

Federal Court



Cour fédérale

Date: 20180615

Docket: IMM-4937-17

Citation: 2018 FC 619

Ottawa, Ontario, June 15, 2018

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

**ZHIKUN ZHAO
QIQIN LIU
KEYI ZHAO**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board [RPD], dated October 30, 2017, in which the RPD found that the Applicants were neither refugees nor persons in need of protection under ss 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] As explained in greater detail below, this application is allowed, because I have found that the RPD erred in its analysis of the genuineness of the subpoena document which the Applicants submitted in support of their claim. As this analysis significantly affected the RPD's assessment of the Applicants' credibility, the error in the analysis undermines the reasonableness of the RPD's decision.

II. Background

[3] The Applicants are a family from China. The principal applicant is a woman named Qiqin Liu and the secondary applicants are her husband, Zhikun Zhao, and their daughter, Keyi Zhao. Their allegations are as follows.

[4] Ms. Liu began practicing Falun Gong in December 2010 with a friend to help her with health issues related to having undergone two forced abortions. Ms. Liu began to attend group meetings with her friend in 2011. Mr. Zhao joined them in December 2011, seeking relief from high blood pressure.

[5] In July 2012, the family came to North America for a holiday. They spent two weeks in the United States before travelling to Canada to visit Ms. Liu's sister, arriving in Canada on July 17. On July 22 they received a phone call from Mr. Zhao's parents in China informing them that officers from China's Public Security Bureau [PSB] had attended the parents' home where the Applicants had previously resided, were looking for the couple, and had left a summons with Mr. Zhao's parents naming the couple and requiring them to appear in court. The officers informed Mr. Zhao's parents that the PSB had raided their Falun Gong group meeting, arrested three

fellow practitioners, and learned about Ms. Liu and Mr. Zhao's involvement with the group from those practitioners. The couple later learned that their daughter was expelled from school because of their involvement with Falun Gong.

[6] The family claimed refugee protection in Canada on September 5, 2012, alleging fear of persecution on the basis of their faith if returned to China. Their claim was based on the couple's past practice of Falun Gong in China and their ongoing practice of Falun Gong in Canada, in which they have been joined by their daughter.

III. **The RPD Decision**

[7] As evidence in support of their claim, the Applicants submitted a copy of the summons that they state was left with Mr. Zhao's parents. Based on the country condition evidence, the RPD held that this document was consistent with a *chuanpiao*, which functions as a subpoena that is issued by a court to a witness, rather than with the sort of summons that the PSB issues to persons it wishes to arrest. The RPD concluded that the summons was not genuine and that there was therefore a valid reason to reject the document as evidence that the PSB wished to arrest the adult Applicants. It also drew a negative inference as to the Applicants' credibility.

[8] The RPD further doubted the credibility of the Applicants' allegations because there was no evidence of follow-up by the PSB after the Applicants failed to appear in response to the summons and because Ms. Liu had not made inquiries with respect to this or with respect to what had happened to her fellow Falun Gong practitioners following their arrest. The RPD found that

the failure to make such inquiries did not accord with what one might reasonably expect of a person in Ms. Liu's situation.

[9] The RPD placed little reliance on the document tendered as evidence that their daughter was expelled because of their Falun Gong activities because of its finding, referring to the *chuanpiao*, that the Applicants had already demonstrated their willingness to tender false documentation in support of their claim. It found it more likely that the minor Applicant was expelled from school because she failed to register at the start of the school year.

[10] The RPD then considered the Applicants' assertion that their trip to North America was purely for tourism purposes and that, but for the phone call they received, they would ordinarily have returned to China. The RPD referred to the Applicant's extensive travel history and the fact that Mr. Zhao had obtained temporary residence permits for them before leaving China. It held that, given the lengths to which they have gone to establish themselves as practitioners of Falun Gong in China, the Applicants had likely always intended to come to Canada and had used the refugee process to facilitate their immigration.

[11] The Applicants also presented a *sur place* claim relating to their practice of Falun Gong in Canada. However, the RPD gave little weight to letters submitted on their behalf, because the authors of the letters were not at the hearing as witnesses. It also held that evidence of the Applicants' attendance at meetings did not show that they were genuine practitioners and found that they had failed to show that their activities in Canada would likely have come to the attention of the Chinese authorities.

[12] The RPD held that the Applicants had failed to show that, because of adherence to Falun Gong, they are persons who face a serious possibility of persecution, or who would be in danger of being tortured or who would face a risk to life or a risk of cruel and unusual treatment or punishment, as contemplated by ss 96 and 97 of IRPA.

IV. **Issues and Standard of Review**

[13] The Applicants submit that the RPD's decision gives rise to the following two broad issues for the Court's consideration:

- A. Did the RPD err in finding that the Applicants are not genuine Falun Gong practitioners and are not being sought by the PSB?

- B. Did the RPD err in finding that the Applicants are not *sur place* refugees?

[14] The parties agree, and I concur, that that these issues are governed by the standard of reasonableness.

V. **Analysis**

[15] While the Applicants raise numerous arguments in support of their position that the RPD's decision is unreasonable, my decision to allow this application for judicial review turns on the RPD's conclusion that the document said to have been left with Mr. Zhao's parents was not genuine and the resulting effect on the Applicants' credibility.

[16] The RPD found, based on the country condition evidence, that the document the Applicants submitted in support of their claim was consistent with a *chuanpiao*, a subpoena issued by a court to a witness, and was not the sort of summons that was issued to persons that the PSB intended to arrest. The Applicants do not contest this finding. The logic the RPD applied as a result of this finding was that that the issuance of a non-coercive subpoena of this nature was inconsistent with the Applicants' allegation that the PSB wanted to arrest the Applicants. I have no difficulty with this particular logic, as it is within the range of reasonable conclusions to find that evidence that the adult Applicants had been subpoenaed as witnesses does not support the claim that the PSB wished to arrest them for illegal activities.

[17] However, I do have difficulty with the logic of the RPD's resulting conclusion that the *chuanpiao* tendered by the Applicants is not a genuine document. As argued by their counsel, the Applicants are not experts in the legal machinery employed by China's courts and police services. The effect of the *chuanpiao* and whether it supports the Applicants' allegations that they would be at risk if they returned to China are conclusions which, if reasonably made, are within the purview of the RPD. An inconsistency between claimants' allegations of risk and their supporting documents may mean that those allegations are not made out. However, that is different than an inconsistency between claimants' statements of fact and their supporting documents, which may serve to undermine the claimants' credibility. On the record before me, I do not find an inconsistency between statements of fact made by the Applicants and the issuance of a *chuanpiao* which would reasonably support an adverse finding as to the genuineness of the document or the Applicants' credibility.

[18] The Personal Information Form [PIF], submitted by Ms. Liu as the principal claimant before the RPD, described as follows how and what they learned about the attendance of the PSB at the house of Mr. Zhao's parents:

... On about 10:00 pm on the night of July 22, 2012 we got a call from my husband's parents that the PSB went to our house looking for my husband and me. When my husband's parents asked the PSB why they were looking for us they told my parents in-laws that they raided the group Falun Gong practice on July 22, 2012 and arrested my friend Zhang, Jing and 2 other practitioners and it was the people arrested who told the PSB about our involvement in Falun Gong practice. The PSB left a summons with my husband's parents accusing us of being involved in illegal Falun Gong activities. ...

[19] Ms. Liu also testified before the RPD and described this event as follows:

So on July 22nd, 10:00 p.m. at night which is the -- in China, the time would be July 23rd, 10:00 a.m. in the morning -- my husband received a call from his parents telling me that the PSB come to -- wanted to capture us and they also sent us a subpoena.

[20] While these excerpts from the PIF and testimony clearly assert a fear of arrest or capture by the PSB, they consist of Ms. Liu relating what the couple were told by Mr. Zhao's parents over the phone. The Applicants and Mr. Zhao's parents are all laypersons when it comes to China's legal machinery, and these assertions represent their interpretation of the effect of the *chuanpiao* and the intentions of the PSB. If the Applicants had attributed to the PSB officers, who presumably are knowledgeable as to the legal processes available to them, statements of their intentions or the effect of the *chuanpiao* which were inconsistent with the use of that sort of subpoena, this might have supported an adverse credibility conclusion. However, in my view, the record does not demonstrate the sort of inconsistency which can reasonably support a conclusion

that the *chuanpiao* is not genuine and the Applicants not credible. In making this finding, I note that the RPD's conclusion with respect to the *chuanpiao* was based solely upon what I consider to be the flawed reasoning, as described above, and not upon any inadequacies in the document itself. The RPD found the document to be consistent with the examples of a *chuanpiao* provided in the objective country condition evidence.

[21] As I noted above, I find no error in the RPD's reasoning in so far as it is to be read as concluding that the issuance of the *chuanpiao* does not support the Applicants' allegation of risk. However, the RPD's decision to reject the Applicants' claim was not based on lack of support provided by the *chuanpiao* as a corroborative document. Rather, the rejection turned on the conclusion that the *chuanpiao* was not genuine and the significant impact that conclusion had upon the RPD's assessment of the Applicants' credibility. It is clear from the RPD's decision that the conclusion that the Applicants had tendered a false document contributed to its doubts about the provenance or reliability of the notice of expulsion from the minor Applicant's school, the finding that the adult Applicants were not genuine practitioners of Falun Gong in China, and the finding that the evidence of their practice in Canada was not a sufficient to establish a *sur place* claim. As such, having found a reviewable error in the RPD's analysis of the genuineness of the *chuanpiao*, the reasonableness of the overall decision is undermined, and this application for judicial review must be allowed.

[22] Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-4937-17

THIS COURT'S JUDGMENT is that this application for judicial review is allowed, and the matter is remitted back to a differently constituted panel of the Refugee Protection Division for redetermination. No question is certified for appeal.

“Richard F. Southcott”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4937-17

STYLE OF CAUSE: ZHIKUN ZHAO, QIQIN LIU, KEYI ZHAO V THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

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**REASONS FOR JUDGMENT
AND JUDGMENT:** SOUTHCOTT J.

DATED: JUNE 15, 2018

APPEARANCES:

John Gravel FOR THE APPLICANTS

Suzanne M. Bruce FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lewis and Associates FOR THE APPLICANTS
Barristers & Solicitors
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario