Federal Court  Cour fédérale

Date: 20090630

Docket: IMM-5717-08

Citation: 2009 FC 681

Ottawa, Ontario, June 30, 2009

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

MEI YANG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant claims to be a citizen of the People's Republic of China (China) who fears persecution in China due to her membership in an underground Christian Church. In a decision dated December 2, 2008, a panel of the Refugee Protection Division of the Immigration and Refugee Board (the Board) rejected her claim for protection under either s. 96 or 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA). The dispositive finding of the Board was that the Applicant had failed to establish her identity as a national of China. Because of this finding, the Board did not consider the Applicant's claim on its merits.

[2] The Board's overall conclusion on identity was based on numerous findings. The Board was obviously concerned that the Applicant had not submitted any original documents where security features could be verified. The Board noted the documentation of country conditions indicating that there is a flourishing trade of fraudulent identity documents used by refugee claimants. In short, the Board did not accept her explanations related to the following:

- Her failure to produce an original Resident Identity Card (RIC) or an original hukou;
- Her explanation for obtaining a new RIC in 2005;
- Her lack of knowledge about the uses of an RIC;
- The hand-written alteration of the identity numbers on both hukous, without stamped authorization for the changes;
- The explanation of why she had two different hukous;
- The omission of the Applicant's son and step-son from either hukou;
- Inconsistent information on the date of issuance of her passport; and
- Her assertion that her name was not checked by Chinese authorities, in spite of going through three security checkpoints when she allegedly travelled from Beijing.

[3] The Applicant seeks judicial review of the Board's decision, arguing that the Board failed to have regard to the totality of the evidence before it and that the Board seriously misapprehended material aspects of the evidence before it.

[4] The decision of the Board is based on its assessment of the facts. Thus, unless that decision as a whole is unreasonable, the Court should not intervene.

[5] Section 106 of the IRPA and s. 7 of the *Refugee Protection Division Rules*, SOR/2002-228 (the Rules) sets out the importance of establishing a claimant's identity.

106.	The Refugee Protection Division must take into account, with respect to the credibility of a claimant, whether the claimant possesses acceptable documentation establishing identity, and if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain the documentation.	106.	La Section de la protection des réfugiés prend en compte, s'agissant de crédibilité, le fait que, n'étant pas muni de papiers d'identité acceptables, le demandeur ne peut raisonnablement en justifier la raison et n'a pas pris les mesures voulues pour s'en procurer.
7.	The claimant must provide acceptable documents establishing identity and other elements of the claim. A claimant who does not provide acceptable documents must explain	7.	Le demandeur d'asile transmet à la Section des documents acceptables pour établir son identité et les autres éléments de sa demande. S'il ne peut le faire, il en donne la raison et indique quelles mesures il a prises pour s'en procurer

> why they were not provided and what steps were taken to obtain them.

[6] Pointing to *Lin v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 84, [2006] F.C.J. No. 104 (QL) at paras. 10-11, *Jiang v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1292, 68 Imm. L.R. (3d) 127 at para.7, and *Zheng v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 877, 74 Imm. L.R. (3d) 28 at para. 15, the Applicant submits that the Board must consider the entirety of her testimony, including that of her alleged persecution as a Christian. I do not agree with this broad interpretation of the cases cited. As I read the jurisprudence, the law is clear that, where identity is not established it is unnecessary to further analyze the evidence and the claims (*Li v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 296, [2006] F.C.J. No. 368 (QL) at para. 8; *Husein v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 726 (QL)). However, when making identity findings, the Board must arrive at its conclusions based upon the totality of the evidence relevant to identity before it (see, in particular, *Zheng*, above, at para.15). There may be cases where the Board may be asked to look at certain aspects of the merits of a claim that could assist in determining identity. For example, in *Lin*, above, the Board erred by failing to have regard to the applicant's responses to numerous questions relative to her background and the area where she claimed to have lived in China. The applicant's in depth and personal knowledge of her purported country of origin could have supported the applicant's identity. There is no such evidence in this case.

[7] Having read the record and the transcript of the Applicant's testimony before the Board, I am satisfied that the Board's conclusion on identity was based on the totality of the evidence

relevant to identity. In other words, there was no material evidence related to her alleged claim of persecution that would have supported her claim of being a national Chinese citizen. For example, her knowledge of underground Christian churches and the operations of the security police could have been obtained from a variety of sources unrelated to the Applicant's identity.

[8] In refugee hearings, the onus is on claimants to produce acceptable documentation establishing their identities. Where a claimant has failed to present acceptable (or any) documentation, the Board must take into account whether he or she has provided a reasonable explanation for the lack of documentation or has taken reasonable steps to obtain the documentation (see, for example, *Zheng*, above, at para. 14). I am satisfied that, in this case, the Board raised all of its concerns with the Applicant and took all of her explanations into account.

[9] I agree with the Applicant that the inconsistency of one month in the dates on which she said her passport was issued was very minor. That inconsistency, on its own, would not warrant the Board's overall conclusion. However, while this finding contributed to the Board's conclusion, it was not determinative.

[10] The Applicant's next alleged error relates to the Board's findings about the Applicant's RIC. The Board asked a number of questions about the Applicant's efforts to obtain her original RIC. One area of questioning revolved around the Applicant's claims that her original RIC was mailed to her by her husband in a separate package. The Board stated that:

> When asked why he [her husband] did not send the RIC and hukous together, the claimant testified that she was asked by the Immigration and Refugee Board (IRB) to produce the RIC first and he therefore sent it first.

[11] I agree that the Applicant did not make this statement; the transcript shows that she said that Immigration Canada – not the IRB – had asked her for the RIC. Nevertheless, this error is, in my view, inconsequential. Indeed, it appears that nothing turns on this sentence. The sentences that follow contain the findings:

> The Panel finds that the claimant knew at the same time that both these documents were required when she completed her Personal Information Form (PIF) on October 18, 2006, indicating that she would provide her RIC and hukou from China. The RIC was not specifically requested until January 15, 2007. The Panel, therefore, does not accept her explanation and draws a negative inference.

[12] Thus, whether it was Immigration Canada or the IRB who requested the RIC first is irrelevant to the finding.

[13] The third "egregious" error alleged by the Applicant also involves the Board's findings on the RIC. The Board stated the following:

> The claimant testified that she obtained her first RIC in 1985, the second one in 1995 and the third one in 2005…[she] testified that everyone in her area was required to get a new card because the original one had 15 digits. The claimant had no country documents to support her assertion. The Refugee Protection Division country documents submitted do not indicate that everyone in China had to obtain a new RIC card before expiry, and the Panel, in its specialized knowledge from hearing hundreds of Chinese claims, has seen even first generation RICs issued in 2005.
>
> The Panel, therefore, does not accept the claimant's explanation for obtaining a new card in 2005 and draws a negative inference.

[14] The Applicant's purported RIC was what is described as a "second-generation" RIC; it contains certain security and other features that were introduced in June 2003 to decrease the incidence of fraud and counterfeiting. The Applicant argues that the documentary evidence referred to by the Board supports her claim that everyone in her area was required to obtain a second-generation card. In my view, the documentary evidence does not support the Applicant's version of events. Second-generation RICs are issued under two scenarios. First, any card that expires is replaced with a second-generation RIC. However, as stated in the document, "RICs issued under the previous regulations will remain valid until their expiry date". The Applicant testified that she had been issued an RIC in 1995 with a 20-year term; thus, in the normal course of events, her RIC would not have expired until 2015. Secondly, the authorities are also replacing cards in a systematic way. The roll-out of new cards began in late 2004 in large centres and "is expected to be complete throughout China by the end of 2008". The Applicant was unable to produce any evidence to show that Tianjin was a city subject to mass RIC replacement in 2005, when her RIC was allegedly issued. In light of this documentary evidence, it was not unreasonable for the Board to reject the Applicant's claim that everyone in her area was issued second-generation cards in 2005.

[15] In sum, I am satisfied that the Board reached a reasonable conclusion based upon the totality of the evidence relevant to identity. The Board's decision on the issue of identity falls "within the range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 47).

[16] The application for judicial review will be dismissed. Neither party requested that a question be certified. In my view, none should be certified.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. the application for judicial review is dismissed; and

2. no question of general importance is certified.

"Judith A. Snider"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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