

Federal Court



Cour fédérale

Date: 20151106

Docket: IMM-436-15

Citation: 2015 FC 1250

Fredericton, New Brunswick, November 6, 2015

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

SHIZHAO HUANG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Shizhao Huang, a citizen of the People's Republic of China [China], seeks judicial review of a decision of the Immigration and Refugee Board, Refugee Protection Division [RPD] made on December 22, 2014, in which the RPD dismissed his claim for refugee status under s 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] and his claim for status as a person in need of protection under s 97 of the Act. The RPD found that Mr. Huang lacked credibility, there is not a serious possibility of persecution should he return to China and that he failed to establish a well-founded fear of persecution. For the reasons set out below, I would

dismiss the application for judicial review. The RPD's decision meets the test of reasonableness as set out in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47 [*Dunsmuir*].

I. Summary of Mr. Huang's Evidence

[2] Mr. Huang was born in China on December 10, 1989. He arrived in Canada on November 27, 2009 on a student visa. Shortly after his arrival in Canada, he attended school to learn English. Because his parents could no longer support him financially, Mr. Huang discontinued his academic program in August, 2010. When his student visa expired in March 2011, he applied for and received an extension which was valid until July, 2015.

[3] Approximately two years prior to his arrival in Canada, Mr. Huang's parents started practicing Falun Gong. Mr. Huang says that following his arrival he informed his parents that he saw people openly practicing Falun Gong in Canada. He claims his parents asked him to send Falun Gong material to them, which they would distribute in China. Mr. Huang says he agreed to his parents' request and started sending materials in February 2010. He says he sent materials once every two to three months, through an internet application called 'QQ'. Mr. Huang testified that while in Canada, he became aware of atrocities committed by the Chinese government toward Falun Gong practitioners and became worried about his parents' safety.

[4] Mr. Huang claimed that on March 4, 2012, he spoke with his paternal grandfather who was living in the same household as his parents. He claimed his grandfather informed him that the police had raided his parents' Falun Gong group. His father and other practitioners were arrested. He says his grandfather informed him that his mother was able to escape and went into

hiding. According to his Personal Information Form [PIF], his grandfather called the next day, March 5, 2012, at which time he told Mr. Huang the police had searched their home in China and found, on his parents' computer, the material he had sent from Canada. Mr. Huang alleges the Chinese Public Security Bureau [PSB] accused him of illegal underground Falun Gong activities, assisting an illegal Falun Gong group, and having connections with anti-Communist foreign forces. Mr. Huang claimed that his grandfather advised him that Chinese authorities had prepared an arrest warrant for him which was being held at the Chinese customs. According to Mr. Huang, his grandfather also told him the police advised that he (Mr. Huang) should return to China as soon as possible in order that he might receive a more lenient sentence.

[5] Before the RPD, Mr. Huang claimed fear of arrest, imprisonment and persecution should he return to China.

II. Overview of the RPD Decision

[6] After making the following negative credibility and implausibility findings, the RPD found that Mr. Huang failed to provide sufficient credible evidence to support his fear of returning to China:

1. Mr. Huang stated that he was aware his parents could face arrest and imprisonment if they were caught practicing Falun Gong and that he was worried for their safety. In the face of that evidence, the RPD found it implausible that Mr. Huang would forward Falun Gong materials to his parents every two or three months for a number of years.

2. The RPD concluded it was implausible that neither Mr. Huang nor his parents would have considered the risks of sending Falun Gong material through an internet application from Canada to China. The RPD referred to a United States Department of State report [US Report] as evidence that sending such material using the QQ internet application was indeed dangerous.
3. Mr. Huang stated that he first spoke about these issues with his grandfather on March 4, 2012. He informed the RPD on three occasions that the second conversation with his grandfather was in April or May 2012. However, according to his PIF, Mr. Huang talked to his grandfather on March 5, 2012. After questioning, Mr. Huang admitted this March 5, 2012 conversation took place. The Board member asked Mr. Huang why he failed to refer to it in his testimony. Mr. Huang replied that he thought the Board member was asking only about those occasions when he (Mr. Huang) initiated the conversation. According to Mr. Huang, since his grandfather initiated the March 5 conversation, he felt it was unnecessary to refer to it, and, furthermore, he did not remember it at the time. The RPD found Mr. Huang's explanations unpersuasive and concluded his testimony in this regard lacked credibility.
4. The RPD was also sceptical about the residence, and even the existence, of Mr. Huang's grandfather. The household registration booklet did not name Mr. Huang's grandfather as someone who lived in the same residence as his parents. When confronted with the discrepancy between his testimony and the contents of the registration booklet, Mr. Huang suggested the grandfather may have been registered with an uncle. The RPD also found this explanation to be unpersuasive.

5. The RPD found further inconsistencies between statements in Mr. Huang's PIF and his testimony regarding his grandparents. In his PIF, Mr. Huang indicated on more than one occasion that he spoke with his grandparents (plural) about the events. He then testified that he only has one grandfather (paternal) and only spoke with him about the Falun Gong issues. Mr. Huang later testified that his maternal grandfather is still alive.
6. In his PIF, Mr. Huang claimed that the police searched his house and found the material he had sent from Canada on his parents' computer. At that time, the police allegedly told his grandfather they already had solid evidence of Mr. Huang's involvement with Falun Gong and that a warrant for his arrest had been issued. This would suggest the police were aware of Mr. Huang's involvement prior to the search of his parents' computer. The RPD member questioned Mr. Huang about the source of the evidence to justify the issuance of an arrest warrant if the computer had not yet been searched. The member described Mr. Huang as being non-responsive and hesitant in his reply. Mr. Huang eventually claimed that the PSB must have found out about his involvement through other Falun Gong practitioners. This omission, from the PIF, of highly relevant information, became the source of yet another credibility concern for the RPD.
7. Moreover, the RPD found that Mr. Huang's deceit regarding the extension of his student visa, while no longer a student, cast doubt upon his credibility.

[7] In support of his claims before the RPD, Mr. Huang produced 'official' Chinese documents; including, a summons for Mr. Huang's mother, an arrest notice for Mr. Huang's

father, a visitor's card for Mr. Huang's brother to visit their father while in jail, as well as a list of items seized from Mr. Huang's home. The RPD chose to assign little weight to these documents. It concluded that none of them directly corroborated Mr. Huang's involvement in Falun Gong, nor did they demonstrate the Chinese authorities' interest in him. The RPD further justified the assignment of little weight to the 'official' Chinese documents because of its general concerns about Mr. Huang's credibility, the fact that the list of items seized did not identify or include copies of the alleged Falun Gong materials sent via the QQ internet site, and the RPD's knowledge of the availability of fraudulent documents in China.

III. Issues

[8] While several issues are raised by Mr. Huang, I am of the view they can be condensed into one: were the credibility and implausibility findings made by the RPD reasonable in the circumstances?

IV. Standard of Review

[9] Questions of credibility are assessed on the reasonableness standard and must be afforded significant deference (*Zhou v Canada (Minister of Citizenship and Immigration)*, 2013 FC 619, [2013] FCJ No 687 at para 26 [*Zhou*]; *Su v Canada (Minister of Citizenship and Immigration)*, 2013 FC 518, [2013] FCJ No 588 at para 7; *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732, 160 NR 315; *Wu v Canada (Minister of Citizenship and Immigration)*, 2009 FC 929, [2009] FCJ No 1143 at para 17). This Court will not substitute its own view, nor will it intervene, if it finds the RPD's conclusion regarding Mr. Huang's credibility falls "within a range of possible, acceptable outcomes which are defensible in respect

of the facts and law” and if there was “justification, transparency and intelligibility within the decision-making process” (*Dunsmuir*, above at para 47).

[10] The assessment of the evidence and findings of fact made by the RPD are central to the role of the RPD and fall squarely within its expertise. These also are to be reviewed on the standard of reasonableness (*Zhou*, above at para 26; *Ghirmatsion v Canada (Minister of Citizenship and Immigration)*, 2011 FC 519, [2011] FCJ No 650 at para 47; *Dunsmuir*, above at para 53). The RPD will be shown deference when it relies on its own knowledge in assessing a document’s probative value (*Lin v Canada (Minister of Citizenship and Immigration)*, 2010 FC 183, [2010] FCJ No 211 at para 21).

V. Analysis

[11] The RPD’s finding regarding Mr. Huang’s lack of credibility is based on implausibility findings and contradictions in his evidence and testimony. While the RPD may question a claimant’s credibility based on the implausibility of his narrative (*Lawal v Canada (Minister of Citizenship and Immigration)*, 2010 FC 558, [2010] FCJ No 673 at para 21 [*Lawal*]), it must clearly set out its reasons for making the implausibility finding (*Kiyarath v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1269, [2005] FCJ No 1529 at para 22). Otherwise, the implausibility finding can be seen as arbitrary and unreasonable (*Martinez Giron v Canada (Minister of Citizenship and Immigration)*, 2013 FC 7, [2013] FCJ No 5 at para 24; *Yu v Canada (Minister of Citizenship and Immigration)*, 2015 FC 167, [2015] FCJ No 138 at paras 10, 12).

[12] Mr. Huang contends the negative credibility findings and the decision as a whole are unreasonable, in part, because of the RPD's finding that it was implausible he would send Falun Gong materials via the QQ internet site to his parents in China. I note that before making this implausibility finding the RPD considered information from the US Report, Mr. Huang's declared knowledge of persecution against Falun Gong practitioners, his declared fear for his parents' safety as Falun Gong practitioners, and the absence of his grandfather's name in the official household registration booklet.

[13] In the circumstances, whether the RPD was correct in concluding it was implausible that Mr. Huang would send Falun Gong materials to his parents via the internet is not the issue. The issue is, rather simply, whether its conclusion in this regard was reasonable and whether its reasons, when considered within the context of all the evidence, demonstrate justification, transparency and intelligibility. I am of the view the implausibility finding with respect to the transmission of Falun Gong materials to Mr. Huang's parents via the internet is reasonable in the circumstances. The RPD made that finding within the context of the evidence referred to in paragraphs 6 and 12 above. It did not base its implausibility finding solely upon its own knowledge of conditions in China.

[14] Mr. Huang also challenges the fact the RPD assigned little weight to the Chinese government documents referred to in paragraph 7 above. The RPD relied, in part, upon its own knowledge that fraudulent documents are readily available in China. Mr. Huang challenges this finding as unreasonable and contends it taints the whole of the decision. He contends the proffered evidence should not be minimized for the sole reason that fraudulent documents can be

easily obtained in China. He says such reasoning constitutes a reviewable error and refers to Justice Russell's observation in *Lin v Canada (Minister of Citizenship and Immigration)*, 2012 FC 157, [2012] FCJ No 167 where he states:

[53] [...] Just because fraudulent documents are readily available in the PRC [People's Republic of China] does not, for that reason alone, mean that the Applicant's documents were fraudulent.

[15] I would note that Justice Russell specifically states that a finding that documents are fraudulent cannot be based solely on the fact that such "documents are readily available" in China. The challenge faced by Mr. Huang is that the RPD did not rely solely upon its knowledge about the availability of fraudulent documents when it accorded little weight to the documents in question. It relied, among others, upon (i) Mr. Huang's contradictions concerning the timing of his conversations with his grandfather; (ii) conflicting evidence about who among his grandparents were alive at the relevant time; (iii) the conflict between Mr. Huang's testimony as to where his paternal grandfather lived and the documentary evidence; and (iv) the conflict between his concern about his parents' safety and his willingness to send contraband via the internet. The RPD's conclusion to accord the purportedly official Chinese documents little weight flowed from its assessment of all of the evidence, including the credibility of Mr. Huang. It is trite law that a claimant's lack of credibility can extend to the documentary evidence submitted by him or her (*Lawal*, above at para 22). In the present case, the RPD did not simply disregard Mr. Huang's documents. It analyzed them in the context of his claim, including its credibility findings (see *Cao v Canada (Minister of Citizenship and Immigration)*, 2015 FC 315, [2015] FCJ No 430 at para 20).

[16] In a more general manner, Mr. Huang attacks the methodology employed by the RPD to find him lacking in credibility. He contends the RPD erroneously applied a “microscopic examination” of his testimony and relied on “peripheral discrepancies” to discredit him. The RPD had the advantage of hearing directly from Mr. Huang. Even if the RPD’s assessment of Mr. Huang’s credibility amounted to a microscopic analysis or a search for peripheral discrepancies, it is not this Court’s function to re-try the case or re-assess credibility findings. Cumulative inconsistencies and contradictions, as a whole, can seriously undermine the overall credibility of a claimant (*Asashi v Canada (Minister of Citizenship and Immigration)*, 2005 FC 102, [2005] FCJ No 129 at para 8; *Lawal*, above at paras 18-20). In my view, the criticism levelled toward the RPD is the direct result of its (RPD’s) highly transparent analysis of why it found Mr. Huang to be lacking credibility. In addition to being transparent, I find the analysis by the RPD to be justifiable and intelligible. Any reader can know exactly why the RPD did not believe Mr. Huang. The negative credibility finding also “falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir*, above at para 47).

VI. Conclusion

[17] As stated earlier, it is not the reviewing court’s role to substitute its own views for those of the RPD. I am satisfied the RPD’s decision provides intelligible and transparent justification on how it arrived at its conclusion. I am also of the view the decision meets the test of reasonableness. I would therefore dismiss the application for judicial review without costs.

[18] No question was proposed for certification and none is certified.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed
without costs.

“B. Richard Bell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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