under section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*) nor a person in need of protection under section 97 of the *IRPA*. For the reasons that follow this application is granted.

[2] The applicant is a citizen of China from Fujian province. He alleges persecution on the basis of his membership to an underground Catholic church. The applicant gave evidence that he was introduced to Christianity by a friend in 2009 and attended a house church every week until it was raided by the Public Security Bureau (PSB) on January 17, 2010. He says that he fled and learned that the PSB had gone to his home and interrogated his family.

[3] The applicant made arrangements to come to Canada and arrived on February 2, 2010. He made a refugee claim three days later. Since then, he claims to have learned from his wife that three members of his church were sentenced to prison terms and that the PSB continues to look for him.

***Decision Under Review***

[4] The Board determined that the applicant was not credible and therefore dismissed his claim for protection.

[5] The Board considered his testimony to be contrary to the country condition evidence and therefore concluded that the alleged raid did not occur.

[6] The documentary evidence states that the Catholic Church has a strong presence in Fujian province but that there has been sporadic persecution of underground churches. The Board noted that generally it is priests and bishops who are persecuted and that there is extremely limited evidence of parishioners being persecuted.

[7] The Board considered the summons that the applicant stated was served on his family by the PSB. The Board determined that if a summons were issued it would have been an arrest summons; the zuzhuan, rather than the less coercive summons; the zuanhuan. The Board also examined the applicant's summons and noted various deficiencies including the lack of dates, no signature, apparent writing over the seal and reference to the wrong article of the criminal code.

[8] The applicant also tendered a prison visiting card said to have been issued to the wife of a parishioner who had been imprisoned. The Board rejected this evidence in light of its conclusion that the raid did not occur and the proliferation of fraudulent documents in China. The Board found that the tending of an additional fraudulent document further undermined the applicant's credibility.

[9] The Board then considered the genuineness of the applicant's religious practice in Canada. The applicant produced a letter from a priest in Canada stating that he had joined a Chinese Catholic church and had been baptized. Additionally, the applicant correctly answered a number of detailed questions about Catholicism. The Board noted however, that he had taken a Christian study course in Canada and determined that his attendance at a church in Canada was merely to support his refugee claim.

[10] Finally, the Board concluded that the applicant could freely practice Catholicism in China. There was "mixed information" regarding the treatment of Christians in Fujian province and some sources showed a high degree of tolerance. Another source stated the Fujian province was one of "the worst" for persecution of unofficial Catholic churches. The Board preferred the former

evidence because the latter did not show details or examples. There was “extremely limited evidence of state authorities taking action against parishioners in Fujian province.”

### *Issue*

[11] The sole issue for this judicial review is whether the Board reasonably decided that the applicant is not a Convention refugee nor a person in need of protection: *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190.

### *Analysis*

[12] In my view there are five substantive flaws in the decision.

[13] First, the Board disbelieved the applicant’s testimony as it was not supported by the country condition evidence. The country condition evidence is contextual and serves as an important backdrop within which the applicant’s evidence is situated, but it is not determinative of an individual claim. Here, the documentary evidence is conflicted and imprecise. It does not dictate a conclusion that the applicant’s story is necessarily implausible.

[14] Much of the documentary evidence speaks generally of arrests, fines and other controls, without specifically referencing any province. The evidence stated that information regarding Fujian province specifically was “scarce”.

[15] The Board found no inconsistencies or contradictions in the applicant’s testimony. Moreover, the Board did not find that he was evasive or that his demeanour indicated a lack of

credibility. The Board simply had a pre-determined view of the situation of Catholics in Fujian and rejected the claim because it was inconsistent with that view.

[16] Second, the Board unreasonably dismissed the applicant's summons. The Board compared the summons to a sample arrest summons even though the applicant provided a notice of summons. These are two distinct documents which, among other things, reference different articles of the criminal procedure law.

[17] The Board reasoned that an arrest summons would have been issued because of the applicant's testimony that the PSB were intent on arresting him and because they had come to his home many times searching for him. This is speculative. The documentary evidence indicates that policing standards are highly inconsistent. It is plausible that the applicant could have been issued a notice of summons in these circumstances.

[18] It is open to the Board to doubt the authenticity of the summons. However, the Board must at least acknowledge that the document did not purport to be an arrest summons and therefore would not follow the arrest summons form even if authentic. Moreover, the comparator arrest summons is only a sample and is now, as a 2004 version, quite dated. An authentic summons from 2010 may well appear different: *Lin v Canada (Minister of Citizenship and Immigration)*, 2012 FC 288, paras 52-53.

[19] Third, the Board failed to fairly consider the prison visiting card, stating that "...on the basis of having found that the raid of the claimant's house did not occur, the panel finds that the Prison 'Visiting Card' in relation to the claimant's introducer is not a genuine document."

[20] It is impermissible to reach a conclusion on the claim based on certain evidence and dismiss the remaining evidence as inconsistent with that conclusion. Before concluding that the raid did not occur the Board must consider whether the prison visiting card substantiated it. The reasoning has been inverted. This error in methodology or in assessing the evidence was best described by the British Columbia Court of Appeal in *Faryna v Chorny*, [1952] 2 DLR 354:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. [...] Again a witness may testify what he sincerely believes to be true, but he may be quite honestly mistaken. For a trial Judge to say "I believe him because I judge him to be telling the truth", is to come to a conclusion on consideration of only half the problem. In truth it may easily be self-direction of a dangerous kind.

[21] The Board identified no basis for concluding that the visiting card was fraudulent, other than its inconsistency with the conclusion already reached on credibility.

[22] Fourth, the Board summarily rejected the applicant's detailed knowledge of Catholicism, his certificate of baptism and the letter from his Canadian priest. It is questionable whether any evidence could have convinced the Board that the applicant was sincere in his religious belief.

Once again, the error lies in putting the conclusion before the evidence. Further, the applicant's responses to the questions supported the opposite conclusion. He answered, in the main, all questions, some of which required a thorough understanding of Christianity.

[23] Fifth, it was unreasonable for the Board to find that the applicant could practice his religion freely in China should he be a genuine Catholic. The Board's analysis on this point was tainted by the earlier errors, in particular its dismissal of the applicant's testimony regarding the conditions in Fujian province. In many cases, an objective finding on the existence of or tolerance for religious freedoms in the country from which the claimant is fleeing would be determinative, rendering the issue of the claimant's particular credibility irrelevant. Here, however, the evidence of religious tolerance in Fujian province was not so overwhelming as to negate the requirement of considering, had the applicant's credibility been correctly assessed, how he would be treated upon return.

[24] Overall, it is evident that the Board decided the merits of the claim based on the documentary evidence alone. Having formed a conclusion based on that evidence the Board dismissed the applicant's testimony and supporting documents as inconsistent with that view. This treatment of the evidence is not consistent with the appropriate methodology. A decision to reject certain aspects of the evidence does not constitute, absent a negative credibility finding, *carte blanche* to reject all of the remaining evidence. Each aspect of the evidence must be assessed on its own merits.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is granted. The matter is referred back to the Immigration Refugee Board for reconsideration before a different member of the Board's Refugee Protection Division. There is no question for certification.

"Donald J. Rennie"

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5888-12

**STYLE OF CAUSE:** **JIN XIANG CHEN v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION**

**PLACE OF HEARING:** Toronto, ON

**DATE OF HEARING:** March 12, 2013

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

**DATED:** March 26, 2013

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