

Federal Court



Cour fédérale

Date: 20150525

Docket: IMM-4968-14

Citation: 2015 FC 666

Ottawa, Ontario, May 25, 2015

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

JIALU SU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Jialu Su [the Applicant] has brought an application for judicial review pursuant to s 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA]. The Applicant challenges a decision of the Refugee Protection Division of the Immigration and Refugee Board

[the Board] which determined that he is neither a Convention refugee nor a person in need of protection pursuant to ss 96 and 97(1) of the IRPA.

[2] For the reasons that follow, the application for judicial review is dismissed.

II. Background

[3] The Applicant is a citizen of China. He formerly resided in Guangdong Province. The Applicant's refugee claim was based on the following contentions:

- In February, 2010 the Applicant discovered that his girlfriend had been unfaithful. He became frustrated and disappointed.
- In May, 2010 the Applicant visited a friend who informed him of the benefits of practising Falun Gong, a spiritual movement that is outlawed in China. In June, 2010 the Applicant began to study Falun Gong with his friend. After three months of practising Falun Gong, he began to feel better.
- On August 25, 2011, the Applicant was practising his new faith in the home of a fellow Falun Gong practitioner when it was raided by the Public Security Bureau [the PSB]. The Applicant escaped to a friend's house where he stayed for two months. During this time, the Applicant learned that the PSB had searched his family home and sought his arrest on 15 separate occasions.

- Fearing the PSB, the Applicant decided to leave China. Assisted by a friend, he hired an agent who made all of the arrangements for the Applicant to leave China.

[4] The Applicant arrived in Canada, via Hong Kong and the United States, on October 22, 2011. He submitted his refugee claim on October 31, 2011.

[5] The Board rejected the Applicant's claim on June 2, 2014 on the ground that he lacked credibility.

III. The Board's Decision

[6] The Board was not satisfied that the Applicant was a genuine practitioner of Falun Gong, either in China or in Canada, and did not believe that he was being sought by the PSB. The Board determined that the Applicant would not face a risk to his life, or a risk of cruel and unusual treatment or punishment, or a danger of torture if he returned to his country of origin.

[7] The Board found that the Applicant had fabricated his story in order to support his refugee claim. The Board's decision was based on several adverse findings regarding the plausibility and credibility of the Applicant's version of events:

- It was implausible that the Applicant would join Falun Gong merely because of a failed relationship. The Applicant was aware of the dangers of practising Falun

Gong in China. He did not demonstrate a strong and substantive motivation for doing so, given the serious consequences.

- The Applicant said that the PSB never left an arrest summons at his family home, despite apparently seeking him out on 15 separate occasions. One would expect an arrest summons to be issued, given the Applicant's assertion that the PSB was pursuing him so assiduously.
- The Applicant was able to leave China using an authentic passport issued in his name. If the PSB were pursuing the claimant as persistently as he claimed, then he would not have been able to leave China in this manner.
- The Applicant's family continued to lead their lives free of intimidation by the PSB; however, documentary evidence indicated that family members of Falun Gong practitioners are subject to punishment and persecution by local Chinese authorities.
- The Applicant's explanation for the delay in submitting his refugee claim was vague and circuitous.

[8] Given its adverse findings of credibility, the Board attached little weight to the evidence submitted by the Applicant to demonstrate his ongoing practice of Falun Gong in Canada. This was found to be self-serving and insufficient to overcome the Board's concerns regarding the Applicant's truthfulness.

IV. Issues

[9] The following issues are raised by this application for judicial review:

- A. Whether the Board's assessment of the Applicant's credibility was reasonable; and
- B. Whether the Board's assessment of the Applicant's *sur place* claim was reasonable.

V. Analysis

[10] The Board's findings regarding the Applicant's credibility and his *sur place* claim are both subject to review by this Court against a standard of reasonableness (*Li v Canada (Minister of Citizenship and Immigration)*, 2011 FC 941 at paras 14-15 ; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]).

A. *Whether the Board's assessment of the Applicant's credibility was reasonable*

[11] A refugee claimant's sworn testimony is presumed to be true unless there are reasons to doubt its veracity (*Maldonado v Canada (Minister of Employment and Immigration)* [1980] 2 F.C. 302 (FC)). In assessing a refugee claimant's sworn testimony, the Board is entitled to consider its plausibility, and to apply common sense and rationality (*Ye v Canada (Minister of Citizenship and Immigration)*, 2014 FC 1221 at para 29). Where the evidence before the Board is

inconsistent with the claimant's sworn testimony, the presumption of truth is rebuttable (*Adu v Canada (Minister of Employment and Immigration)*, [1995] FCJ No 114 (FCA)).

[12] The Applicant argues that the Board's finding regarding the implausibility of his story was unreasonable, relying on *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 (FC) at para 9 [*Valtchev*]:

A tribunal may make adverse findings of credibility based on the implausibility of an applicant's story provided the inferences drawn can be reasonably said to exist. However, plausibility findings should be made only in the clearest of cases, i.e., if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant. A tribunal must be careful when rendering a decision based on a lack of plausibility because refugee claimants come from diverse cultures, and actions which appear implausible when judged from Canadian standards might be plausible when considered from within the claimant's milieu.

[13] The Board's findings of credibility are entitled to considerable deference by this Court, given the Board's ability to directly observe the witness' demeanour, its expertise and its central role as a fact-finder (*Aguilar Zacarias v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1155 at para 9; *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 732 (FCA) at para 4). It is only when the Board's decision falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" that the Court will intervene (*Dunsmuir* at para 47). A decision of the Board will fall outside the realm of what is reasonable only if it has been made in a perverse or capricious manner, or without regard to

the material before it (*Khosa v Canada (Minister of Citizenship and Immigration)*, 2009 SCC 12 at para 118).

[14] The Board's finding regarding the implausibility of the Applicant's story based on the Board's expertise, the Applicant's testimony and the available documentary evidence. It was not unreasonable for the Board to conclude that the Applicant, a young man in his early 20s, would not endanger himself and his family by becoming a Falun Gong practitioner merely because his girlfriend had been unfaithful.

[15] The Applicant also says that the Board was selective in its use of documentary evidence. There is a presumption that the Board considered all of the evidence that was before it (*Hassan v. Canada (Minister of Employment and Immigration.)*, [1992] F.C.J. No. 946 (FCA) at para 3). A failure to mention a particular piece of evidence does not mean that this was ignored or that the Board committed a reviewable error (*Li v Canada (Minister of Citizenship and Immigration)*, 2008 FC 266 at para 19).

[16] The documentary evidence confirmed that the PSB's practice of leaving summons was not uniform. However, in this case the Board's negative assessment of the Applicant's credibility was reasonable given his testimony regarding the number of times that the PSB visited the Applicant's home (*Cao v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1398 at para 35; *Zhang v Canada (Minister of Citizenship and Immigration)*, 2011 FC 654). The documentary evidence does not suggest that the PSB never leaves arrest summons with family

members in Guangdong Province (*Lin v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1200 at para 30).

[17] Similarly, the Board was entitled to draw an adverse inference from the Applicant's ability to leave China using a genuine passport issued in his name. The documentary evidence included information regarding the national police monitoring system and entry/exit procedures for Chinese citizens who wish to travel to Hong Kong. Although information-sharing practices among police stations are not consistent, particularly in small towns, an exit permit could only be obtained from the Applicant's local police station.

B. *Whether the Board's assessment of the Applicant's sur place claim was reasonable*

[18] The Board is permitted to conduct its *sur place* analysis in view of its concerns regarding the original authenticity of a claim (*Zhou v Canada (Minister of Citizenship and Immigration)*, 2015 FC 5 at para 23. *Jiang v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1067 at para 28 [*Jiang*]; *Hou v Canada (Minister of Citizenship and Immigration)*, 2012 FC 993 at para 57; *Yang v Canada (Minister of Citizenship and Immigration)*, 2012 FC 849 at para 19). The Board must nevertheless determine, either implicitly or explicitly, whether the Applicant, due to events that have transpired since his departure from his country of origin, has become a member of a persecuted group and whether he would now face persecution upon his return (*Jiang v Canada (Minister of Citizenship and Immigration)*, 2008 FC 635 at para 15).

[19] In this case, I adopt the analysis of Justice Zinn in *Jiang* at para 27:

The Board here found that the applicant had fabricated her story to claim refugee protection. A reasonable inference from that premise is that her current knowledge, appearance in photos, and letters of support were fostered in the intervening two years to support that fraudulent claim.

[20] I reject the Applicant's assertion that the Board conducted its *sur place* assessment in a perfunctory manner and failed to provide reasons. I am satisfied that the Board properly considered the evidence that was before it, and reasonably concluded that the Applicant had "manufactured this part of his story to support his contrived claim" (*Meng v Canada (Minister of Citizenship and Immigration)*, 2015 FC 365 at para 27). The Applicant's counsel candidly acknowledged that there is no reason to believe that the Chinese authorities are aware of the Applicant's activities in relation to Falun Gong in Canada.

VI. Conclusion

[21] For the foregoing reasons, the application for judicial review is dismissed. Neither party proposed a certified question for appeal, and none arises in this case.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

No question is certified for appeal.

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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