
FEDERAL COURT LIMITS QUESTIONS ON RELIGIOUS BELIEFS

*By Jennifer M. Leddy **

A. INTRODUCTION

On September 2, 2011 the Federal Court allowed an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada (the Board) because the Board held the applicant to an “unreasonably high standard of religious knowledge.”¹ The matter was remitted back for redetermination by a different Board. This case will be of interest to religious charities because of its import for testing sincerity of religious belief in cases of freedom of religion, as well as, refugee determination.

B. FACTS

The applicant, a citizen of China, feared that if he returned to China he would be put in jail and be unable to practice his Roman Catholic faith. He provided a letter from the Toronto Chinese Centre – Our Lady of Mount Carmel Church that stated he had been attending Church regularly since September of 2008 and also produced a Baptismal and Confirmation Certificate from the Church.

* Jennifer M. Leddy, B.A. LL.B., practices charity and not-for-profit law with the Ottawa office of Carters Professional Corporation.

¹ *Mao Qin Wang and the Minister of Citizenship and Immigration* 2011 FC 1030

C. BOARD DECISION

The Board gave little weight to the above noted documentary evidence produced by the applicant because, in its view, the applicant's knowledge of the Catholic faith was not "commensurate with someone who had been a Roman Catholic for three years." In this respect, the Board included the following in a list of the applicant's deficiencies:

- a. The applicant displayed little knowledge of mass;
- b. He was asked about the reading of the Gospel by the priest. The applicant testified that the previous Sunday's reading was from Exodus. The Board noted that this was incorrect, as the Gospel is always from the New Testament;
- c. He displayed little knowledge of the Old Testament;
- d. He had little knowledge of the Bible's characters, such as Mary, Elizabeth and Mary Magdalene;
- e. He did not know the story of the Good Samaritan;

The Board also gave little weight to the applicant's correct answers to questions about the rosary or seven sacraments on the basis that he "could have been anticipating the questions". The Board's finding that the applicant lacked sufficient knowledge of the Roman Catholic faith was the principal reason why the applicant's claim for acceptance as a refugee was dismissed.

D. FEDERAL COURT DECISION

The Court held that the Board erred in holding the applicant to an "unreasonably high standard of religious knowledge", noting that the applicant correctly answered several detailed questions. The Court also concluded that the Board "erroneously expected the answers of the applicant to questions about his religion to be equivalent to the Board's knowledge of that religion."

E. CONCLUSION

The decision of the Court affirms that the Board was not competent in the legal sense to evaluate the answers given by the applicant about his religion. In testing the sincerity of religious belief in cases of freedom of religion, the Supreme Court of Canada has clearly held in the leading case of Amselem [2004] 2 S.C.R. 551 that "Requiring proof of the established practices of a religion to gauge the sincerity

of belief diminishes the very freedom we seek to protect.” That approach would seem to apply equally to claims of refugee determination.