

Federal Court



Cour fédérale

Date: 20190423

Docket: IMM-2974-18

Citation: 2019 FC 502

Ottawa, Ontario, April 23, 2019

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

JIANJIA TAN

Applicant

And

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review by Jianjia Tan [the “Applicant”] under section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [“IRPA”] of a Refugee Protection Division [“RPD”] decision [“Decision”]. The Applicant submits that as a practicing member of the Falun Gong, he fears persecution at the hand of the Public Security Bureau [“PSB”] in China.

[2] For the reasons that follow, I am dismissing this application for judicial review.

II. Background

[3] The Applicant was born in or around Guangzhou City, China, on or around July 7, 1980.

[4] On January 27, 2011, his father died of a sudden heart attack. The Applicant noted that after his father's death, he suffered from insomnia, depression and fatigue. As a mail carrier, the Applicant worked long days, which resulted in "shoulder pain and arm muscle pain every day". The Applicant had mixed results from allopathic and traditional Chinese medicine, but did not find either allopathic or naturopathic medicine to be curative.

[5] As a consequence of the mixed results, the Applicant alleges that his friend Xiao Zhenhong ["Xiao"] introduced the practices of Falun Gong to him and invited him to join group practice. The Applicant stated that although he initially felt trepidation on beginning Falun Gong based on its illegal status, the Applicant was reassured by his friend that this specific group had taken particular precautions.

[6] As a result of practicing Falun Gong, the Applicant supposedly had positive health outcomes. The Applicant stated that he felt happier and he quit smoking. The Applicant also apparently introduced his friend Li Lin to the group practice.

[7] The Applicant claims that on June 3, 2012, the PSB allegedly located the group practice. The Applicant was allegedly serving as a lookout when the PSB arrived, and therefore managed

to escape to his uncle's house. On June 6, 2012, the Applicant's mother informed him that the PSB had gone to their house looking for the Applicant. The Applicant was able to find a smuggler and with the help of the smuggler fled China successfully to Canada, where he made a claim for refugee status.

[8] En route to Canada, the Applicant went through San Francisco, but did not make a refugee claim in the United States ["US"]. He made his escape to the United States by way of a fraudulently obtained US visa.

[9] During this interim period of six years, the Applicant continued to apparently practice Falun Gong in Toronto, doing the exercises on a daily routine, studying Falun Gong philosophy, and attending numerous events and pro-Falun Gong demonstrations.

[10] The Applicant submits that the PSB continues to visit his house on an annual basis to search for him, and that many of his group practice colleagues have been arrested.

[11] The RPD heard the Applicant's case on April 16, 2018 and May 30, 2018. The Applicant was assisted by legal counsel and a Cantonese translator throughout both hearings.

[12] On June 5, 2018, the RPD rejected the Applicant's claim.

III. Issue

[13] Is the decision of the RPD member reasonable?

IV. Standard of Review

[14] A decision of the RPD, in these circumstances, is reviewable on a reasonableness standard, as per paragraph 16 of *Krishan v Canada (Citizenship and Immigration)*, 2018 FC 1203.

V. Analysis

[15] The Applicant has two central arguments. First, the Applicant argues that the RPD member erred in its credibility assessment. Secondly, the Applicant argues that the RPD member erred in its assessment of the *sur place* claim.

A. *Credibility*

[16] The Applicant submits that there are five issues related to credibility that he takes issue within this application. The five issues are regarding the following findings on: plausibility, the summons, his passport, his family not suffering and not being a genuine Falun Gong practitioner.

[17] The Applicant's arguments are that the RPD member erred in the credibility assessment as follows.

(1) Plausibility findings

[18] On the question of location of the group practices, the Applicant suggests that a credible reason was offered to explain the inconsistency: namely, a translation error. The RPD member rejected this explanation without reason.

[19] Regarding his mother's indications of the allegations against him, the Applicant submits that six years after the fact, the Applicant may have difficulty remembering specific details of what his mother told him regarding the allegations against him.

[20] The issue of whether the PSB's alleged actions are inconsistent with its "reputation of being a professional and fierce force", the Applicant submits that the RPD engaged in speculation regarding the actions of the PSB without reference to any documentary evidence to support its conclusion. Being a "professional and fierce force" does not necessarily indicate how many places they would look for the Applicant or otherwise dictate how they would behave toward the Applicant.

(2) Summons

[21] The Applicant argues that the RPD member erred in finding that the summons was fraudulent. The Applicant submits that the RPD erred by relying on the availability of fraudulent documents in China, and generalizing that conclusion to award the summons little weight.

[22] The Applicant relies on Justice Campbell's reasons in *Guo v Canada (Citizenship and Immigration)*, 2013 FC 400, where Justice Campbell stated that the mere mention of the general availability of fraudulent documentation in China as a basis to dismiss the evidence could be a reviewable error in the treatment of the supporting documents.

[23] The Applicant then says that the RPD did not apply the presumption of truthfulness to the documentation in this case. Given the nature of how important the document is to the potential safety of the Applicant, the Applicant submits that the RPD erred in its dismissal of the documents.

[24] Contrary to the RPD member's findings the Applicant's position is that the red seal on the document is indicative of the authenticity of summons. The Applicant submits that Justice Tremblay-Lamer's ruling in *Zheng v Canada (Citizenship and Immigration)*, 2008 FC 877 ["*Zheng*"] supports this proposition.

[25] The Applicant asserts that there is no indication that the RPD found a willingness of the Applicant to provide fraudulent documents.

(3) Passport

[26] The Applicant suggests that the RPD erred in determining that the Applicant would not have been able to exit China using his own passport if he was being sought by the authorities. The coincidence of getting a passport shortly before the raid does not "equate to a lack of plausibility" he says is an error. The Applicant further states that as he had a smuggler, who was

theoretically able to bribe individuals, there is jurisprudence from this Court to suggest that escaping on his own passport was plausible.

(4) Family – No reprisals

[27] The Applicant in argument suggested that the RPD member erred in its assessment of the lack of reprisals against the Applicant's family.

[28] Firstly, the Applicant states that the continued visits by the PSB to the Applicant's family constitute a kind of harassment and in and of itself is a form of reprisal (*Chen v Canada (Citizenship and Immigration)*, 2014 FC 7319).

[29] Secondly, the Applicant said that the evidence relied on by the RPD regarding reprisals specifically states that, "the lecturer noted that he hadn't come across specific cases of family members of Falun Gong practitioners being "hunted down" or targeted by authorities".

(5) Falun Gong practitioner

[30] The Applicant takes specific issue with the finding that the Applicant was not, and is not currently, a Falun Gong practitioner.

[31] The Applicant submits that the RPD's opinion of his faith is purely speculative. Firstly, the Applicant cannot control whether the RPD member perceives his answers to the member's questions as "rehearsed". What is indisputable, according to the Applicant, is that the Applicant

sufficiently demonstrated knowledge of Falun Gong because providing an “obvious” answer to the question about the meaning of truth, and not further elaborating should not be read against him. Finally, the RPD member placed an unreasonable expectation upon the Applicant to prove his faith, where the RPD member said that he could be convinced if the Applicant was practicing six years after obtaining permanent residency.

[32] The Applicant further notes that there is a very low threshold for establishing religious knowledge as set out in the caselaw, which the RPD member ignored.

[33] The Applicant argues that the RPD member erred in assigning little weight to the letters of support for the Applicant from various Falun Gong practitioners as they cannot attest to his motivation. The letters he says are to testify that he is a genuine practitioner, not to his motive; obviously, for a *sur place* claim, the question of being a genuine practitioner is far more important than the Applicant’s specific motivation. The combination of assessing the *sur place* claim alongside his original motivation for joining the Falun Gong is therefore a reviewable error he asserts.

[34] The RPD is well placed to assess credibility and is familiar with the country condition evidence that the RPD relies on when assessing claims that are similar in nature. The RPD’s credibility findings are owed significant deference.

[35] While at the hearing there was speculation on hypothetical questions or as to why an inconsistency occurred, that is not our realm on judicial review. The RPD’s credibility findings

were reasonable and the determination made with evidence to support the decision. I do not agree that there were any errors in regards to the numerous findings regarding the Applicant's credibility.

[36] In making the determination, the RPD member found that the Applicant made a number of inconsistent claims and made a number of omissions. Specifically:

- The RPD found that the location of where the group practices were held was inconsistent between the oral testimony of the Applicant and the information in the Personal Information Form ["PIF"]. Specifically, on the day of the PSB raid, the Applicant in his PIF states that they were practicing at Xiao's house, but in oral testimony, stated that this was an error of translation, and that in fact all Falun Gong group practices were at Yao's house during the ten months he was practicing in China. However, there is no mention of Yao anywhere in the PIF;
- In the PIF, his mother indicated that the PSB was accusing the Applicant of being an important Falun Gong practitioner; however, he omitted these accusations in oral testimony;
- The Applicant was inconsistent about the details of which of his friends were arrested, and what happened to them. The RPD did not find his explanation credible;
- The Applicant testified that the first month after the raid, the PSB went to his home very frequently to look for him. This information is omitted from the PIF. When this omission was pointed out to the claimant, he stated that he was surprised that it is not in the PIF;
- The PSB summons was given little weight. The reason was that the summons was on a plain piece of paper, lacked the appropriate security features, the Applicant had

demonstrated that he has “access to fraudulent documents” as he admitted obtaining a US visa with fraudulent information and fraudulent documents are easy to obtain in China;

- The Applicant’s story of escaping China was unlikely. The RPD stated that his story of obtaining a passport just before the raid occurred far too coincidental, and that the public security infrastructure in place at the time would have ensured that the Applicant would have been caught trying to leave China on his own passport;
- The fact that there have been no negative reprisals against the Applicant’s family during his absence. The RPD suggests that if the Applicant had been telling the truth, the PSB would have, as per the objective country documentation, engaged in reprisals against his family;
- While the Applicant was able to answer a number of questions about his faith practice, “many of his answers appeared rehearsed” and did not provide as much nuance on the question of the importance of truth as the RPD member would have found credible;
- The RPD member dismissed all letters of support from various practitioners that indicated that he was a genuine Falun Gong practitioner, as the letters cannot attest to the motivation of the Applicant; and
- The fact that the Applicant protested in a Falun Gong protest in front of the Chinese consulate, which the RPD found, on a balance of probabilities, indicated that the Applicant was deliberately trying to manufacture his own *sur place* claim.

[37] I do not find that the errors alleged by the Applicant are in fact errors. Rather, the findings of the RPD are supported by evidence (see paragraph 20 above) and are reasonable.

[38] I will not address each of the voluminous arguments by the Applicant as they can all be addressed by the singular finding that the Applicant did not like the conclusions or weight given to evidence by the RPD. On the contrary, I do not find that any are reviewable errors. The exception is that I will address the argument surrounding the red seal security feature on the summons.

[39] The Applicant provided case law to support that a red seal was a security feature and the RPD member had found that the summons had no security features. In *Zheng*, above, Justice Tremblay-Lamer held at paragraphs 18 and 19 that the board erred when it did not properly examine all of the documents because the board found that they did not have security features, when the documents in fact contained security features in the form of official stamps.

[40] That is not the case on our facts, as the RPD member had several reasons to give the summons little weight and the lack of a red seal was only one. This Court will not interfere with that determination of weight to give to the document.

[41] In *Su v Canada (Citizenship and Immigration)*, 2013 FC 518, Justice Gleason noted at paragraph 14, citing Justice Zinn in *Jiang v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1067:

I find that even if the Board's finding relating to the lack of a summon is disregarded, there remains a sufficient basis to support the Board's finding that her story was not to be believed when one applies the test of reasonableness in *New Brunswick (Board of Management) v. Dunsmuir*, 2008 SCC 9 (S.C.C.) (CanLII), and the deference which the Court must give to the Board's decision.

[42] These comments apply equally here. Even if one or possibly two of the reasons offered by the RPD in support of its credibility determination bear no weight, the bulk of its reasons are solid. Thus, there is no basis to interfere with the RPD's assessment of the Applicant's lack of credibility, particularly in light of the deference to be afforded to its assessment.

B. *Sur place*

[43] I find it further necessary to specifically address the Applicant's argument that the RPD erred in failing to properly assess his *sur place* claim, which relied on the lack of a legitimate motive for his practice of Falun Gong in Canada. Neither assertion has merit.

[44] In regards to the *sur place* claim, the Applicant suggested that his continued practice of Falun Gong in Canada for the last six years could expose him to danger in China, and demonstrates that he is a genuine Falun Gong practitioner now, even if he was not one in China. The RPD member specifically states, "I disagree, because the claimant is motivated to practice FG, until the hearing, in order to further his fraudulent refugee claim. I could be persuaded if he was still practicing six years after obtaining permanent residency in Canada."

[45] Contrary to what the Applicant asserts, the RPD member did assess the *sur place* claim and the evidence the Applicant tendered in support of his assertion that he was a genuine Falun Gong practitioner in Canada. It simply found this evidence insufficient to establish the genuineness of the claimed practice. There is nothing unreasonable in this conclusion, especially when viewed in light of the determination that the Applicant fabricated what had occurred in China.

[46] In short, there is nothing unreasonable in finding that: a) two letters b) photographs that are of such poor quality he cannot be identified, c) his claim he was being videotaped at the consulate without wearing some type of cover (hat or balaclava) when he was supposedly being sought by the PSB.

[47] All of these things are simply insufficient to establish that a claimant is a genuine adherent to a religion, especially where, as here, he has lied about being a practitioner in order to make a fraudulent refugee claim. In this regard, I endorse the comment of Justice Pinard in *Jin v Canada (Citizenship and Immigration)*, 2012 FC 595 at paragraph 20, that:

[I]t would be absurd to grant a sur place claim every time a pastor provides a letter attesting to an applicant's membership in his church.

[48] To similar effect, it was not unreasonable for the RPD to have assessed and considered the Applicant's motive for practicing Falun Gong as a reason for rejecting his sur place claim. While beginning to practice a religion solely to buttress a refugee claim cannot, in and of itself, be the basis for rejecting a sur place claim, the RPD may legitimately have regard to such motive in assessing the genuineness of a claimant's claimed religious beliefs. In many respects, this case is on all fours with the decision in *Hou v Canada (Citizenship and Immigration)*, 2012 FC 993 [*"Hou"*], where Justice Gleason reviewed and rejected an argument identical to that made by the Applicant in this case. Because those reasons in that case apply equally here, I have reproduced a portion of them below:

[61] I disagree with the applicant's assertion; contrary to what the applicant claims, Canadian case law does recognise that motive for engaging in a religious practice in Canada may be considered by the RPD in an appropriate case. However, a finding that a claimant was motivated to practice a religion in Canada to buttress a

fraudulent refugee claim cannot be used, in and of itself, as a basis to reject the claim. Rather, the finding that the claimant has been motivated by a desire to buttress his or her refugee claim is one factor that may be considered by the RPD in assessing the sincerity of a claimant's religious beliefs.

[62] The sincerity of those beliefs will be an issue in cases, like the present, where continuing the religious practice in the country of origin might place the claimant at risk. If the beliefs are not genuine, then there is no risk, as a claimant would not practice his or her newly-acquired religion in the country of origin if adherence to the religion is motivated solely by a desire to support a refugee claim...

...

[68] In light of the foregoing, the mere fact that the Board considered and relied on the applicant's motive for practicing Falun Gong in Canada does not invalidate its decision. Rather, the question which must be answered is whether the RPD reached a reasonable conclusion in determining that the applicant's practice of Falun Gong in Canada was not motivated by genuine faith. As in *Jin* and *Wang*, I believe this conclusion is reasonable. Finally, the findings with respect to the *sur place* claim were intelligible and justifiable (see paragraph 26) The Applicant's claim that he was a practitioner in China was not found to be credible, and was for the purposes of a *sur place* claim, particularly given that he has a motive to say he is a practitioner.

[49] I adopt the reasoning of Justice Gleason in *Hou*, above, and find the *sur place* analysis to be reasonable.

[50] Finally, I turn to the Applicant's argument that the RPD applied the wrong test because the RPD member stated that the PSB had a reputation of being a professional and fierce force.

[51] In the Decision, the RPD member notes:

[23] In regard to the PSB, they also have a reputation of being a professional and fierce force. However, in the claimant's case, they

did not act as such. For example, the claimant testified that the PSB did not look for him anywhere else except for his mother's house. This does not make sense if they were trying to find him and issued a summons and arrested others. The claimant testified he was hiding at his uncle's, his father's younger brother's home, and yet the PSB did not search for him in this obvious location.

[52] Although the RPD member did not cite any objective documentary evidence to support his proposition on the "reputation" of the PSB, the member does have expertise and specialized knowledge concerning the PSB.

[53] I find that the statement of the RPD member was a "throw away" comment and that the member was not advancing that was the stated legal test for a *sur place* claim or that she was applying that standard. I see using the words as a summary of what is known by the RPD member's area of expertise of the PSB. This statement cannot be seen to be a statement of any legal test and must be seen for what it was: adjectives to describe the PSB.

[54] When the decision is reviewed as a whole, the global lack of credible evidence is overwhelming and determinative. The application is dismissed.

JUDGMENT in IMM-2974-18

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

DOCKET: IMM-2974-18

STYLE OF CAUSE: JIANJIA TAN v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 30, 2019

JUDGMENT AND REASONS: MCVEIGH J.

DATED: APRIL 23, 2019

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