

Federal Court



Cour fédérale

**Date: 20171019**

**Docket: IMM-1188-17**

**Citation: 2017 FC 936**

**Toronto, Ontario, October 19, 2017**

**PRESENT: The Honourable Mr. Justice Campbell**

**BETWEEN:**

**JIANFENG LUO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This Application concerns a Pre-Removal Risk Assessment (PRRA) application in which the Applicant, a Chinese citizen, makes a *sur place* claim for protection on the basis that he is a Falun Gong practitioner and, if returned to China, he will face more than a mere possibility of persecution.

[2] In the decision under review, dated January 10, 2017, a PRRA Officer (Officer) rejected the Applicant's claim.

[3] In the PRRA decision, the Officer referred to the decision by the Refugee Protection Division (RPD), dated November 12, 2014, where the RPD rejected the Applicant's claim as a Falun Gong practitioner in China. In rejecting the Applicant's claim, the RPD made a particular finding with respect to the genesis of the Applicant's interest in Falun Gong. The Applicant explained he was introduced to Falun Gong by a fellow worker at Toyota, his place of employment. Without notice, the RPD Member did not accept the Applicant's evidence that he was an employee of Toyota and wanted documentary proof, which the Applicant could not supply. The RPD drew a negative inference against the Applicant for his failure to provide evidence respecting his employment at Toyota and, as a result, dismissed the Applicant's claim for protection, in part, on this finding.

[4] With respect to the Applicant's present application to the Officer, the Applicant tendered the documentation he did not have in his possession to offer to the RPD to prove that he worked at Toyota. The issue then became whether the document complied with s. 113 of *Immigration and Refugee Protection Act* (the IRPA), SC 2001, c 27 as new evidence, in particular, whether the Applicant could have reasonably been expected, in the circumstances, to have presented the document before the RPD. In the Applicant's "Application for Pre-Removal Risk Assessment" the Applicant made a declaration that the information he provided in his application is "truthful, complete and correct" (Certified Tribunal Record, Vol. 1, p. 80). Accordingly, the Applicant provided the following explanation as to why he did not provide the documentation to the RPD:

I further submit that this evidence was not reasonably available to me to present at the RPD hearing or, alternatively, that I could not reasonably have been expected in the circumstances to have presented the evidence to the RPD. On the one hand, it is correct to state that I did not even know that this document was relevant to my refugee claim at the time of my RPD hearing. Leading up to my RPD hearing, I was chiefly focused on providing support letters from my fellow practitioners in Canada because that seemed most important and most relevant to my claim for refugee protection as a Falun Gong practitioner. It was only after the hearing, and after seeing the RPD's findings relating to my ability to provide documents regarding my employment at Toyota that I understood why these documents were at all relevant to my claim.

Upon realizing the importance of these documents, I requested that my parents retrieve the documents on my behalf and send them to me here in Canada. Nevertheless, my parents refused my request. They were simply too nervous that the PSB was monitoring them and that the PSB would increase their harassment were they to find out that my parents were sending documents to me in Canada. This is the same reason why they refused to provide me with a support letter or any other type of verification of the allegations contained in my refuge [sic] claim. As such, my plan was to ask my parents to give the documents to a friend who was travelling to China and who would be willing to bring the document to me in Canada by hand. In October 2015, my friend Wang Lan Chen brought the documents to me in Canada.

In light of the above, it is my submission that the documents are credible, relevant, new, material and not reasonably available to me at the time of the RPD decision. As such, I humbly submit that the documents comply with the express statutory and implied terms of *IRPA* s. 113.

[Certified Tribunal Record, pp. 17-18]

[5] The Officer rejected these explanations and found that the evidence submitted by the Applicant to show that he was an employee of Toyota could not be considered new evidence.

The Officer found as follows:

I am not persuaded that the applicant was not aware of the importance of supporting documentation. I am not persuaded that he requested an opportunity to file supporting documentation with

the RPD post-hearing and I find that he has not provided a reasonable explanation why he did not.

[Decision, p.5]

[6] In support of the PRRA application, the Applicant presented original documentation establishing that, indeed, he was an employee of Toyota. The authenticity and veracity of the documentation was not questioned by the Officer. However, in the result, the Officer rejected the documentation on the basis that it was not “new evidence”, which in part, resulted in the rejection of the Applicant’s application.

[7] In my opinion, the reasons given by the Officer for the rejection of the evidence is contrary to the evidence on the record as above mentioned and constitutes a negative credibility finding which is unsubstantiated. Therefore, I find that the decision under review is unreasonable.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the decision under review is set aside and the matter is referred back for redetermination by a different decision-maker.

There is no question to certify.

“Douglas R. Campbell”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1188-17

**STYLE OF CAUSE:** JIANFENG LUO v THE  
MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 18, 2017

**JUDGMENT AND REASONS:** CAMPBELL J.

**DATED:** OCTOBER 19, 2017

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