

Federal Court



Cour fédérale

Date: 20160513

Docket: IMM-2638-15

Citation: 2016 FC 543

Ottawa, Ontario, May 13, 2016

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

YONGWEN YANG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This application for judicial review is grounded in unwarranted implausibility conclusions. The decision under review is that of the Refugee Appeal Division [RAD] upholding a decision of the Refugee Protection Division [RPD] denying a claim under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act].

II. Background

[2] The Applicant is allegedly a practitioner of Falun Gong in China. On April 8, 2014, she was warned to go into hiding because some of her fellow practitioners were arrested by the Chinese Public Security Bureau [PSB].

[3] The Applicant's parents arranged for her to flee China with the assistance of a human smuggler (snakehead). The manner of her leaving China is important. She was able to obtain a passport and, in the company of a snakehead and with a fraudulent student visa, she was able to get past airport and immigration security to Canada.

[4] The RPD drew negative inferences from the inconsistencies between the immigration visa officer's interview notes, her BOC narrative and amendments as well as her own testimony.

The RAD accepted the RPD's credibility findings and concluded that the events cited did not happen.

[5] The RPD drew a negative inference from the Applicant's family not being a target of the PSB. The RAD acknowledged that being targeted is not always the case where a family member is a Falun Gong practitioner, but found that given these circumstances, they should have been targeted.

[6] The RPD had found it implausible that the Applicant was able to exit China on her own passport through the snakehead's bribery of officials. It concluded that it was implausible that

the smuggler would be able to pay off all the necessary immigration officials, PSB officers, customs officials and airline representatives.

[7] The RAD found the RPD's conclusions to be reasonable. It concluded that given the profile and allegations of the Applicant, it was not plausible that she would be able to leave China on her own passport if she was wanted by the PSB.

III. Analysis

[8] It is settled law that the standard of review of the RAD's credibility findings and assessment of the evidence is reasonableness (*Khachatourian v Canada (Citizenship and Immigration)*, 2015 FC 182).

[9] This is no means a perfect case for the Applicant. There were some major inconsistencies in her narrative. Inconsistencies can form the basis of credibility findings; however, where the decision rests on implausibility, careful regard must be had of what is alleged to be implausible.

[10] In *Chen v Canada (Citizenship and Immigration)*, 2014 FC 749, 242 ACWS (3d) 909, the Court emphasized that implausibility findings should only be made in the clearest of cases. The determination that the PSB would have done more than make random visits to the Applicant's home if the Applicant was a suspect ignores the evidence that harassment and random visits by police were a method of punishment by the PSB.

[11] The RAD fails to adequately explain why the Applicant's narrative on this point is implausible – that it could not reasonably happen.

[12] Further, the determination that the Applicant could not leave China on her own passport is simple speculation on how one can leave China. There was no evidence that one had to bribe every official in the “chain of departure”. The decision does not address the Applicant's evidence that the customs officer did not scan her passport or type anything into the computer but merely stamped the passport.

[13] Before finding it implausible to exit China, the RAD (and RPD) had to address the Applicant's evidence. If it believed, there must be an explanation of how it was implausible for her to leave; if not believed, there must be an explanation for that credibility finding.

[14] There was sufficient evidence of corruption of officials and a bribery scheme that the RAD had to explain why it was not reasonable that such occurred in this case.

As found by Justice Boswell in *Ren v Canada (Citizenship and Immigration)*, 2015 FC 1402 at para 16, “[i]t is not implausible that a person could leave China on their own passport with the assistance of a smuggler who bribed the appropriate person;”.

IV. Conclusion

[15] For these reasons, this judicial review will be granted, the decision quashed and the matter returned to the RAD for a new determination.

[16] There is no question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is granted, the decision is quashed and the matter is to be returned to the Refugee Appeal Division for a new determination.

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2638-15

STYLE OF CAUSE: YONGWEN YANG v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 11, 2016

JUDGMENT AND REASONS: PHELAN J.

DATED: MAY 13, 2016

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