

Federal Court



Cour fédérale

Date: 20161027

Docket: IMM-1115-16

Citation: 2016 FC 1196

Ottawa, Ontario, October 27, 2016

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

WEI HE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant, Wei He [Mr. He], a citizen of the People's Republic of China [China], challenges a decision of the Refugee Appeal Division [the RAD] dated February 18, 2016. The RAD confirmed a Refugee Protection Division [RPD] decision which denied Mr. He's claim for refugee protection on the basis that he had not provided "credible and trustworthy evidence to

establish the central element of his claim, that he is a Falun Gong practitioner wanted by authorities.”

II. Background

[2] The determinative issue was Mr. He’s alleged practice of Falun Gong in China and Canada.

[3] Mr. He’s contention on judicial review is that the RAD breached the principals of natural justice by not indicating that Falun Gong knowledge was part of this issue. The second argument before me is that the RAD was overzealous in their assessment of Mr. He’s Falun Gong knowledge.

[4] Mr. He relies on the presumption of truth when a refugee claimant swears to the truth of a fact (*Maldonado v Canada (Employment and Immigration)*, [1980] 2 FC 302 (FCA) at p 305). He presented examples of where he feels the RAD ignored sworn evidence and speculated in their findings. As well, Mr. He argues the RAD did not properly consider his explanations for any inconsistencies.

III. Issues

[5] The issues I must determine are whether the RAD’s decision was reasonable and whether Mr. He required notice that his Falun Gong knowledge would be an issue before the RAD.

IV. Standard of Review

[6] The Federal Court of Appeal in *Huruglica v Canada (Minister of Citizenship and Immigration)*, 2016 FCA 93 [*Huruglica*], indicated that the RAD is to do their own assessment of the evidence and reach its own conclusions. The RAD must apply a correctness standard of review but may also defer to the RPD on credibility findings where the RPD enjoys a meaningful advantage. This Court is to review the RAD decision on a standard of reasonableness.

V. Analysis

[7] Briefly, in October of 2014, Mr. He's neighbour Mrs. Liu introduced him to Falun Gong. Mr. He was upset as a result of his parents dying several years prior. He practised with Mrs. Liu and her husband until March 2015. Mr. He explained that at that time Mrs. Liu received a visit from a Neighbourhood Committee officer. The officer indicated to Mrs. Liu that the practice of Falun Gong was a punishable offence and that the Public Security Bureau would investigate suspected practitioners. Mr. He was never approached by the Public Security Bureau or the Neighbourhood Committee officer. As a result, Mr. He stopped practicing Falun Gong.

[8] Mr. He made contact with an agent who indicated they could help get Mr. He to Toronto via the United States and Vancouver. Mr. He, with the help of the agent, unsuccessfully applied for a visa to the United States in April of 2015 using falsified documents. Mr. He's agent then made a second attempt on his behalf which was accepted in July of 2015. Mr. He's aunt paid for the agent to accompany Mr. He on his journey.

[9] In August of 2015, Mr. He arrived in Canada and made a claim for refugee status. He resumed his practice of Falun Gong and purchased a seminal text (the *Zhuan Falun*) regarding the practice.

A. *Notice of Falun Gong Knowledge*

[10] Mr. He's counsel was counsel before both the RPD and the RAD. He argues that he could not have known that the RAD would focus on Mr. He's knowledge of Falun Gong given the positive RPD finding on the issue. As a result, Mr. He's RAD materials did not address this issue.

[11] This appeal before the RAD formed part of a pilot project where a transcript and CD-ROM of the RPD hearing was provided to the RAD and counsel. The RAD was in a position to make its own assessment of the evidence as it was instructed to do by the Federal Court of Appeal in *Huruglica*, above.

[12] I do not agree that in this case the RAD had to give Mr. He specific notice that his knowledge of Falun Gong would be at issue. The determination of whether Mr. He was a Falun Gong practitioner was the central element in his refugee claim. A review of the RPD transcript and record reveals there could be no mistaking that knowledge of Falun Gong would be at issue. Contrary to Mr. He's position, the RPD found he did not demonstrate a genuine practise. The RPD found that he could only answer basic questions by naming the five exercises and some information on the teachings of Falun Gong. This finding by the RPD should have signalled to Mr. He that the RAD would make their own finding on his Falun Gong knowledge just as the

RAD did concerning other RPD findings. It cannot be said that knowledge of Falun Gong is a new issue. Without this being a new issue, it was reasonable for Mr. He to anticipate that it would be raised before the RAD.

B. *Overzealous in Religious Dogma*

[13] The second part of the argument presented by Mr. He is that the RAD was overzealous in their examination of his Falun Gong knowledge (*Chen v Canada (Minister of Citizenship and Immigration)*, 2012 FC 510 at para 66). The RAD's determination is particularly unreasonable given Mr. He's relatively short time practicing, his age, and the fact he was not able to obtain books on Falun Gong until he arrived in Canada.

[14] It was not disputed by the RAD or the Respondent that Mr. He has some knowledge of Falun Gong. The RAD recognized that caution should be exercised when using knowledge, or lack thereof, in the determination of a claimant's religious beliefs.

[15] This Court is consistent in holding that there should not be microscopic examination of the applicant's religious knowledge (*Huang v Canada (Minister of Citizenship and Immigration)*, 2008 FC 346). Whether there was microscopic examination is very much a factual determination on the transcript and reasons.

[16] This is not such a case where the RAD required a higher level of knowledge of Falun Gong than was reasonable. They acknowledged that there was a ban on the *Zhuan Falun* in China and Mr. He had access to the text for less than four months prior to the RPD hearing. They

conducted an analysis of the answers provided by Mr. He and why they found he was not sincere in his religious conviction. The RAD concluded on the evidence before them that Mr. He only practiced Falun Gong to further his refugee claim.

[17] After a careful review of the transcript, I do not find that this was a case where the decision maker was overzealous or microscopic in their evaluation of Mr. He's knowledge of Falun Gong. In fact, it was Mr. He who asked the Court to engage in this sort of analysis when he compared passages from the transcript with documentary evidence in order to demonstrate consistency in his answers.

[18] The RAD came to a reasonable decision, when the entire record is reviewed, that Mr. He's Falun Gong practice is not sincere. I have come to this conclusion while keeping in mind the caution given in *Lin v Canada (Minister of Citizenship and Immigration)*, 2012 FC 288, and the low standard on refugee claimants to demonstrate religious knowledge.

C. *Factual Errors*

[19] The final argument that Mr. He provided was that the RAD was not reasonable in their assessment of the evidence. Arguments at the hearing were lengthy and detailed concerning the evidence, its sufficiency, and its treatment by the RAD.

[20] Mr. He argued that the RPD made only two negative credibility findings: 1) concerning the ability to enter Canada by walking through the Peace Arch park; and 2) that he gave up his passport in Toronto because he "thought it was no longer needed." Since the RAD overturned

these two negative findings and the RPD found his knowledge of Falun Gong sufficient, Mr. He argues the RAD upheld an unsupported RPD decision.

[21] This argument fails as Mr. He overstates what the RAD and the RPD actually held. With regards to the findings on his entry to Canada the RAD held that "...there is a possibility however slight, that the Applicant made his way into Canada as alleged. However, this entry into Canada is not the determinative issue in this claim." And with respect to the passport, the RAD "made no finding on the Appellant's giving his passport to the snakehead." The RPD did not as the Appellant submitted, reject the Appellant's story based on this finding. But then the RAD found that "this issue is not determinative in this claim." What was determinative was the finding that Mr. He's practise of Falun Gong was only to further his refugee claim.

[22] The RAD's factual findings are accorded deference. I cannot reweigh or make different findings of fact on judicial review. I am satisfied that the RAD properly considered the evidence that was before it, and reasonably concluded that Mr. He acquired his knowledge of Falun Gong following his arrival in Canada "in order to advance a fraudulent refugee claim" (*Meng v Canada (Minister of Citizenship and Immigration)*, 2015 FC 365 at para 27).

[23] The Court is to review the RAD on a standard of reasonableness and I find cumulatively the decision to be reasonable. The decision maker considered all of the evidence and submissions by Mr. He and rendered a decision that falls "within the range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[24] There was no question presented for certification and none arose so no question will be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is dismissed;
2. No question is certified.

"Glennys L. McVeigh"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: WEI HE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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