

Federal Court



Cour fédérale

Date: 20150706

Docket: IMM-4216-14

Citation: 2015 FC 823

Ottawa, Ontario, July 6, 2015

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

YANLING CHEN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant seeks judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board [RPD] that determined that she was neither a Convention refugee nor a person in need of protection because she had failed to establish that she was a member of Falun Gong in China or that she was wanted by the Public Security Bureau [PSB].

[2] The decision was based on the assessment of the RPD as to “the overall improbability of the claimant’s story.”

[3] Ms. Chen is a 53 year-old citizen of China who says that she was introduced to Falun Gong by a friend in May 2010, after she caught a cold a few months prior. Ms. Chen says that she was enticed by Falun Gong since doctors were unable to cure her cold and other health issues (insomnia). On May 10, 2010, she started to attend an underground Falun Gong practice group. She contends she did so although being aware the practice was banned in China. After joining the Falun Gong practice, her symptoms started to improve and she started to introduce others to her practice group.

[4] On July 18, 2011, she says that the PSB raided her underground Falun Gong practice group. She says she was able to avoid detection by the PSB and went into hiding at a friend’s home. The next day, she was informed by her husband that two individuals were caught during the PSB raid. She says that on July 20, 2011, the PSB went to her house to look for her, accused her of being involved in Falun Gong, and ordered that she surrender herself. On July 3, 2011, they returned and asked her husband why she had not surrendered herself.

[5] Fearing persecution as a Falun Gong practitioner, Ms. Chen left China on October 29, 2011. She arrived in Canada on November 5, 2011, and claimed refugee protection three days later.

[6] The RPD reviewed the documentary evidence on China with respect to Falun Gong. In its view, given that Falun Gong practitioners have faced persecution in China since its ban in 1999, it would be reasonable to expect that Ms. Chen would have a compelling reason for joining Falun Gong. The RPD however did not see Ms. Chen's motivation as convincing since she joined Falun Gong due to "a cold and insomnia." Given, in the view of the RPD, that these illnesses could be treated with Western and Chinese medicine, and the founder of the movement had stated the practice was not a method to cure illness; the RPD was of the view that a cold did not justify the extraordinary course of action of joining Falun Gong. It also noted that during her testimony, Ms. Chen did not demonstrate a depth of knowledge, passion or intensity to justify taking the risk of joining the Falun Gong movement.

[7] The RPD also noted that Ms. Chen had not provided any medical documents corroborating her claim that she approached doctors to address her cold and insomnia. It rejected Ms. Chen's explanation that the records were in China and her husband could not locate them, since, in its view, it would be expected these records would be kept with care. Therefore, the RPD concluded that the contents of the medical documents would not have corroborated Ms. Chen's allegations.

[8] Further, the RPD noted an inconsistency between Ms. Chen's narrative and testimony. In her narrative, Ms. Chen claimed after the PSB raid she went to a friend's house, where she was allowed to stay and call her husband. However, at the hearing, she testified that she was not allowed to stay at the friend's house, and after speaking with her husband, she took a bus to another friend's house in another city. When confronted with this inconsistency, Ms. Chen

expressed the narrative was correct and that she had memory problems. The RPD rejected the explanation since Ms. Chen had no problem recalling all the dates in her narrative, and also noted that her testimony regarding her stay at her friend's house was confusing.

[9] Moreover, the RPD stated that other aspects of Ms. Chen's testimony rendered her claim untrustworthy. For example, there was no evidence that Ms. Chen's husband or family in China had suffered any persecution as a result of her involvement in Falun Gong. Additionally, the RPD attributed little probative value to letters submitted in support of Ms. Chen's claim since, in its view, the letters were insufficient to overcome the credibility concerns.

[10] In light of the above, the RPD rejected Ms. Chen's claim since she failed to provide sufficient credible or trustworthy evidence.

[11] Ms. Chen identifies two issues: 1) Whether the RPD assessment of her credibility was reasonable; and 2) Whether the RPD erred by failing to address the *sur place* aspect of her claim?

[12] I find that the decision under review must be set aside on the basis of the first issue and accordingly, it is unnecessary to deal with the second issue raised by Ms. Chen. I would note, however, that if the RPD's conclusion that Ms. Chen was not a member of a Falun Gong practice group in China was reasonable and upheld, then there was no evidence requiring the Board to conduct a *sur place* analysis.

[13] I agree with the respondent that there were inconsistencies and contradictions in the evidence of Ms. Chen; however, the primary basis for the credibility finding of the RPD was its view as to the implausibility of her story as to why she joined the Falun Gong. It is that finding, in my view, that is unreasonable. It is impossible for the court to reach a clear conclusion as to whether the result would have been the same had the RPD not made that error and accordingly the claim for Convention refugee status or protection must be determined by a different panel.

[14] The implausibility finding made in this decision is identical to that made in the decision reviewed in *Gan v Canada (Minister of Citizenship and Immigration)*, 2015 FC 693 [*Gan*]; namely, the finding that it is not plausible that the claimant would risk the consequences inherent in joining Falun Gong, rather than finding another, less perilous solution to health problems.

[15] As in *Gan*, the RPD relies, in part, on my decision in *Jiang v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1067 [*Jiang*]. Both in *Gan* and in this case, the RPD cites *Jiang* as if it endorses the implausibility finding made therein. It does nothing of the sort. The RPD, when citing decisions of this court must do so with an understanding that the court is sitting in review, not on appeal. As such, all *Gan* stands for is that the court did not find the decision under review to be unreasonable. The RPD must also have in front of mind, when citing a court decision, the facts relevant to that case. The reasonableness of any decision will turn largely on the facts, including the analysis of those facts by the RPD.

[16] At paragraph 9 of *Gan*, I summarized *Jiang* as follows, and then noted how dissimilar it was to the facts in *Jiang*:

The respondent also relies on my decision in *Jiang v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1067 [*Jiang*] which reviewed a decision of a failed claimant who had taken to Falun Gong rather than seeking medical assistance for her depression. In addition to other findings, including embellishment, it seemed to the Board “reasonable that she would have investigated alternatives rather than simply accepting the risk of practicing Falun Gong.” At paragraph 16, I observed: “I cannot say that the Member’s view that a well-educated person would first try to address depression, a condition that is medically treated (a fact not challenged by the applicant), through legal means first before resorting to a practice that could subject her to arrest and imprisonment is unreasonable.”

[17] *Jiang* is distinguishable from the facts here. Ms. Chen is not “highly educated” but has a grade 10 education. Unlike Ms. Jiang, Ms. Chen tried medical treatment, without success, before turning to Falun Gong. Contrary to the suggestion of the RPD that Ms. Chen suffered from the common cold, her Basis of Claim narrative discloses that her health complaints and impact were more serious:

I often had congestion in my chest, shortness of breath, feeling weak, and etc. Doctors couldn’t find the cause of my problems, therefore, didn’t have effective way to cure me. My health conditions affected my work and life, for example, rest at home and short temper.

[18] The situation before the RPD here is much closer to that in *Gan* than *Jiang* in that the RPD had the evidence of a woman who was educated (but not well-educated), who had suffered chronic illness that affected her home and work life, who sought medical treatment without success, whose conditions persisted, and who had a friend who had practiced Falun Gong for years without incident who persuaded her that it would help. In that scenario, I fail to see how trying Falun Gong could be said to be implausible, even knowing that it was outlawed and put one potentially at risk.

[19] Accordingly, as noted earlier, this application must be allowed. Neither party proposed a question for certification nor is the one on the facts before the court.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is allowed, the decision of the RPD denying the applicant's claim from convention refugee status or protection is set aside, her claim is to be determined by a differently constituted panel, and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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