

Federal Court



Cour fédérale

Date: 20190325

Docket: IMM-3332-18

Citation: 2019 FC 358

Ottawa, Ontario, March 25, 2019

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

WEIJUN HUANG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Mr. Weijun Huang, is a citizen of China. He entered Canada from the United States in September 2012 and sought protection on the basis that he feared persecution in China as a Falun Gong practitioner. The Refugee Protection Division [RPD] denied his claim on credibility grounds, and he now seeks judicial review of that decision pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] Mr. Huang submits the RPD made unreasonable credibility findings. The respondent submits the credibility findings were reasonable.

[3] For the reasons that follow, the application is granted.

II. Background

[4] Mr. Huang reports that in response to chronic neck pain, he began practicing Falun Gong in China in 2011. His practice group was raided by the Public Security Bureau [PSB] in June 2012. He fled and took refuge in his uncle's home.

[5] While at his uncle's house, Mr. Huang learned that the PSB had gone to his home looking for him. The PSB questioned his parents about his whereabouts, accused him of involvement in an evil cult, and ordered him to surrender. The PSB also warned his parents about concealing information about him and noted other Falun Gong practitioners had been arrested.

[6] Mr. Huang states that the PSB then visited his home a second time, again questioned his parents, and alleged he was involved in an evil cult. As a result, he decided to flee China. He hired a smuggler, leaving China in August 2012 and entering Canada via the United States in September 2012. He reports the PSB continued to visit his home in China and showed his parents a warrant for his arrest in October 2012.

[7] Mr. Huang reports that he continues to practice Falun Gong in Canada.

III. The Decision under Review

[8] The RPD noted that Mr. Huang's description of events was consistent with the narrative provided in his Personal Information Form. Nonetheless, it drew a negative credibility inference based on the absence of a summons from the PSB. The RPD acknowledged that PSB practice varied from one locality to the next but concluded the PSB's strong interest in Mr. Huang suggested a summons would have been left.

[9] In considering Mr. Huang's report that his parents had been shown an arrest warrant, the RPD, citing documentary evidence in support, found that the PSB would have issued a coercive summons before it obtained the arrest warrant. Relying on the absence of a coercive summons, the RPD concluded the applicant had failed to provide persuasive evidence that the PSB was pursuing him.

[10] The RPD also concluded Mr. Huang was not being pursued by the PSB as he had left China using his own passport. In support of this conclusion, the RPD noted the documentary evidence relating to the Golden Shield project and found that, despite corruption in the Chinese administration, the smuggler would not have been able to bribe four officials.

[11] The RPD found there was insufficient evidence to support the applicant's allegations that he was a Falun Gong practitioner in China and was being pursued. It found the refugee claim was fraudulent and the applicant's general credibility was in doubt.

[12] In addressing the *sur place* claim, the RPD acknowledged Mr. Huang's basic knowledge of Falun Gong and noted photos and a letter that had been placed in evidence. The RPD dismissed the evidence of practice in Canada and noted it could import prior credibility findings into its *sur place* assessment. The RPD found that the applicant was not a Falun Gong practitioner in China or Canada and had made a fraudulent claim. The *sur place* claim was rejected.

IV. Issues and Standard of Review

[13] The application raises two issues: (a) were the RPD's credibility findings reasonable; and (b) was the RPD's *sur place* analysis reasonable?

[14] The issues raised engage questions of fact and mixed fact and law that are to be reviewed against a standard of reasonableness (*Mohamud v Canada (Citizenship and Immigration)*, 2018 FC 170 at para 2; *Feng v Canada (Citizenship and Immigration)*, 2019 FC 18 at para 16 [*Feng*]). Reasonableness is a deferential standard. A reviewing court is to be concerned with whether the decision-making process reflects the elements of justification, transparency, and intelligibility, and whether the decision falls within the range of possible, acceptable outcomes that are defensible in respect of the facts and the law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47). Credibility findings are entitled to significant deference: the RPD "is in a superior position to assess the evidence, gauge the credibility of witnesses, and draw the necessary inferences" (*Huang v Canada (Citizenship and Immigration)*, 2019 FC 94 at para 14 [*Huang*]).

V. Analysis

A. *Were the RPD's credibility findings reasonable?*

[15] The RPD drew negative credibility inferences on the basis that a summons was not issued by the PSB and that Mr. Huang had exited China using his own genuine passport without incident.

[16] In considering the absence of a summons, the RPD referenced documentary evidence to the effect that a summons is generally left with family members where the PSB has an interest in an individual. The RPD relied on the number of visits to Mr. Huang's home and the reported arrests of two members of the practice group to conclude the PSB was interested in him. The RPD also noted that a summons would have provided a documentary basis for the issuance of an arrest warrant.

[17] While framed as an issue of credibility, it appears the RPD essentially concluded it was implausible that the PSB would not have provided a summons to the applicant's family. In doing so, the RPD also noted that the issuance of a warrant would have required the PSB to apply to a higher authority, whereas the PSB was in a position to issue a summons without having to "go to the trouble of seeking permissions from higher authorities." It was therefore reasonable to expect the PSB to have issued a coercive summons.

[18] Plausibility findings are to be made only in the clearest of cases. In this case, the RPD recognized “that PSB practice regarding the issuance of a summons varies from one locality to another” and that the documentary evidence indicated “a summons is generally left.”

[19] Despite referencing the equivocal nature of the documentary evidence relating to summonses, the RPD nonetheless concluded that on a balance of probabilities, a summons would have been left “given the multiple PSB visits” and “the arrest of co-practitioners.” The RPD pointed to nothing in the documentary evidence to support its view that it was more likely that a summons would be left if the PSB undertook multiple visits. Rather, the RPD relied on prior jurisprudence of this Court to support this fact.

[20] It is trite to note that claims for protection are matters that turn on the particular facts of the claim. Prior decisions of this Court are of particular value where questions of law arise. However, jurisprudence needs to be approached with caution when relied upon to interpret evidence and to support findings of fact. A plausibility finding should be “‘nourished’ by reference to the documentary evidence” (Lorne Waldman, *Immigration Law and Practice*, 2nd ed (LexisNexis Canada, 2018) (loose-leaf), § 8.64; also see *He v Canada (Citizenship and Immigration)*, 2017 FC 1089 at para 8). In this case, it was not. As Justice Simon Fothergill recently noted, “[t]his Court has repeatedly warned against making assumptions about how the Chinese authorities would rationally behave, and whether one would expect them to issue a coercive summons” (*Huang* at para 21).

[21] The documentary evidence itself also raises concerns. The RPD referenced the Chinese Public Security Punishment Law found in the National Documentation Package to support its conclusion that a summons is generally left with family members and that the PSB may issue both non-coercive and coercive summons without having to go to higher authorities. Applicant's counsel notes that neither issue is addressed in the legislation cited by the RPD. Applicant's counsel also refers to a Response to Information Request [RIR] contained in the record, although not cited by the RPD, that states the PSB is required to obtain higher level approval where a coercive summons is required and that a coercive summons must be served personally on the suspect. Respondent's counsel did not identify evidence to the contrary.

[22] Having reviewed the Chinese legislation and the RIR, I am satisfied that it does not support the RPD's plausibility finding and conclude that both the plausibility finding and resulting negative credibility inference were unreasonable.

[23] I now turn to Mr. Huang's exit from China. Again, the RPD reached its conclusion on the basis of what was plausible. Passing security points without constraint led the RPD to conclude Mr. Huang was not sought by the PSB. However, Mr. Huang's evidence was that a summons had not been issued and an arrest warrant was not shown to his parents until after he had exited China. The RPD's flawed analysis in respect of the issuance of a summons impacts upon and taints the reasonableness of the RPD's exit analysis.

B. *Was the RPD's sur place analysis reasonable?*

[24] The RPD imported and relied upon its flawed negative credibility conclusions in considering the *sur place* claim. This alone undermines the reasonableness of the *sur place* finding (*Chen v Canada (Citizenship and Immigration)*, 2014 FC 749 at paras 58–59). However, this was not the RPD's only reviewable error.

[25] The jurisprudence makes clear that the RPD must consider what would happen if an applicant returned to China and was identified as a Falun Gong practitioner. In *Liu v Canada (Citizenship and Immigration)*, 2014 FC 972 [*Liu*], Justice Douglas Campbell explained the required *sur place* analysis as follows:

[8] [...] [W]hether or not the RPD believed that the Applicant is a “genuine adherent of Falun Gong in Canada”, he was, nevertheless, recognized as practicing Falun Gong in Canada. Thus, the *sur place* issues before the RPD were: would the Applicant be identified as a Falun Gong practitioner upon return to China; and if so identified, would the Applicant suffer more than a mere possibility of persecution? The RPD utterly failed to address these primary issues (see: *Shao Rong Hu v Minister of Citizenship and Immigration*, 2012 FC 544 (CanLII) at paragraph 8).
[Emphasis added]

[26] Mr. Huang had placed photographic evidence of himself before the RPD associated the practice of Falun Gong in Canada and what is described in the RPD decision as a letter from a fellow practitioner. The photographs were dismissed on the basis that they were not dated. The “letter”, which is in fact a sworn affidavit, was disregarded on the basis that the author was unknown to the RPD and had not appeared as a witness.

[27] The RPD was required to consider this evidence for what it disclosed, not dismiss it out of hand based on what it did not say (*Feng* at para 37). The question was not whether Mr. Huang was a genuine practitioner but whether, having considered the evidence, Mr. Huang would “be identified as a Falun Gong practitioner upon return to China; and if so identified, would [he] suffer more than a mere possibility of persecution” (*Liu* at para 8).

[28] The respondent relies on *Li v Canada (Citizenship and Immigration)*, 2018 FC 877, and *Zhang v Canada (Citizenship and Immigration)*, 2016 FC 765, to argue that Mr. Huang had the burden of demonstrating that his practice in Canada had come to the attention of Chinese authorities. In the respondent’s submission, the applicant failed to satisfy that burden and the RPD reasonably refused the *sur place* claim.

[29] This jurisprudence is of little assistance. In *Li* and *Zhang*, the issue was whether the evidentiary burden had been satisfied. In this case, the issue is the RPD’s failure to have considered the evidence.

VI. Conclusion

[30] The application is granted. The parties have not identified a serious question of general importance and none arises.

JUDGMENT IN IMM-3332-18

THIS COURT'S JUDGMENT is that:

1. The application is granted;
2. The matter is returned for redetermination by a different decision-maker; and
3. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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