

Federal Court



Cour fédérale

Date: 20171108

Docket: IMM-1759-17

Citation: 2017 FC 1020

Ottawa, Ontario, November 8, 2017

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**LIYI LIANG
WEILIANG HUANG**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is the judicial review of a decision of the Refugee Appeal Division [RAD] upholding a decision of the Refugee Protection Division [RPD] denying the Applicants' refugee claim based on the female Applicant's practice of Falun Gong.

For purposes of the appeal and this judicial review, the female Applicant is the key applicant (hereafter called the Applicant) because the claim for her and her husband is based on her claim to be a Falun Gong practitioner.

II. Facts

[2] The Applicants are citizens of China. They fear persecution based on the Applicant's Falun Gong activities.

[3] It was alleged that the Public Security Bureau [PSB] came to the Applicant's house, interrogated her husband, and ordered that he turn his wife in to the authorities. The PSB then left a summons for her at her house.

The husband also claimed that the PSB came to his workplace looking for him.

[4] The couple went into hiding and hired a smuggler who arranged for their exit from China in September 2015. They then went to the United States where they did not claim protection but moved to Canada where they made their refugee claim.

The Applicant alleges that she continues to practice Falun Gong, which is the basis for her *sur place* claim.

[5] The RPD denied the claim largely on credibility grounds. With minor exceptions, the RAD made the same findings and reached the same conclusion as the RPD.

[6] The RAD concluded that:

- the exit from China was not credible due to the Applicant's lack of knowledge of the smuggler's method of getting them out of the country and it was implausible that a single smuggler could elude China's Golden Shield system;
- the documentary evidence, such as the summons, was not authentic;
- the Applicant's Falun Gong identity was not established due, in part, to her lack of knowledge of key tenets of that belief;
- the *sur place* claim was not made out because the Applicant was never a Falun Gong believer and had joined a Falun Gong group in Canada to support her claim; and
- the Applicant did not have subjective fear as evidenced by her failure to claim in Korea, Hawaii or Seattle.

III. Analysis

[7] The standard of review in this situation is not controversial. As established in *Canada (Minister of Citizenship and Immigration) v Huruglica*, 2016 FCA 93, [2016] 4 FCR 157, on a judicial review of an appeal from the RPD to the RAD, the standard of review is reasonableness.

[8] The central issues in this judicial review are the reasonableness of the findings with respect to the exit from China and with respect to the Applicant's identity as a Falun Gong practitioner.

A. *Exit from China*

[9] In finding that the Applicant's story of leaving China was not credible, the RAD remarked on the fact that the Applicant did not know the smuggler's exit plan or how the smuggling was completed.

The RAD does not say how a person would necessarily know these details nor did it consider that smugglers are likely not the most open communicators on how they conduct their illegal activities.

[10] There are a number of cases in this Court that hold that it would be possible to leave China on one's own passport with the aid of a smuggler and elude the Golden Shield computer system. There are some cases which hold the opposite.

While the jurisprudence of the Court is mixed, it is due in large part to the different facts in each case.

[11] The RAD explained away or distinguished the jurisprudence favourable to the Applicant as it was entitled to do. The decisions turn on their facts.

[12] In the present case, the Applicant alleged that the computer system was avoided because her passport was stamped, not scanned into the system.

[13] The RAD never addressed this allegation. It was obliged to address that evidence and explain why it did not or would not accept it. This situation and what was required was set out in

Yang v Canada (Citizenship and Immigration), 2016 FC 543, 266 ACWS (3d) 715, not cited by the parties until the hearing, in which the Court held:

[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;”.

[14] This failure to address a critical fact renders the finding on exit from China unreasonable. However, that error is not dispositive unless the error influenced other more important aspects of the decision.

Regardless of how the Applicants may have left China, the dispositive issue here is the Applicant’s identity as a Falun Gong practitioner.

B. *Falun Gong Identity*

[15] The RAD's finding on this point took into consideration other aspects of the claim, but largely turned on the Applicant's ability to answer questions about fundamental concepts of Falun Gong, specifically "attachments" and "righteous thoughts".

[16] The RAD was significantly influenced by the lack of knowledge the Applicant demonstrated in her answers, which included describing an attachment, which is similar to a "vice" in common parlance, as a virtuous quality.

[17] Questioning an applicant on religious beliefs is a delicate matter involving subjective viewpoints, theological and philosophical bases, and language and cultural differences. Such an exercise cannot be reduced to a checklist or a trivia quiz.

[18] However, in *Gao v Canada (Citizenship and Immigration)*, 2015 FC 1139, 259 ACWS (3d) 137, the Court described a situation very similar to this case:

[25] I believe that Justice Rennie succinctly captured the applicable principle at paragraph 9 of *Wang v Canada (Minister of Citizenship and Immigration)*, 2012 FC 346:

[9] The Board is tasked with assessing the applicant's credibility and not the soundness of his theology. A claimant may have a poor understanding of the minutiae of the religious doctrine but that does not, necessarily, mean his faith is not genuine. While there is a logical correlation between the depth of religious knowledge and the credibility of a claim of persecution, here, the deviations from doctrine were, at best, minor and cannot safely sustain the

finding that the applicant was not a genuine adherent.

[26] My reading of the jurisprudence is that it is not improper for the Board to engage in religious questioning in an effort to gauge the genuineness of a claimant's beliefs, but that such questioning and resulting analysis must indeed focus on the genuineness of those beliefs and not whether they are theologically correct. This can be a difficult task for the Board, as it is entitled to consider whether the claimant holds a level of religious knowledge that would be expected of someone in the claimant's position but should not reach an adverse conclusion based on minutiae or holding the claimant to an unreasonably high standard of religious knowledge.

[19] In my view, the RAD approached this task properly and fairly and was aware of the delicate nature of this type of questioning. It was not simply the answers to the specific questions (for example, the concept of attachments) which influenced the RAD, but the details, comfort, and sense of familiarity conveyed, as well as the Applicant's lack of credibility about her Falun Gong activities in China.

[20] In respect of the *sur place* claim, having cast doubt on the Applicant's allegation that she practised Falun Gong in China, it was reasonable for the RAD to incorporate these conclusions into the *sur place* analysis. Further, there was no evidence that the Applicant's activities in China had or would come to the attention of Chinese authorities.

[21] It was open to the RAD to conclude that the Applicant's Falun Gong activities in Canada were performed to improve her refugee claim and not the result of a genuine belief.

[22] Therefore, I conclude that there was a reasonable basis for the RAD's finding that the Applicant was not a Falun Gong practitioner.

[23] I further conclude that the RAD's analysis of the Applicant's alleged Falun Gong identity was not corrupted by the error regarding the Applicant's exit from China. The two issues are distinctly different in this case, and there was no cross-fertilization between them.

IV. Conclusion

[24] This judicial review will therefore be dismissed. There is no question for certification.

JUDGMENT in IMM-1759-17

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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