

Federal Court



Cour fédérale

Date: 20160718

Docket: IMM-5757-15

Citation: 2016 FC 811

Ottawa, Ontario, July 18, 2016

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

HONG XIN LIU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Hong Xin Liu, is a 37 year old citizen of China. Prior to his arrival in Canada, he claims he was forced into hiding for about five months following a raid upon his illegal Christian church by the Chinese Public Security Bureau [PSB] in November 2013. The Applicant says the PSB searched his home, interrogated his wife, and left a summons for him four days after the raid.

[2] Shortly after his arrival in Canada on March 18, 2014, the Applicant sought refugee protection due to persecution on the basis of being sought by the PSB and a member of the Church of Almighty God (Eastern Lightning). The Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB] rejected the Applicant's claim for protection, finding that he had failed to establish his identity, lacked credibility, and had no subjective fear. The Applicant appealed the RPD's decision to the Refugee Appeal Division [RAD] of the IRB, but in a decision dated December 29, 2014, the RAD dismissed the appeal and confirmed the RPD's negative determination of the claim. The Applicant now asks this Court, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, to set aside the RAD's decision and return the matter to a different member of the RAD for redetermination.

I. The RAD's Decision

[3] The RAD determined, on the basis of *Huruglica v Canada (Citizenship and Immigration)*, 2014 FC 799, [2014] 4 FCR 811, that it would conduct a full and independent assessment of the RPD's decision and would reach its own conclusions. Accordingly, the RAD noted that, while the RPD did not make a specific finding with respect to the PSB raid or its aftermath, there nonetheless were sufficient credibility concerns for the RPD to disbelieve the entirety of the Applicant's claim. The RAD then proceeded to consider the RPD's specific findings.

[4] *Identity and weight given to identity documents*: The RAD found that the RPD's finding that the Applicant had failed to provide reliable evidence to support his identity was not

supportable. The RAD therefore found that the Applicant had established on a balance of probabilities his identity as a citizen of China.

[5] *Information on Applicant's Canadian visa application:* The Applicant had testified that he only provided the snakehead with his passport and no other information; yet, his visa application contained his home address, information not normally found in a passport. The RPD had found that this anomaly undermined the Applicant's credibility, and the RAD agreed, finding that this discrepancy was notable and the RPD's determination in this regard was supportable.

[6] *In hiding and passport to smuggler:* The RAD found that the RPD had failed to provide sufficient information to explain its credibility findings as to why it was not credible for a relative of the Applicant's wife to provide safe haven for an extended period of time, or why it was not credible that the Applicant would surrender his passport to the smuggler given that he owed so little money. On these points, the RAD, after reviewing the evidence, agreed with the Applicant that these findings by the RPD were not supportable.

[7] *Religious beliefs:* The RAD noted that the RPD had drawn a negative inference from the lack of evidence that the Applicant recruited for the Church of Almighty God, something which the RPD found to be "a major tenet" of his religion. Following a review of the evidence in this regard, the RAD concluded that the RPD's finding in this regard was supportable, noting an article which quoted an alleged spy for the Chinese police who infiltrated the Church:

It's also a bit like pyramid selling. The more people you recruit and the more money you give to the church, the higher your status

will be in heaven. If you don't donate, you don't have a chance for promotion in this life, either.

The RAD further noted that, although the Applicant allegedly attended at Church services in China for approximately nine months, he presented no credible evidence that he recruited for or gave money to the Church.

[8] *Ability to exit China undetected by authorities:* After considering and reviewing the documentary evidence, the RAD reached the same conclusion as the RPD that it would be implausible for the Applicant to leave China undetected by the authorities simply by the snakehead bribing one customs agent. The RAD found that the Applicant's assertion that he was able to elude detection in this manner, when the objective evidence indicated otherwise, further undermined his credibility.

[9] *Failure to claim elsewhere:* The Applicant had traveled to the United States in December 2012 due to his alleged fear of religious suppression in China but, the RAD noted, he had not advised the US authorities of this fear when he was refused entry and had not filed an asylum claim there. The RAD found that it was clear the Applicant was motivated to leave China, but his motivation appeared to be for purposes other than finding a country where he could practice his religion freely. In the RAD's view, the Applicant's failure to claim asylum in the US seriously damaged his credibility and reflected a lack of subjective fear.

[10] *Weight assigned to summons and letters:* Like the RPD, the RAD assigned no weight to the summons the Applicant provided as proof that the PSB was pursuing him; the RAD found the summons lacked security features, contained little information about the Applicant's alleged

activities, and provided no verifiable information. The RAD also assigned no weight to the two letters from the Applicant's fellow Church members in Canada, noting that these letters did not indicate what would be used as a basis for judging the genuineness of his religious practice.

[11] In the end, the RAD concluded that the Applicant had failed to establish on a balance of probabilities that he joined the Church of Almighty God in China in response to depression over the death of his friend, that he was identified by the PSB as a practitioner of the Church, or that he had to flee China because he was wanted by the PSB.

II. Issues and Standard of Review

[12] The parties identify various issues with respect to the RAD's decision. In my view, however, the Court needs to address only one overarching issue: that is, whether the decision of the RAD was reasonable.

[13] The Federal Court of Appeal has recently determined that the appropriate standard of review for this Court when reviewing a decision of the RAD is one of reasonableness (see: *Canada (Citizenship and Immigration) v. Huruglica*, 2016 FCA 93, at para 35, 396 DLR (4th) 527). Accordingly, the RAD's assessment of the evidence before it is entitled to deference (see: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 53, [2008] 1 SCR 190 [*Dunsmuir*]; *Yin v Canada (Citizenship and Immigration)*, 2014 FC 1209 at para 34; *Mojahed v Canada (Citizenship and Immigration)*, 2015 FC 690 at para 14).

[14] Moreover, the RAD's decision should not be disturbed so long as it is justifiable, intelligible, and transparent, and defensible in respect of the facts and the law (*Dunsmuir* at para 47). Those criteria are met if “the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes” (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16, [2011] 3 SCR 708). The decision must be considered as an organic whole and the Court should not embark upon a line-by-line treasure hunt for error (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd.*, 2013 SCC 34 at para 54, [2013] 2 SCR 458; see also *Ameni v Canada (Citizenship and Immigration)*, 2016 FC 164 at para 35).

III. Is the RAD's Decision Reasonable?

[15] I reject the Respondent's arguments that the RAD's findings were thorough and reasonable. The RAD based its decision upon an erroneous finding of fact relating to the Applicant's religion and his membership in the Church of Almighty God. The decision cannot be justified and is therefore unreasonable.

[16] The RAD concurred with the RPD that the objective evidence indicated that recruitment is a key part or major tenet of the Applicant's religion. Because there was a lack of evidence that the Applicant recruited for the Church of Almighty God, both the RAD and the RPD concluded he was not a member of the Church and, by implication, not a Christian. The only evidence in the objective country documentation for this conclusion arises from one article in the Financial Times dated December 20, 2012 (the salient portion of which is quoted above). While there is

some indication that recruitment may be an objective of the Church, there is no other evidence in the record touting recruitment as a *major tenet* of the Applicant's religion. In my view, this is not a sufficient basis for the RAD to conclude that recruitment is a major tenet of the Church of Almighty God. It is not sufficient for at least two reasons.

[17] First, the source of this information, a police spy, is not sufficiently reliable. The quote above is not substantiated in any other documentation on the record. Second, the quoted source does not actually state that *recruitment* is a requirement, let alone a major tenet, of the Church of Almighty God. The RAD did not declare any specialized knowledge as to the tenets of the Applicant's religion. Its finding that recruitment is a major tenet of the Applicant's religion is an erroneous finding of fact not based on the material before it.

[18] Furthermore, it was not reasonable for the RAD to draw a negative inference from the lack of evidence that the Applicant recruited for the Church of Almighty God because there is scant, if any, evidence that recruitment is actually a requirement for being a member of the Church of Almighty God. Since this is the basis on which the RAD found the Applicant was not a member of the Church, and therefore not a Christian, the matter must be sent back for redetermination because the objective documentary evidence demonstrates a clear risk for Christians in China.

IV. Conclusion

[19] The Applicant's application for judicial review is therefore granted. The RAD's decision is set aside, and the matter returned to the RAD for a new determination by a different panel

member in accordance with these reasons for judgment. No question of general importance is certified.

JUDGMENT

THIS COURT'S JUDGMENT is that: the application for judicial review is allowed; the matter is returned to the Refugee Appeal Division for redetermination by a different panel member in accordance with the reasons for this judgment; and no question of general importance is certified.

"Keith M. Boswell"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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