



Date: 20131118

Docket: IMM-10228-12

Citation: 2013 FC 1167

Ottawa, Ontario, November 18, 2013

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

TONG LE SU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] A Member of the Refugee Protection Division of the Immigration and Refugee Board of Canada [the Member], denied Mr. Su's application for refugee protection because he found him not to be credible with respect to his pursuit by the Public Security Bureau of China [PSB] and further questioned the genuineness of his Pentecostal Christian religious practice in Canada.

[2] The Member's decision denying Mr. Su's application for refugee protection based on its finding that he was not credible, cannot stand because too many of the negative inferences the

Member drew regarding credibility were based on his speculation and on inferences he drew that are not supported in the record.

[3] The most significant of these relates to the Member's finding that the Notice for Arrest issued following the arrest of Mr. Su's parents is likely fraudulent and his alternative determination that if the parents had been arrested and this was documented, the PSB would also have issued a summons for Mr. Su, which it had not.

[4] The Member concludes that the Notice for Arrest is likely fraudulent primarily for three reasons. First, the document was disclosed to the Board by Mr. Su just four days prior to the hearing, when other documents had been disclosed earlier.

[5] If there were other *indicia* that the document was fraudulent, then this apparently opportunistic timing might be a relevant consideration. However, the Member makes no independent assessment as to whether the document otherwise appears to be valid. It is of note that the Notice for Arrest was submitted by Mr. Su together with his Resident Identity Card and hukou; the validity of these was not questioned by the Member. In fact, the Member relied on these two documents to establish Mr. Su's identity and nationality. If their late delivery did not affect their genuineness, why should the late delivery of the Notice of Arrest bring its genuineness into question? It is also noted that the Member, during a break in the hearing, had the Resident Identity Card examined, and he says that there are "no apparent problems with it." Why did he not also have the Notice of Arrest similarly examined? In any event, there is nothing

in the record that suggests that there were any “problems” with the Notice for Arrest document, and I assume that it was otherwise an apparently genuine document.

[6] The second reason for finding that the Notice for Arrest document was likely fraudulent was that his parents were allegedly arrested two months after Mr. Su sent them some religious pamphlets by email when they had attended their house church for 20 years prior without incident. The Member writes that this arrest is an “extraordinary coincidence” and thus makes the raid of the church and arrest of Mr. Su’s parents suspect. I fail to see anything extraordinary about the timing of the raid.

[7] In questioning whether Mr. Su had sent his parents the religious pamphlets by email, the Member himself noted that the Chinese authorities monitor the internet and email in that country. He writes that “it is reasonable to assume that he [the Applicant] was aware of official monitoring of the internet by Chinese authorities, and that he would have taken precautions and used a neutral site and in addition he would have been concerned about sending material to his parents” (emphasis added). Accordingly, it is well within the realm of possibility that the authorities intercepted the email and thus became aware of the receipt of these religious materials by Mr. Su’s parents and their attendance at a non-state operated Christian church.

[8] I note that the Member never actually states that he does not believe that the email was sent - rather, one must imply that he reached that conclusion. The Member is very selective in his recitation of the testimony of Mr. Su as to why he would do such a thing. In his reasons, the Member says that Mr. Su responded that “in the Bible it is said that God will help him” and “at

the time he did not think of this.” Both explanations are rejected by the Member. However, Mr. Su offered a more detailed explanation. He said that the material attached to the email was, in his view, not of a political nature that would offend the Chinese authorities; rather it was about the concept of the Church in Canada. He further explained that because his parents had believed in God for such a long time and without incident, he did not think that the material he sent should cause a big problem. Lastly, as he testified, his parents had asked him to send the materials. This was not a situation where he did so entirely on his own. None of these explanations are discussed by the Member and may have resulted in a different finding, had they been.

[9] Lastly, the Member notes that fraudulent documents are easily obtained in China. As has previously been held by this Court, this does not mean that every document from China is fraudulent and the Member is obliged to examine and weigh the actual document before him and not reject it out of hand: *Lin v Canada (Minister of Citizenship and Immigration)*, 2012 FC 157 at paras 54-55.

[10] The Member speculates that had the Notice for Arrest been genuine, “it is reasonable to assume PSB interest in [Mr. Su] would also be documented.” There is quite simply no foundation for this “assumption.” Mr. Su’s parents were arrested and a document of that fact was issued. Mr. Su has not been arrested. This was not a warrant for arrest, but rather, a document describing when Mr. Su’s parents were taken into custody and where they were being held. His parents were living in China. Mr. Su is in Canada. Absent any reference to a statement in the national documentation package supporting the Member’s assumption, it is mere speculation on his part, and unwarranted and unreasonable.

[11] The unreasonable basis for the rejection of the Notice for Arrest and the unwarranted assumption that a similar document would have been issued for Mr. Su is the primary basis on which the credibility finding was made. Having no solid foundation on which to stand, the credibility finding must accordingly be found to be unreasonable.

[12] The Member “having found the claimant’s testimony regarding pursuit by the PSB is not credible” further finds that he joined a church in Toronto to avoid deportation and his Christian beliefs are therefore not genuine. That finding is also unreasonable because the basis for it, the pursuit by the PSB, has been found to be unreasonable.

[13] No question for certification was proposed.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is allowed, the decision dismissing the Applicant's refugee claim is set aside and his claim is to be determined by a different Member, and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-10228-12

STYLE OF CAUSE: TONG LE SU v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 14, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** ZINN, J.

DATED: November 18, 2013

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