



IMMIGRATION AND REFUGEE BOARD
(REFUGEE DIVISION)

LA COMMISSION DE L'IMMIGRATION
ET DU STATUT DE RÉFUGIÉ
(SECTION DU STATUT DE RÉFUGIÉ)

IN CAMERA
HUIS CLOS
TA0-02066

CLAIMANT(S)

XXXXXXXXXXXXXXXXXX

DEMANDEUR(S)

DATE(S) OF HEARING

October 2, 2000

DATE(S) DE L'AUDIENCE

DATE OF DECISION

October 20, 2000

DATE DE LA DÉCISION

CORAM

**Joel A. Bousfield
Puttaveeraiah Prabhakara**

CORAM

FOR THE CLAIMANT(S)

**Herman Pat
Barrister and Solicitor**

POUR LE(S) DEMANDEUR(S)

REFUGEE CLAIM OFFICER

R. Henderson

AGENT CHARGÉ DE LA REVENDICATION

DESIGNATED REPRESENTATIVE

REPRÉSENTANT DÉSIGNÉ

MINISTER'S REPRESENTATIVE

Dale Munro

REPRÉSENTANT DU MINISTRE

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These are the panel's reasons for decision in the claim of XXXXXXXXXX. The claimant is an 18-year-old citizen of China from XXXXXXXXXX, XXXXXXXXXX, Chang Lo City, Fujian province. He claimed a well-founded fear of persecution in China at the hands of the government, a truck owner, the Public Security Bureau (PSB), and his own family by reason of membership in a particular social group – young rural Fuzhounese.

This is a following claim in a group of similar claims before the Toronto Region CRDD, all involving alleged young rural Fuzhounese and Wenzhounese. Due to case complexity and documentary volume, issues common to all of the claims, including a constitutional challenge to the definition of a Convention refugee based on section 15 of the *Charter of Rights and Freedoms*, have been thoroughly argued by the parties in a previously heard first claim, and a sanitized transcript¹ of those proceedings is an exhibit to the hearing of this claim. All of the exhibits entered in the first claim are exhibits to this hearing, with the exception, of course, of exhibits personal to the first claimant. The memoranda of fact and law submitted by the parties in the first claim are before this panel as well, and we have considered them. In arriving at our findings in this claim, we have considered all of this, and all of the further exhibits, submissions, and observations particular to this claim.

The claimant's testimony of alleged past persecution and past events going to the bases of his fear was provided in the narrative to his second Personal Information Form² (PIF) and during the hearing. All of it is in the record and, for the purposes of these reasons, we do not repeat it here. Having said that, again, we have considered all of the claimant's testimony and all of the rest of the evidence, submissions and observations before us. We have also considered the claimant's youth, lack of education, and lack of sophistication.

¹ Exhibit C-9.

² Exhibit C-1.

For the following reasons, we find that the claimant is not a credible or trustworthy witness. During the hearing, the claimant testified that the truck owner and others re-attended at the claimant's family home twice in March 1999. However, the narrative to his second PIF says nothing about these two additional visits. When asked to explain why it is not mentioned in the second PIF narrative, the claimant testified that he did not consider these additional visits significant enough to explicitly mention, given that he had mentioned the previous visits. The panel does not accept this explanation as reasonable. Question 37 of the second PIF, to which the narrative responds, clearly stipulates that the claimant is to set out all of the significant incidents in chronological order. The claimant clearly had legal representation when the second PIF was drafted and, by the claimant's own oral testimony, he was threatened again with hard labour during the two March visits. These visits therefore cannot be reasonably regarded as anything less than significant in terms of the claimant's alleged fears and, therefore, given that the claimant was represented by counsel at the time the second PIF was drafted, the panel sees no reason why these additional visits ought not to have appeared in the second PIF narrative if they occurred. The panel draws an adverse inference as to the claimant's credibility as a witness from this omission and from the claimant's failure to provide a satisfactory explanation.

According to the claimant's second PIF and his oral testimony, the claimant arrived in Canada by airplane in January 2000. However, there are notes³ of an immigration interview before us which ostensibly contradict this testimony, suggesting, *inter alia*, that the claimant arrived in Canada by ship in March 1999. In oral testimony, in the course of being given an opportunity to explain the contradictory notes, the claimant acknowledged that he was interviewed by Canadian immigration officials on February 1, 2000. To explain away the notes, the claimant testified that he lied to Canadian immigration officials pursuant to a snakehead's instructions. However, for the

³ Exhibit M-2.

following reasons, the panel does not accept this explanation as reasonable or truthful. When asked to state the lies that he told to Canadian immigration officials, the claimant stated that he lied about his date of birth and by saying that he arrived by ship. Unfortunately, when asked if he told any other lies in that interview, the claimant testified that he did not. The claimant was then confronted with notes of the interview which indicate that the claimant also told another alleged lie - that he had been working in Toronto since March of 1999 while waiting for arrangements to smuggle him to New York. To explain this further contradiction upon contradiction away, the claimant testified that he thought this was implicitly included in his initial admission of the lie about coming by ship rather than by plane, and that he could not remember all the lies he told Canadian immigration officials because it happened such a long time ago and he had been under pressure. In our view, however, an alleged lie about working in Toronto is not reasonably regarded as implicitly included in an alleged lie about arriving by ship, and, also in our view, the time to tell us that he could not remember all the lies he told Canadian immigration officials was when we asked whether he told any other lies rather than only after testifying that he did not tell any further lies and then being confronted with an alleged further lie. Moreover, while it is not implausible that a snakehead might instruct the claimant to lie about how he arrived, given the extreme prejudice it would create for a Canadian refugee claim by the claimant and the paucity of additional service it would do to the interests of the snakehead, the panel finds it highly implausible that a snakehead would instruct the claimant to untruthfully backdate the date of arrival as far back as March 1999 and to untruthfully state that he had been working in Toronto while awaiting arrangements for smuggling to New York. We draw a further adverse inference as to the claimant's credibility as a witness from this morass of contradiction and implausibility and the claimant's failure to provide a satisfactory explanation.

There were two PIFs in evidence before us and the first PIF⁴ differs from the second PIF and his oral testimony in a number of respects. Given the alleged

circumstances of the drafting of the first PIF which were offered as an explanation for all of the discrepancies, we do not draw any adverse inferences from most of the discrepancies. However, there is one omission from the first PIF which, in our view, is not reasonably explained by lack of legal representation, ignorance, lack of sophistication, and pressured circumstances, and that is its narrative's failure to mention the threats to take the claimant away to work at a hard labour camp. According to his second PIF and his oral testimony, such threats occurred. Furthermore, it is clear from his oral testimony that fear of forced labour is supposed to be one of his primary fears. Finally, despite the circumstances of its drafting, the first PIF narrative does contain a fair amount of detail. We, therefore, fail to understand why the alleged threats of forced labour are not mentioned in the first PIF narrative if they occurred. We draw a further adverse inference as to the claimant's credibility as a witness from this discrepancy between, on the one hand, his oral testimony and his second PIF narrative, and, on the other, his first PIF narrative.

In our view, these aforementioned problems with the claimant's testimony are sufficient, in our view, for our finding that the claimant is not a credible or trustworthy witness. However, the following additional reasons bolster our finding.

There were internal contradictions in his oral testimony with respect to the history of visits by the truck owner and the PSB. The record will show that the claimant testified that the first two of these visits occurred in December 1998. Later on during the hearing, the claimant changed his testimony to allege that the first two visits occurred in January 1999. When asked to explain this contradiction, the claimant denied that he ever testified that the first two visits occurred in December 1998 and never provided an explanation. Furthermore, at another juncture of the hearing, the claimant testified that the truck owner attended visits with several PSB officers and then changed his testimony later on to allege that the truck owner attended these very same visits with only one other person. Similar to the contradiction regarding the dates of some of the visits discussed immediately

⁴ Exhibit C-2.

previous, when confronted with this contradiction, the claimant again attempted to deny contradiction and failed to provide an explanation. Not having an explanation for either one of these contradictions, the panel draws yet another adverse inference as to the claimant's credibility as a witness from them.

There also was an inherent implausibility in the claimant's testimony. The claimant testified that, on one occasion, the truck owner attended at the claimant's family's home with 11 others in an attempt to coerce the debt for the truck out of the claimant's father. While possible, the panel finds it unlikely that such a large group would attend for such a purpose. If it were a group of 6 or 7, this testimony might shade into likely, but 11 is definitely not, in our view, a likely number. We draw a further adverse inference as to the claimant's credibility as a witness from this implausibility.

For all these reasons, we find that the claimant is not a credible or trustworthy witness. Having made this finding, we do not find any of his testimony of alleged past persecution and past events going to the bases of his fear as true on a balance of probabilities, including any aspects of his testimony that might suggest that he is wanted by the truck owner and the PSB for hard labour, or any of his testimony, and we might add that in this particular regard there was not much even had it been found credible, that might suggest that he has been or will be exploited by his family for financial purposes or that he came to Canada against his will. Based on the claimant's resident identity card,⁵ we accept that the claimant is an 18-year-old citizen of China from the Fuzhou area of Fujian province, and that he is, therefore, a young rural Fuzhounese. However, that is about all we believe.

⁵ Exhibit C-3.

Given our findings with respect to the claimant's credibility as a witness, we have no credible evidence upon which to find a serious possibility that the claimant is wanted by a truck owner and the PSB for forced labour. Furthermore, we also do not have any credible or trustworthy evidence to find that the claimant came to Canada against his will. We, therefore, have no basis upon which to distinguish Valentin,⁶ according to which penalties for illegal exit pursuant to laws of general application are not persecution.

This leaves the claimant's alleged fear of forced re-migration at the hands of his father and his family. Given our findings with respect to the claimant's credibility as a witness, we have no reason to believe based on his testimony that this claimant's father and family are poor and, therefore, need to press their children into service to recoup or redress any family debts or financial hardships at this time based on anything the claimant has testified. It is no doubt true that there is a wealth of other evidence⁷ before us suggesting that, by virtue of family patriarchy, filial piety, ignorance, and the restricted choices of many rural Fuzhounese families caused by poverty, residence restrictions and other government policies, *many* young rural Fuzhounese are victimized and exploited by their poor rural families, and that, pursuant to this exploitation, they are at risk of forced migration to work abroad illegally and remit funds to the family, with an attendant risk of a number of serious human rights abuses, and an even greater risk of forced re-migration should the initial attempt at illegal migration fail. However, in our view, that evidence cannot be reasonably read to suggest that *all* rural Fuzhounese families are poor, nor that *all* young Fuzhounese are at risk of victimization and exploitation by their families, including forced migration and increased risk of forced re-migration should the initial attempt fail. Moreover, other evidence before us suggests that many other rural Fuzhounese are not so poor, that many of them are well-informed of the risks of migration, and that many of them have made an informed and voluntary decision to

⁶ Valentin v. Canada (M.E.I.), [1991] 3 F.C. 390 (C.A.).

⁷ See e.g. Exhibits C-4 and C-5.

migrate.⁸ If the claimant fits within the former poorer, exploitative profile, then he might face a serious possibility of forced remigration should he return to China. However, if he fits within the latter wealthier and better-informed profile, then he probably is an economic migrant who voluntarily assumed the risks created by his initial decision to migrate, including increased pressure to re-migrate as a result of his initial decision to migrate should he not wish to attempt to migrate a second time upon return to China after a failed first attempt. The determination of this claimant's profile is, therefore, critical to the assessment of the risk of forced re-migration and, given the existence of two very different possible profiles presented by the documentary evidence previously cited, the credibility of the claimant's testimony is critical to the determination of profile. Having found that the claimant is not a credible or trustworthy witness, we do not have any credible testimony upon which to make the profile determination and to find, possibly, that the claimant falls within the poorer, more exploitative rural Fuzhou profile. Not having any basis upon which to determine the profile, we have no basis upon which to find that this claimant faces a serious possibility of forced re-migration should he return to China. In this regard, the panel emphasizes that the claimant was given ample opportunity to present his testimony and, after having been given such an opportunity, was found not credible or trustworthy.

For all these reasons, we find that the claimant does not have a well-founded fear of persecution, for any of the Convention grounds, if he were to return to China. Therefore, the Refugee Division determines that XXXXXX is not a Convention refugee.

“Joel A. Bousfield”

Joel A. Bousfield

Concurred in by:

“Puttaveeraiah Prabhakara”

Puttaveeraiah Prabhakara

DATED at Toronto, this 20th day of October, 2000.

⁸ See Exhibit R-2, p. 19, Elisabeth Rosenthal, "Chinese Town's Main Export: It's Young Men," *The New York Times*, June 26, 2000.

KEYWORDS - REFUGEE DIVISION - PRACTICE - PROCEDURE - CONDUCT OF HEARING - CREDIBILITY - PARTICULAR SOCIAL GROUP - ILLEGAL EXIT - PERSECUTION - LAW OF GENERAL APPLICATION - MALE - NEGATIVE - CHINA