

** Translation **

Case Name:

O.M.R. (Re)

[2001] C.R.D.D. No. 135

No. TA0-14835

**Immigration and Refugee Board of Canada
Convention Refugee Determination Division
Toronto, Ontario
Panel: Bonnie E. Milliner
In camera**

Heard: May 11, 2001.

Decision: July 12, 2001.

(25 paras.)

China — Negative — Evidence — Credibility — Political opinion — Economic migrant — Male.

Appearances:

John Savaglio, Barrister & Solicitor, for the claimant(s).

S. Pieters, Refugee Claim Officer.

REASONS FOR DECISION

¶ 1 On May 11, 2001, at Toronto, Ontario, the Convention Refugee Determination Division (CRDD) of the Immigration and Refugee Board (IRB) heard the claim of xxxxxx to be a Convention refugee pursuant to section 69.1 of the Immigration Act. The claimant is a 37-year-old citizen of the People's Republic of China (PRC), who bases his claim to a well-founded fear of persecution, on the grounds of perceived political opinion. The claimant agreed in writing to have his claim determined by a single-member panel.

Summary of the Claimant's Allegations

¶ 2 In his narrative, [See Note 1 below] the claimant wrote that he was a xxxxx at a bookstore in Changle, Fujian Province. The store was raided by the Public Security Bureau (PSB) and contraband publications were discovered. The owner and the claimant were arrested.

¶ 3 The claimant was detained at a police detention centre, interrogated and beaten, and kept there for approximately four months. Subsequently, he was taken to a court and sentenced to two years plus two years probation, based on charges that he had been disseminating counter-revolutionary material. He writes that he was denied due process.

¶ 4 At the time of sentencing, he was transferred to a prison where he served a two year term of being "reformed through labour" at a garment factory.

¶ 5 For the five months before he left the PRC, he reported to the police station as required by one of his several probation conditions. His attempts to find work were frustrated by his status as a convicted counter-revolutionary and his inability to leave the jurisdiction. Feeling that he would forever be burdened by the stigma of his ex-convict status, he decided to leave the PRC. With the help of a "smuggling agent" and borrowed money, he left for Canada.

¶ 6 Since his arrival, he has learned through telephone conversations with his mother that the authorities continue to seek his whereabouts and ask about his failure to report to the police as required by his probation order.

¶ 7 He is unable and unwilling to return to the PRC because he fears ongoing persecution on the grounds of his actual and/or perceived political opinion.

Determination

¶ 8 In order for the panel to find the claimant to be a Convention refugee, the evidence must demonstrate that he has good grounds to fear persecution for at least one of the reasons set out in the Convention refugee definition. The standard of proof to be applied in assessing whether good grounds exist is set out in Adjei. [See Note 2 below] Having considered all of the evidence, I am not satisfied that there is a "serious possibility" that the claimant, should he return to China, would be persecuted, based on any of the Convention refugee grounds.

Note 2: Adjei v. Canada (Minister of Employment and Immigration), [1989] 2 F.C. 680.

Issues

¶ 9 The issues identified at the outset of the hearing were identity, namely, personal, national and political; credibility; subjective fear, namely, failure to claim in the United States of America (USA) and a five-day delay in claiming in Canada; and objective basis.

Analysis

Identity

¶ 10 The claimant traveled to Canada with a passport and with the assistance of a "smuggler." The only official document provided by the claimant to establish his true identity is a Resident Identity Card [See Note 3 below] that was not submitted until the day of the hearing. He was asked about his hukou (household registration) and various school documents as examples of other identity documents that he might have provided, but, although he acknowledged the availability of such documents in the PRC, he had no answer for his failure to provide them other than either his lawyer did not ask him or his lawyer did not tell him that he needed such documents. While such documents are not legally required, when available, they are expected and helpful. Nonetheless, in the absence of evidence to the contrary, I accepted the claimant's personal identity and that he is a national of the PRC. However, these factors are not by themselves sufficient to establish a claim for refugee status. His connection to the bookstore, in which he was allegedly employed, and which figures largely in this claim, proved to be much more tenuous.

Note 3: Exhibit C-2, Resident Identity Card, xxxx, Date of Issue xxxxx, 1990.

Credibility

¶ 11 I considered the claimant's testimony in its entirety. Even taking into consideration the claimant's age, level of sophistication and education, cultural differences, and the stress of the hearing room setting that might impact on how his testimony was given, I still found that the claimant's evidence, with respect to the central elements of his claim, was not credible or trustworthy. There were discrepancies and implausibilities which perhaps alone would be insufficient for a negative determination, but cumulatively, they were enough to create an absence of a "ring of truth." A few examples follow of why I made such a negative credibility finding.

Business Card

¶ 12 The only document provided to establish his connection with the bookstore that is at the heart of the claim, is a business card. [See Note 4 below] The business card, which the claimant stated that he received in January 2001, from the PRC, from the friend of a friend through Hong Kong, was not provided for the panel to view until the actual hearing. The claimant alleged that he tendered the card to the translator from the law firm but speculated that perhaps the interpreter did not have time to deal with it. Given the brevity of the two documents he submitted (the resident identity card and the business card), I would expect the claimant to accept some responsibility to see that his documents were provided as requested on his Personal Information Form (PIF), a document that he affirmed had been translated to him as signed November 24, 2000, and that he said he understood. The PIF instructs the claimant to:

Note 4: Ibid., Business Card, xxxxxxxx, Sales xxxxxxxx.

... submit all documents, including translated documents, no later than twenty (20) working days prior to your scheduled hearing. [See Note 5 below]

Note 5: Exhibit C-1, PIF, p. 1, Important Instructions.

¶ 13 The purported original business card provided at the hearing contains deficiencies readily apparent to the eye of the beholder. The pattern and printed words were not straight and the smudging made it look like a photocopy. In his submissions, Counsel allowed that the card is crude, not sharp, and looks copied, but proposed that it was only one piece of evidence. When asked if the band at the top was supposed to be in colour, the claimant did not answer the question asked, but simply said it was like that when he received it. When the anomalies in the card were first brought to his attention, he replied that it was like that when he printed it, then, in response to questioning, quickly denying that he had printed it, saying that it was printed for him. Although when asked about the crooked placement of the words on the card, he initially stated it was like that when it was printed, he later stated that he did not notice that it was out of kilter. When asked if he would not want such a card re-done, he stated that he did not pay attention, he just picked it up. One does not have to be a forensics expert to view the anomalies on the card. It is a very poor quality copying job, especially considering (according to the claimant's testimony), it is supposed to have come from the city of Changle from a printing firm in the business of printing such material. Given the ease with which one may obtain fraudulent documents in the PRC, even official ones, [See Note 6 below] and given the poor quality of even the original of this document, I do not give any weight to this business card as corroboration of the claimant's position at the bookstore. In the presence of other negative credibility findings, I find that the claimant has produced the business card solely for the purpose of forwarding a refugee claim.

Note 6: Exhibit R-1, Human Rights Information Package, June 2000, Subsection 2.6 (a), Information Request CHN32917.Ex, September 28, 1999, p. 2, Corrupt Public Officials Assist in Securing Documents in China.

Subsection 3.1, Asylum in the United Kingdom, China Assessment p. 22, There is a Burgeoning Market in Counterfeit Identity Cards.

China Disclosure Package, February 2000, p. 288, Information Request CHN30580.E, March 24, 1999, re Fraudulently Obtained but Legitimately Produced Documents.

Other Business Documents

¶ 14 The claimant was asked if he had any documents, for example, pay slips, to show that he really was employed at any of the three places that he outlined in his PIF, namely, a construction company, a department store, and most importantly, the bookstore. [See Note 7 below] His non-

responsive answer again was that his lawyer never asked. He was asked the question again, and responded that such documents might be at home, and that he would have to inform his friend and let him try to get them. Again, while such documents are not a legal requirement, they are expected and helpful if they are available. It is the claimant's case to make. If such documents are available, it was up to him to present them. Such documentation was requested pre-hearing at the time of disclosure to Counsel as noted in the file screening form (on file) signed by the Presiding Member. Given that the claimant was represented by Counsel, I find that the claimant has not exercised due diligence in pursuing his claim.

Note 7: Exhibit C-1, PIF, p. 4, q. 18(1), (2), and (3).

Alleged Banned Book

¶ 15 In his narrative, the claimant wrote of a number of banned political magazines, mainly, "Chen Ming," stored in a locked cabinet. [See Note 8 below] Orally, he stated there were about twenty or thirty copies of the magazine. He stated that he had never seen these magazines before, and later in the hearing, used profanity as he described his allegation of being interrogated about the magazines. When asked if he had a copy of the magazine concerned, he replied that it was considered illegal - how could anyone in the PRC get a copy? Then it was put to him that he had been in Canada a long time, and he was asked if he had tried to get a copy of the magazine or get evidence to show that it was banned. He replied in the affirmative, stating that after he arrived, he bought a copy here and read it. When asked why he had not put the magazine before the panel, he fell back on his all-too-frequent comment that the lawyer and the interpreter did not tell him, but then he added that the magazine was easy to get here. In his submissions, Counsel said that the name of the magazine comes up regularly, that it is readily available in Toronto, and that it could be supplied. Up to the time of signing of these reasons, no such copy has materialized. Again, it is the claimant's case to make, it is not up to the Board to obtain his documents for him, and if the magazine that is at the heart of his claim is so easy to get, it was up to him to present a copy to the Board. Again, acknowledging that documentation is not a legal requirement, this particular easily obtainable magazine would have been enormously helpful, and it is reasonable to expect that the claimant could have provided it, especially considering that he says he owns a copy and that he was represented by Counsel.

Note 8: Exhibit C-1, PIF Narrative, Schedule A, par 2.

Claimant's Alleged Behaviour in Court

¶ 16 In his narrative, the claimant wrote that after he had been detained about five months, he was taken to an interrogation room and was met by two plain-clothed officials who claimed to be from the court. He alleged that at that time, he received his sentence, and that during this very brief proceeding, he was not afforded legal counsel, and was not permitted to say anything in his defence. However, when in the hearing he was asked if he had any documents to connect him with the prison, the court, or the charges, he said that when he was charged and sentenced, the

authorities wanted him to sign a document but he refused. He alleged that he was forced to put his fingerprint on the document, and that he was given the document which he threw aside, allegedly saying, "What do I want with this?" When it was suggested to him that such behaviour in a court setting would be deemed unacceptable, and when asked why he would risk further sentencing by the officials, he stated that he was angry, that he was furious, that he was not controlled, and that he was afraid of nothing at that time. Since he had already alleged being beaten in jail, he was asked if his aberrant court behaviour would make him afraid of further beatings or a longer jail term. His answer was in the negative, adding that he thought he would be detained for a while, then released. The claimant was not asked why his written evidence indicated that he was not permitted to say anything in his defence, whereas orally he spoke of unleashing an angry tirade. Therefore, no inferences were drawn from this particular contradiction. However, the claimant's statements, in general, are implausible and the scenario he paints does not accord with the documentary evidence. The documentary evidence abounds with examples of the ruthlessness of the Chinese authorities. Constitutional protections are ignored in practice, prisoners are mistreated and tortured, prisoners are detained incommunicado, and there are instances of extrajudicial killings. [See Note 9 below] It defies credulity that the claimant would not receive swift and severe sanctions for behaviour such as he described, if he were truly in a court situation receiving the sentence of the court. That he could say he had no fear in such a situation just does not carry the "ring of truth" in the face of the strong documentary evidence. I find his credibility to be compromised. There is nothing but his word to connect the claimant to arrest and detention, and I do not find his word to be credible or trustworthy. I find that the entire jail/sentencing scenario was created for the purpose of embellishing this refugee claim.

Note 9: Exhibit R-1, China Disclosure Package, February 2000, Section 1 (C), US DOS for 1999, p. 4.

Leaving the PRC

¶ 17 According to his narrative, the claimant himself came to the realization that he could not have a "normal or reasonable life in China," it was he who saw no choice but to leave China, the departure being facilitated by an amount of money obtained and/or borrowed from relatives and friends. However, his oral version of events did not coincide with the written version. When reminded of the delay in leaving the PRC of almost five months, the time period between his alleged release from prison and his departure from the PRC, he explained that he waited for some time because he did not have enough money. Then he added that it was his friend who came to the realization that he should leave, not himself. His friend allegedly told him that he could not stay like this forever, and advised him to go abroad because he could not stay in the PRC. When specifically asked if it was NOT his realization that he had to leave the PRC, he answered affirmatively. When he was asked to explain the discrepancy about who came to the realization that he should leave the PRC, he did not directly answer the question asked, but replied that he did not have the money to go abroad, and, as well, his parents were old and sick, and he did not want to go too far from them. I do not find the claimant's explanation satisfactory. There is no evidence to show that he is incapable of remembering who came to the

realization that he had to leave, himself or his friend, allegedly a life-altering realization that has brought him half-way around the world. I find that the claimant was evading addressing the discrepancy between his oral and written evidence. I also note that his parents' age and state of health did not preclude his going away from them, once the borrowed money materialized, purportedly US\$25,000. I find his credibility to be seriously undermined.

Contact with Family Since Arrival in Canada

¶ 18 In his PIF, the claimant alleged that since his arrival in Canada, he has had some minimal contact with his mother, by telephoning her at the home of a close friend of his in Changle. That was the means by which he allegedly learned that the Neighbourhood Committee officials were still looking for him and that the authorities were asking questions of both his parents for his failure to report to the police. [See Note 10 below] However, again orally, his story was different. He stated that since his arrival in Canada, he found out that he was still wanted by the authorities because he called his friend and asked, and his friend purportedly acquired that information by visiting the claimant's parents from time to time. When the discrepancy was put to him, i.e. that his information about the authorities came from his friend versus from conversations with his mother at his friend's place, he denied ever contacting his parents, saying all contact was with the friend. He stated that he would not dare contact his parents or involve them, and then added that his mother was ill and was seldom out of bed. He denied knowing why his narrative was written to include conversation with his mother. The claimant was reminded that his PIF was translated to him and that he had attested to its accuracy. He responded that he did not pay attention and did not know there was a mistake. I do not find his explanations satisfactory. Not paying attention and pleading ignorance of a mistake in this narrative cannot be a reasonable explanation for someone whose PIF was translated to him, who was afforded the opportunity to make changes in his PIF at the outset of the hearing, who took advantage of that opportunity and did make amendments, and then affirmed that his PIF was complete and true and accurate. The issue is important because it speaks to the alleged persistence of the Chinese authorities and how the claimant came by that information. In the absence of a reasonable explanation for the discrepancy, I find that on a balance of probabilities, the claimant is not being sought by the Chinese authorities for any reason.

Note 10: Exhibit C-1, PIF Narrative, par. 10.

¶ 19 In making the determination that the claimant's evidence was not credible or trustworthy, I was guided by the words of Mahoney J. A. in Orelie:

One cannot be satisfied that the evidence is credible or trustworthy, unless satisfied that it is probably so not just possibly so. [See Note 11 below]

Note 11: Orelie v. Canada (Minister of Employment and Immigration), (1991) 15 Imm.L.R. (2nd) 1 (F.C.A.).

¶ 20 In summary, I do not believe that the claimant was arrested in a bookstore police raid. I do not believe that he was detained in any correctional facility or that he was on probation, and I do not believe that he is wanted in China by the Chinese authorities.

¶ 21 In addition, there is sufficient evidence before me to find that on a balance of probabilities, the claimant's arrival in Canada was economically motivated. He described his home as one room with partitioning drapes, located in a rural village (xxxx) of Changle. After reading the documentary evidence, I do believe his statement that he had difficulty finding any employment, although I do not believe that his lack of employment has anything to do with a purported criminal record. The documentary evidence, especially with respect to the claimant's province of Fujian, is compelling. The United States Department of State Report states:

China is making a difficult transition from a centrally planned to a market-based economy ... the economy faces growing problems including state enterprise reform, unemployment, under-employment, and regional economic disparities. Rural unemployment and underemployment combined are estimated to be over 30 %. Tens of millions of peasants have left their homes in search of better jobs and living conditions. [See Note 12 below]

Note 12: Exhibit R-1, China Disclosure Package, February 2000, Section 1 (c), United States Department of State Report for 1999, p. 1.

¶ 22 Dr. Charles Burton, a renowned Political Counsellor writes that Southern China has a long history of emigration to foreign nations, and that "people smuggling" has increased to meet the aspirations of the Fujianese to continue the tradition of sending promising young people abroad to seek their fortune and bring honour to their native villages, especially since it has become more difficult over recent years for unskilled people to successfully apply for legal entry to advanced industrialized nations. [See Note 13 below] Dr. Burton goes on to say that there is no incentive for China to restrict emigration because emigration takes pressure off social effects of over population and unemployment and contributes to ridding China of disaffected elements. [See Note 14 below] He also notes that with respect to the Fujian Central Government, and more specifically, Changle, (the claimant's area), Fuqing, Mawei, and Lianjiang, the repressive policies of the Chinese state with regard to political and social freedoms are mostly not implemented by the authorities in this area. Dr. Burton, who is widely traveled in China over a 25 year period concludes that human rights are much better protected in the Changle, Fuqing, Mawei, and Lianjiang areas of Fujian than in most other parts of China. [See Note 15 below] I have before me an entire Book of Documents [See Note 16 below] that suggests that the province of Fujian is the top source of illegal immigrants from China, and that the primary motivating factor is economic betterment. The same evidence indicates that the vast majority of illegal migrants to Canada are from Changle. I prefer the documentary evidence to that of the claimant because it comes from independent reliable sources with no interest in the outcome of this claim. The United Nations High Commission for Refugees Handbook has the following to say with respect to economic migrants:

Note 13: Exhibit R-1, Human Rights Information Package, June 2000, Section 3.0, Dr. Charles Burton, Heaven is High and the Emperor Far Away, no. 4, p. 0003.

Note 14: Ibid., No. 11, p. 0008.

Note 15: Ibid., Nos. 19, 20, p. 0009.

Note 16: Ibid., China Disclosure Package February 2000, Section 10, Book of Documents - Relating to Trafficking and Smuggling of Fujian Chinese, Alien Smuggling from Fujian Province Official Perspectives, pp. 189, 190.

A migrant is a person who for reasons other than those contained in the definition, voluntarily leaves his country in order to take up residence elsewhere. He may be moved by the desire for change or adventure, or by family or other reasons of a personal nature. If he is moved exclusively by economic considerations, he is an economic migrant and not a refugee. [See Note 17 below]

Note 17: Office of the United Nations High Commissioner for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, reedited Geneva, January 1992, p.16, parag. 62.

¶ 23 While one may be sympathetic to the grinding poverty and tenuous economic situation in China, especially in Fujian, it is not a ground upon which refugee status may be claimed, and humanitarian and compassionate reasons are not within the mandate of the Refugee Division.

Conclusion

¶ 24 Having considered all the evidence in its totality, and based on the foregoing analysis, I have determined that there is insufficient credible or trustworthy evidence to make a positive determination. I am satisfied the claimant does not have good grounds for fearing persecution, based on his perceived or actual political opinion or on any of the grounds set out in the Convention refugee definition.

¶ 25 Therefore, the Refugee Division concludes that the claimant xxxxxx is not a Convention refugee.

"Bonnie E. Milliner"

Dated at Toronto this 12th day of July, 2001.

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