

Federal Court



Cour fédérale

Date: 20150608

Docket: IMM-3772-14

Citation: 2015 FC 723

Toronto, Ontario, June 8, 2015

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

**YING YI DAI
YI HUANG
YING XIN HUANG**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of the decision of a member (Member) of the Refugee Protection Division of the Immigration and Refugee Board of Canada (RPD) dated April 15, 2014, in which the Member rejected the Applicants' claim for refugee protection made pursuant to ss 96 and 97, respectively, of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA).

Background

[2] The Principal Applicant, Ying Yi Dai, was appointed as the Designated Representative of her daughters, Yi Huang and Ying Xin Huang (Minor Applicants). The Applicants allege that they are citizens of China. The Principal Applicant alleged that she fears persecution by the Chinese government because of her Christian religion.

[3] Based on the totality of the evidence the Member found, on a balance of probabilities, that the Applicants had not established their personal identity, nationality or presence in China at the relevant times. Jurisprudence establishes that where identity is not established, it is unnecessary to further analyze the claim.

[4] By Order dated April 28, 2015, then counsel for the Applicants was, at his request, removed as solicitor of record, the motion record materials indicating that the Applicants had returned to China without forwarding an address or contact information. At the hearing before me the Applicants were not represented, however, their written representations and other materials found in their application record were taken into consideration in reaching this decision.

Issues

[5] The issues in this matter can be framed as follows:

- i. Did the Member err in her assessment of the identity documents?

- ii. Did the Member breach the duty of procedural fairness?

Standard of Review

[6] The standard of review of the RPD's assessment of an applicant's identity is a factual matter and attracts the reasonableness standard (*Gulamsakhi v Canada (Citizenship and Immigration)*, 2015 FC 105 at para 5; *Diarra v Canada (Citizenship and Immigration)*, 2014 FC 123 at 18; *Liu v Canada (Citizenship and Immigration)*, 2012 FC 377 at para 8 [*Liu*]; *Wang v Canada (Citizenship and Immigration)*, 2011 FC 969; *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 at para 4 (FCA); *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at paras 22, 48 [*Rahal*]). In applying the standard of reasonableness, the Court will be concerned with the justification, transparency and intelligibility of the decision-making process and also with whether the decision falls within a range of possible, acceptable outcomes in respect of the facts and the law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]).

[7] On questions of procedural fairness and natural justice, the standard of review is correctness (*Juste v Canada (Citizenship and Immigration)*, 2008 FC 670 at paras 23-24; *Olson v Canada (Public Safety and Emergency Preparedness)*, 2007 FC 458 at para 27). Under the correctness standard no deference is owed by the reviewing Court, which will undertake its own analysis of the question and reach its own conclusion (*Dunsmuir* at para 50; *Wu v Canada (Citizenship and Immigration)*, 2013 FC 838 at para 12; *Etienne v Canada (Public Safety and Emergency Preparedness)*, 2014 FC 1128 at para 14).

Positions of the Parties

Applicants' Position

[8] The Applicants submit that while it may have been open to the Member to find that the hukou was fraudulent, she erred by failing to properly assess the remainder of the identity documents. The Member unreasonably focused on those documents where authenticity appeared doubtful, and ignored those documents that appeared trustworthy. The Member was bound to fairly consider all of the documents but made no effort to ascertain the authenticity of the other documents. Therefore, her finding on identity, which was determinative of the entire claim, was made without considering the totality of the evidence, and this was a reviewable error (*Kabongo v Canada (Citizenship and Immigration)*, 2013 FC 1086 at para 21 [*Kabongo*]; *Mohmadi v Canada (Citizenship and Immigration)*, 2012 FC 884 at paras 19-21 [*Mohmadi*]; *Lin v Canada (Minister of Citizenship and Immigration)*, 2006 FC 84 at paras 12, 14 [*Lin*]).

[9] As to the birth certificate, graduation certificate, divorce certificate and electricity bill, the Member made a factual error in stating that the documents have no security features, as the certificates all bore official stamps (*Zheng v Canada (Citizenship and Immigration)*, 2008 FC 877 at paras 18-19 [*Zheng*]; *Ru v Canada (Citizenship and Immigration)*, 2011 FC 935 at paras 49-52 [*Ru*]; *Elhassan v Canada (Citizenship and Immigration)*, 2013 FC 1247 at para 22 [*Elhassan*]). Further, it was a reviewable error for the Member to rely on the fact that fraudulent documents are easily obtained in China to impugn the reliability of these documents, as this is an extraneous consideration (*Guo v Canada (Citizenship and Immigration)*, 2013 FC 400 at para 4; *Lin* at paras 53-54; *Cheema v Canada (Minister of Citizenship and Immigration)*, 2004 FC 224 at

para 7). This same reliance also permeated the Member's analysis of the driver's licence and resident identity card (RIC).

[10] As to the Minor Applicants' identity documents, the Member's response to the Principal Applicant's explanation that her mother could not find the birth certificates was a bizarre implausibility finding. Implausibility findings should only be made in the clearest of cases, where the facts presented are outside the realm of what could reasonably be expected. There was nothing implausible about the Applicants' assertion that her mother had lost or misplaced the birth certificates (*Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7).

[11] Further, it was a reviewable error and a breach of procedural fairness for the Member to have failed to give notice to the Principal Applicant about her concerns with the authenticity of the immunization records and not to have given her an opportunity to respond to the concerns (*Torishta v Canada (Citizenship and Immigration)*, 2011 FC 362 at paras 11-13 [*Torishta*]).

Respondent's Position

[12] The Respondent notes that the Applicants have not challenged the Member's credibility findings pertaining to their knowledge concerning the information contained in, or in relation to the use of, the fraudulent Canadian passports and other matters.

[13] As to the hukou, the Applicants do not dispute the Member's finding that the country documentation indicated that there should only be one hukou per house. When asked why her mother was not listed on the hukou, the Principal Applicant stated that she and her mother lived at the same address but had different hukous. Given the documentary evidence, it was reasonable for the Member to reject this evidence. The Member also set out the reasons why she doubted the authenticity of the hukou. The Respondent submits that the Member reasonably held that the hukou was not genuine and that the Applicants have not challenged or raised a reviewable error with that finding.

[14] The Member also drew a reasonable negative inference based on the fact that the driver's licence was for a car, yet the Principal Applicant's evidence was that she did not drive a car, rather, she drove a motorcycle. Motorcycles were not included by the subject licence. The Applicants do not challenge or raise a reviewable error with this inference. Instead, they allege that the Member unreasonably concluded that the licence was fraudulent because their hukou was fraudulent. However, there is no basis to that claim.

[15] As to the graduation certificate issued in 1992, the birth certificate issued in 1996, the divorce certificate issued in 2008 and the electricity bill, the Member reasonably held that these documents failed to establish the Principal Applicant's identity, for the reasons she set out. Contrary to the Applicants' submissions, the Member did not conclude that these documents failed to establish her identity simply because her hukou was fraudulent. All of the documents were critically assessed and reasons were provided as to why they failed to establish the Principal Applicant's identity.

[16] The Applicants do not dispute that these documents do not establish that they lived in China at the relevant times. Instead, they allege that the Member's finding that the documents contain no security features and can be fraudulently obtained renders the entire decision unreasonable. However, these findings only supported the Member's determinative findings regarding each specific document, which the Applicants do not challenge. This is distinguishable from the case law cited by the Applicants, where the Court held that it was unreasonable to dismiss the authenticity of documents simply because fraudulent documents are readily available in China.

[17] In any event, whether or not the Member was unreasonable in finding that those documents contained no security features, this does not affect her finding that none of the documents, even if genuine, establish that the Principal Applicant was living in China during the relevant time period.

Analysis

[18] As acknowledged by the Member, s 106 of the IRPA states that the RPD

...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.

The *Refugee Protection Division Rules*, SOR/2012-256 (RPD Rules) state that the claimant must provide acceptable documents establishing their identity and other elements of their claim. A

claimant who does not provide acceptable documents must explain why they did not provide the documents and what steps they took to obtain them (RPD Rule 11).

[19] It is well established that if a claimant does not establish their identity, the RPD need not consider the merits of the putative refugee's claim and may reject it out of hand (*Liu* at para 6; *Flores v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1138 at paras 7, 9; *Rahal* at para 47).

[20] As stated in *Toure v Canada (Citizenship and Immigration)*, 2014 FC 1189 [*Toure*]:

[31] The Applicant claiming refugee status must first establish her identity before the RPD (Rule 11 of the *Refugee Protection Division Rules*, SOR/2012-256 and section 106 of IRPA). The Applicant has a high onus to produce acceptable documentation establishing her identity (*Su v Canada (Minister of Citizenship and Immigration)*, 2012 FC 743, [2012] FCJ No 902 at para 4 [Su]). When making identity findings, the RPD must take into account the totality of the evidence related to the identity of the refugee claimant (*Yang v Canada (Minister of Citizenship and Immigration)*, 2009 FC 681, [2009] FCJ No 848 at para 6 [Yang]). If the Applicant does not establish her identity, the RPD can then draw a negative conclusion as to her credibility (*Matingou, supra* at para 2).

[32] It is also well established that the issue of identity is at the very core of the RPD's expertise and this Court should be cautious about intervening on such decisions (*Barry v Canada (Minister of Citizenship and Immigration)*, 2014 FC 8, [2014] FCJ No 10 at para 19 [Barry]). Justice Gleason further states in *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319, [2012] FCJ No 369 at para 48 [*Rahal*]:

[...] In my view, provided that there is some evidence to support the Board's identity-related conclusions, provided the RPD offers some reasons for its conclusions (that are not clearly suspicious) and provided there is no glaring inconsistencies between the Board's decision and the weight of evidence in the record, the RPD's determination on

identity warrants deference and will fall within the purview of a reasonable decision. In other words, if these factors pertain, the determination cannot be said to have been made in a perverse or capricious manner or without regard to the evidence.

[21] In *Rahal* Justice Gleason also stated that the approach required of the RPD is holistic: “the Court must examine all the reasoning on the point in its totality in light of the record to evaluate whether the Board’s conclusion is reasonable” (*Rahal* at para 50).

[22] Although the Applicants in this matter submit that the Member in her decision erred by failing to consider the totality of the evidence, I do not agree with that submission.

[23] The Member noted that a passport and RIC are primary identification documents but that the Principal Applicant did not submit a passport and submitted only a photocopy of her RIC, which lacked the significant security features, including a microchip, that would have been contained in the original. The Member did not accept the Principal Applicant’s explanation for this. The Member also found that the Principal Applicant’s testimony in regard to her travel to Canada was not credible and, as the Respondent points out, this finding has not been challenged.

[24] The Member also considered the hukou, noting that: it had no security features; that the Principal Applicant’s explanation that her mother was not listed on the hukou, but had her own hukou for the same address, was inconsistent with the documentary evidence that each household is issued only one hukou; and, that she had concerns with the appearance of the document.

Based on this, the Member concluded that the document was not genuine. Further, that the Principal Applicant had the means and ability to secure fraudulent documents and knowingly did

so. This could impact the weight assigned to other documents submitted, particularly where they are interrelated, and on the overall credibility of the claimant.

[25] The Member referenced *Sertkaya v Canada (Minister of Citizenship and Immigration)*, 2004 FC 734 [*Sertkaya*], for the proposition that it is open to the RPD to consider the authenticity of documentary evidence and the ability of a claimant to obtain and use fraudulent documents, as well as *Rasheed v Canada (Minister of Citizenship and Immigration)*, 2004 FC 587 [*Rasheed*], for the proposition that foreign documents purporting to have been issued by a competent foreign public official should be accepted as evidence of their content unless there is some valid reason to doubt their authenticity.

[26] The Member explicitly considered the Principal Applicant's driver's licence and gave it no probative value, not just because the Principal Applicant had already submitted a fraudulent document, but also because the licence did not pertain to motorcycles and, therefore, it was not consistent with her evidence that she drove a motorcycle. It is true that the Member made no finding on the authenticity of the licence, although she did question its pristine condition given that it had been issued in 2011. However, even if the Member had found the document to be genuine, her weighing of its evidentiary value was still reasonable given her concern that the licence was not consistent with the Principal Applicant's evidence that she operated a motorcycle.

[27] The Member also considered each of the graduation certificate, birth certificate, divorce certificate and electricity bill. The Member incorrectly found that the certificates had no security

features when, in fact, they all bore official stamps. This Court has held that official stamps do constitute security features for the purposes of evaluating authenticity (*Elhassan* at para 22; *Ru* at para 21; *Zheng* at para 18). However, this error alone is not sufficient to render the decision unreasonable. The Member had already set out her concerns about the primary identity documents: the lack of a passport or, an original RIC and an inauthentic hukou. The certificates were, in effect, secondary sources with lesser evidentiary value.

[28] Further, the Member also pointed out the graduation certificate issued in 1992 and the birth certificate re-issued in 2008 did not establish that the Principal Applicant had been in China since 1992, as the birth certificate could have been re-issued from outside the country or when the Applicant was visiting. The divorce certificate, even if genuine, did not indicate that the Principal Applicant was in China when she obtained it, and the electricity bill could have been issued in her name while she was out of the country as her mother continued to live in that home. The Applicant has not challenged this finding. The Member also addressed the Summons.

[29] In sum, the Member did consider the totality of the evidence. She addressed each of the documents submitted by the Applicants as well as credibility concerns that arose from the Principal Applicant's testimony and the explanations offered by the Principal Applicant. This is not a situation where the RPD impugned one identification document on the basis of concerns with underlying documents, resulting in its limiting of its assessment of that document (*Mohmadi*). Nor is it a situation where the RPD erred by ignoring submitted identity documents or by assuming without further comment that some were not genuine merely because another document had been tampered with (*Kabongo*).

[30] The Member, when weighing the probative value of the driver's licence, the certificates, the electric bill and the Summons, also considered the fact that the Principal Applicant had submitted a fraudulent document and, in the case of the latter documents, the ready availability of fraudulent documents in China. However, these were not the sole bases upon which the documents were assessed and weighed. Further, the Member was entitled to draw adverse conclusions on credibility from the Principal Applicant's use of fraudulent documents (*Sertkaya; Tan v Canada (Citizenship and Immigration)*, 2013 FC 911 at para 9; *Neethinesan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 138 at paras 9-10, 15).

[31] As to the Minor Applicants' identity documents, the burden was on the Applicants to establish their identity (IRPA, s 106; *Rasheed* at para 13). The only documents submitted that tied their nationality and residence to China were the hukou, which the Member reasonably found not to be genuine, and immunization records.

[32] The absence of the birth certificates was addressed with the Principal Applicant. She had testified, in connection with her driver's licence, that the reason it appeared brand new and smelled strongly of mothballs was that her mother had carefully stored the Applicants' identity documents in a drawer (CTR at 545). When asked why then her mother could not locate the birth certificates, the Principal Applicant testified that "I ... I had told her to find those carefully, but maybe sometimes if she took those out and then she did not remember where she put them back" (CTR, pp 545-46). In my view, the Member's finding that this explanation was purely speculative was, in the absence of any other evidence, reasonably open to her. As to her finding that it was implausible that the Principal Applicant would have entrusted her mother with finding

and sending her the documents if her mother was not competent to do so, I agree with the Applicants that the implausibility finding was not well grounded. However, little turns on the point, given that the explanation that the Principal Applicant offered as to why her mother could not locate the birth certificates was reasonably not accepted by the Member.

[33] The Applicants also assert that a reviewable error and breach of procedural fairness arise from the failure of the Member to give notice to the Principal Applicant about her concerns with the authenticity of the immunization records and an opportunity to respond. In this regard they rely on *Torishta*. In that case Justice Rennie was considering a letter which, on its face, appeared legitimate. He stated that if the RDP was of the view that the letter was not authentic and relied on specialized knowledge to impugn it as fraudulent, then the RPD should have said so and provided the applicant with the opportunity to respond. This was a breach of procedural fairness as well as of Rule 18, which requires that before using any information or opinion that is within the RPD's specialized knowledge it must notify the claimant of this and provide an opportunity to respond. In this instance, the Member in her reasons did not state that she was relying on specialized knowledge. Further, the Member had made her suspicion that some of the documents were not authentic, albeit not specifically singling out the immigration records. The Applicants were afforded the opportunity to respond to the concern at large and did so. In any event, the immigration records do not establish the Minor Applicant's identity.

[34] In conclusion, the burden was on the Applicants to establish their identity. The Member did consider the totality of the evidence (*Toure* at paras 31, 34; *Yang v Canada (Citizenship and Immigration)*, 2009 FC 681 at para 6), and the assessment of the weight to be given to

documents is a matter within the discretion of the Member (*Zheng* at para 18; *Tkachenko v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1652 at para 11; *Ipala v Canada (Minister of Citizenship and Immigration)*, 2005 FC 472 at para 31). The issue of identity is at the very core of the RPD's expertise and the Court should be cautious about intervening in such decisions (*Toure* at para 32; *Barry v Canada (Citizenship and Immigration)*, 2014 FC 8 at para 19; *Rahal* at para 48). Having reviewed the decision and the materials filed by the parties, I am of the view that the Member's conclusion as to identity falls within the range of possible, acceptable outcomes that are defensible in respect of the law and the facts.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There shall be no order as to costs.
3. No question of general importance was proposed and none arises.

"Cecily Y. Strickland"

Judge

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SOLICITORS OF RECORD

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