
REFUGEE CLAIM TURNED DOWN BECAUSE CLAIMANT UNABLE TO PROVE SINCERITY OF RELIGIOUS BELIEF

*By Jennifer M. Leddy**

A. INTRODUCTION

On May 26, 2011, the Federal Court upheld the decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) that the applicant in question was not entitled to protection as a refugee because his claims alleging that he had attended an underground Christian Church in China and was wanted by the Public Security Bureau (PBS) were not credible. The Federal Court upheld the Board's decision that the applicant had not adequately proven the sincerity of his religious beliefs.¹ This *Charity Law Bulletin* outlines the facts of the case and explains its relevancy to religious charities.

B. FACTS

The applicant, a citizen of China, came to Canada in April 2007 on a temporary work permit. On January 7, 2008 he claimed refugee status on the grounds that he would be persecuted for his religious beliefs if he returned to China.

In China, all Christian religious activity is required to take place only within government controlled churches. Members of house churches or underground churches, that operate outside the regulated churches, are subject to arrest, imprisonment and other punishment, such as labour camps or substantial fines.

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¹ *Wang v. Canada* (Citizen and Immigration), 2011 FC 614 (CanLII).

The applicant claimed that he began attending a house church in China in 2004 and was often a lookout during services. Within three days of arriving in Canada, his employer introduced him to a church which he began attending regularly. He alleged that he filed a claim for refugee status after learning from his wife in China that the PBS had come to their home because of the alleged illegal activities of his church and that some members of his church had been arrested and imprisoned.

C. BOARD DECISION

While the Board had documents affirming the applicant's attendance and participation in church activities, it found that he was not sincere in his religious beliefs, partly because he could not answer to the Board's satisfaction the following questions about Jesus as a person that are reproduced in paragraph 19 of the Federal Court decision.

Member: So tell me about Jesus as a person. What was he like?

Claimant: Jesus is son of God.

Member: I am not asking who he was or what he did. I am asking what is he like as a person.

Claimant: Jesus was conceived through the holy ghost and was born in this world.

Member: Again I am not asking who he was or what he did. I am asking who he is as a person. Because anybody could memorize a creed and recite the creed. I want to know what you believe and what you know of Jesus as a person.

Claimant: In my heart he is my saviour.

Member: That is not... again, tell me what Jesus is as a person and this is the last time I am going to ask you.

Claimant: I am sorry I really do not know how to answer.

Ultimately, the Board did not believe the applicant, citing numerous inconsistencies in his written submission and oral testimony and noting that there was no affidavit from his wife. The Board concluded that that his claims to have attended an underground church in China and to be wanted by the PBS were not credible.

D. FEDERAL COURT DECISION

This brief case comment is concerned solely with the problematic questions that the Board posed to the applicant about "Jesus as a person". While the Federal Court Judge found this line of questioning "awkward", he did not find it an error for which the Board's decision could be set aside. He also noted that the answers to

these questions were not the only basis for testing the applicant's sincerity of faith, but that he had also been vague in answering other questions about the Pentecostal faith.

E. CONCLUSION

The approach of both the Board and Federal Court to testing a claimant's sincerity of religious belief seems to overlook the Supreme Court of Canada's ruling in the leading Amselem case which held as follows:

“Indeed, the court's role in assessing sincerity is intended only to ensure that a presently asserted religious belief is in good faith, neither fictitious nor capricious, and that it is not an artifice. Otherwise, nothing short of a religious inquisition would be required to decipher the innermost beliefs of human beings....

“A claimant may choose to adduce expert evidence to demonstrate that his or her belief is consistent with the practices and beliefs of other adherents of the faith. While such evidence may be relevant to a demonstration of sincerity, it is not necessary. Since the focus of the inquiry is not on what others view the claimant's religious obligations as being, but rather what the claimant views these personal religious “obligations” to be, it is inappropriate to require expert opinions to show sincerity of belief. An “expert” or an authority on religious law is not the surrogate for an individual's affirmation of what his or her religious beliefs are. Religious belief is intensely personal and can easily vary from one individual to another. Requiring proof of the established practices of a religion to gauge the sincerity of belief diminishes the very freedom we seek to protect.” (*Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551, at para 52 and 54)

While the Board was required to test the sincerity of the applicant's religious belief, its very unusual questioning of the Applicant about Jesus “as a person” came very close to setting itself up as the religious “expert” that the Supreme Court of Canada has clearly stated is not required. Moreover, the Board was not competent in the legal sense to evaluate the answers given by the Applicant.