

Federal Court



Cour fédérale

Date: 20190625

Docket: IMM-5173-18

Citation: 2019 FC 854

Toronto, Ontario, June 25, 2019

PRESENT: Mr. Justice Diner

BETWEEN:

**ZHONGQUAN LIN
YONGFANG CAO**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This application judicially reviews a decision [Decision] of the Refugee Protection Division [RPD] which found that the Applicants are neither Convention refugees nor persons in need of protection. For the reasons that follow, this application for judicial review is dismissed.

II. Preliminary Items

[2] It should be noted that after leave was granted but before the judicial review hearing itself, counsel for the Applicants was unable to contact the couple and/or get further instructions. Counsel thus brought a motion before me to remove himself as counsel. The motion was heard by teleconference on May 14, 2019, and subject to further evidence that all reasonable attempts to reach the Applicants had been made, counsel satisfied the Court of unsuccessful efforts and that he was no longer in a position to properly represent his clients. His motion was accordingly granted, and he was removed as solicitor of record.

[3] The judicial review hearing originally scheduled for May 21, 2019 was accordingly adjourned and set down over 30 days later on a peremptory (i.e. mandatory) basis, to be heard on Monday, June 24, 2019, thus providing the Applicants sufficient time to set any further course of action in motion, including notifying the Court of their whereabouts and/or engaging new counsel. They did neither, and the Court's Registry was unsuccessful in its own efforts to contact the Applicants using the contact information in the Court file, and that was provided by former counsel (per the instructions set out in my Court Order of May 14, 2019).

[4] Ultimately, the Applicants failed to present themselves at Court at the appointed hearing time on Monday, June 24, 2019. The Court usher was sent to look for them outside the Courtroom and in the surrounding hallways. They could not be found. The matter proceeded pursuant to my Order of May 14, 2019.

[5] As a result of the foregoing, and to be fair to both sides, the Reasons that follow are based upon the written record only.

III. Background

[6] The Applicants consist of a husband [the Principal Applicant] and wife, both citizens of China. Their claim is based on a fear of persecution by the Public Security Bureau [PSB] in China due to their illegal practice of Falun Gong. I will briefly summarize their story, but make no determinations as to the truth of its contents, particularly in light of what transpired as discussed above.

[7] In 2010, after several unsuccessful attempts to treat his back pain, including the use of prescription painkillers and traditional medicine and acupuncture, the Principal Applicant turned to the practice of Falun Gong. He joined a practice group and introduced his wife to the practice for migraine headache relief.

[8] In 2012, their practice group was raided by the PSB. The Applicants escaped and went into hiding. Two days later, the Applicants discovered that the PSB had been to their home and that three of their co-practitioners had been arrested. They learned that the PSB had left a non-coercive summons with the Principal Applicant's father. Following repeat visits made by the PSB at their home, the Applicants fled to Canada and claimed refugee protection.

[9] The RP noted a number of inconsistencies, contradictions and omissions in the Applicants' evidence. It addressed the Applicants' alleged practice of Falun Gong in China and

found it not to be credible. It imported the adverse credibility findings into its assessment of their *sur place* claim and determined that the Applicants had not become genuine Falun Gong practitioners in Canada.

IV. Issues and Standard of Review

[10] The issue is whether the RPD's decision was reasonable. The standard of review for credibility findings made by the RPD is that of reasonableness, with considerable deference owed to the advantageous position of the trier of fact (*Arachehig v Canada (Citizenship and Immigration)*, 2019 FC 430 at para 13). The standard of review applicable to the RPD's factual findings regarding the Applicants' *sur place* claim is also that of reasonableness (*Huang v Canada (Citizenship and Immigration)*, 2016 FC 163 at para 26).

V. Analysis

A. *Credibility*

(1) *PSB visits*

[11] The Applicants argue that the RPD was speculative and made erroneous conclusions with respect to PSB practices. They argue that the RPD contradicted itself by first setting the standard of not expecting the Applicants to recall precise dates, while subsequently finding the Principal Applicant's answers to be vague. They further argue that the Principal Applicant was clear in explaining that the PSB continued their pursuit on "celebration days" – a common PSB practice.

[12] The Respondent counters that the Applicants are conflating the RPD's expectation that oral testimony not be vague with an expectation to recall precise dates. Rather, it reasonably drew an adverse credibility inference from the Principal Applicant's failure to provide material and relevant information on the PSB's continued pursuit on "celebration days" given that it was not included in either Personal Information Form [PIF] or any amendment thereto.

[13] The RPD observed the Principal Applicant testified he was informed by his aunt (who was informed by his father) that the PSB continued to pursue him on "celebration days", following his departure, but was unable to provide any further information given his aunt's death and his lack of communication with any other family members out of fear of being arrested. The RPD found this information vague and noted the lack of addendum informing it of this updated information. It further found that the Principal Applicant's fear of communicating with his family had no evidentiary basis.

[14] I agree with the Respondent that there is no contradiction between the finding that the Principal Applicant provided vague testimony and the fact that the RPD did not expect the Applicants to remember exact dates of events. It was open to the RPD to find that (i) the omission of continued PSB visits from either PIF or an addendum and (ii) lack of information provided regarding the said visits following their departure, were more significant than incorrectly recalling a date. Therefore, I am unable to conclude the RPD's assessment determining the lack of an addendum to provide an update with respect to the alleged PSB pursuit to be unreasonable; a negative inference on credibility was reasonable given the failure to mention it.

(2) *Family members*

[15] The RPD drew an adverse credibility finding based on the Principal Applicant's family's ability to "carry on with their lives without facing serious consequences at the hands of the PSB" (Decision at para 20) despite the PSB's interest in pursuing them and their failure to surrender to the authorities.

[16] The Applicants argue that the RPD speculated in drawing an adverse credibility finding because they did not adduce evidence that their family members had encountered problems as a result of the Applicants' failure to turn themselves into the authorities. They rely on *Chen v Canada (Citizenship and Immigration)*, 2014 FC 749, a case that concerned an alleged practitioner of Falun Gong where Justice Russell found that the RPD speculated regarding the likely behaviour of the PSB when it relied on its own opinion.

[17] The Respondent relies on *Hou v Canada (Citizenship and Immigration)*, 2012 FC 993 for the proposition that it was reasonably open to the RPD to find the Applicants' version of events to be implausible given the inconsistency between their story and the common pattern of behaviour of the PSB toward Falun Gong practitioners' families reported in the country condition evidence. The Respondent notes that there is documentary evidence on the record that family members of Falun Gong practitioners "may be detained and questioned in order to expose practitioners" and some face the "same mistreatments as practitioners themselves" (Response to Information Request CHN104580.E, Item 12.27 National Documentation Package for China, 30 April 2018 [RIR]).

[18] I agree that this was an error. Here, like in *Chen*, there is no evidence that supports the RPD's contention that, reasonably speaking, the PSB would have done anything more than the Applicants say they did. In any event, the RIR cited by the Respondent states that family members of those who practice Falun Gong have suffered "various degrees of persecution". In drawing an adverse credibility finding based on the fact that family members have not faced "serious consequences at the hands of the PSB", the RPD unreasonably applied on its own opinion.

(3) *Summons*

[19] In considering the Principal Applicant's non-coercive investigative summons, the RPD, citing some documentary evidence in support, found that the PSB would have issued a coercive summons given the allegations of its efforts to arrest the Principal Applicant and the arrest of the co-practitioners. Relying on the absence of a coercive summons, the RPD concluded that the Applicants had failed to provide persuasive evidence that the PSB was pursuing them.

[20] The Applicants submit that the RPD based its findings concerning the summons on speculation given that it failed to make a determination on the authenticity of the Applicants' summons and failed to consider the inconsistency in police compliance.

[21] The Respondent counters that the RPD provided intelligible reasons, supported by the country condition evidence and the case law, for placing little weight on the summons. The Respondent relies on *Zhu v Canada (Citizenship and Immigration)*, 2017 FC 615 and *Yan v Canada (Citizenship and Immigration)*, 2017 FC 146 for the proposition that it was reasonable

for the RAD to conclude that the PSB would have issued a coercive summons in comparable circumstances.

[22] While this Court has indeed warned against making assumptions about how the Chinese authorities would rationally behave, and whether one would expect them to issue a coercive summons (*Huang v Canada (Citizenship and Immigration)*, 2019 FC 94 at para 21), I find that Justice Brown's findings in *Yan* (supporting the Respondent's arguments) is analogous to the instant case.

[23] In *Yan*, a case involving an applicant who claimed a fear of persecution on the ground of religion as a member of the Church of Almighty God, Justice Brown upheld the RAD's finding that it was reasonable to expect a coercive summons to have been issued by the PSB in light of the objective evidence and the applicant's allegations (at para 23).

[24] Here, I find the RPD reasonably based its determination on the objective evidence demonstrating "Chinese authorities view adherents of Falun Gong as members of a cult" and their vigorous efforts to pursue members of Falun Gong, as well as the circumstances surrounding the Principal Applicant's summons, namely the Principal Applicant's allegations of continued PSB visits to his home for his arrest and the arrest of the co-practitioners.

[25] The Applicants' reliance on *Liu v Canada (Citizenship and Immigration)*, 2013 FC 896 for the proposition that a negative finding cannot itself serve as the basis to reject an item of documentary evidence is not persuasive. In *Liu*, Justice Russell found it was unreasonable for

the RPD to reject other supporting documentation outright because it had found the summons not be genuine, holding that the RPD had an obligation to assess the other documentation independently. This was simply not the case here, as the RPD assessed the key documentation presented (see also the section below on the *sur place* claim).

[26] Based on the foregoing, I find the RPD reasonably concluded that the absence of a coercive summons undermined the genuineness of the summons tendered by the Applicants and reasonably assigned it little weight.

(4) *Conclusion on credibility*

[27] Not every error committed by an administrative decision-maker constitutes a reviewable error. An error must go to the heart of the decision (*Williams v Canada (Citizenship and Immigration)*, 2018 FC 241 at para 26). Here, I do not find it does. In my view, the unreasonableness of the RPD's findings on the Applicants' family members does not outweigh the reasonability of the RPD's findings on the alleged PSB visits and summons. Ultimately, I find the RPD's credibility findings reasonable.

B. *Sur place claim*

[28] The Applicants submit that the RPD erroneously imported its credibility findings in its *sur place* claim assessment and erred in its analysis of the Applicants' knowledge of Falun Gong by dismissing their evidence (e.g. testimony, letters from co-practitioners, photos, country condition documentation) without analysis and cogent reasons. They refer to the documentary

evidence indicating that Falun Gong practitioners in Canada are monitored by Chinese authorities and assert that the RPD failed to consider whether the Applicants will be perceived as Falun Gong practitioners in China.

[29] The Respondent counters that the RPD was permitted to assess the Applicants' *sur place* claim in light of the credibility concerns relating to the authenticity of the claim, reasonably found the evidence insufficient to demonstrate the genuineness of the Applicants' Falun Gong practice in Canada, and reasonably concluded there was insufficient evidence that the Chinese authorities were aware of the Applicants' practice of Falun Gong in Canada.

[30] First, I agree with the Respondent that the RPD was entitled to import its finding that the Applicants were not genuine Falun Gong practitioners into its *sur place* analysis (*Li v Canada (Citizenship and Immigration)*, 2019 FC 454 at para 25). This was not unreasonable.

[31] Second, I do not find that the RPD simply dismissed the Applicants' supporting documentation without cogent reasons. Rather, the RPD reasonably assessed the Applicants' knowledge of Falun Gong by asking questions on very basic practices, noting that the Principal Applicant's knowledge was "very limited". Similarly, it reasonably noted that the Principal Applicant's wife "demonstrated virtually no knowledge" of Falun Gong as she also did not know basic details given her responses to questions.

[32] Furthermore, the RPD also assessed the Principal Applicant's photos of himself and other engaged in Falun Gong activities in Canada and explained why it assigned them little weight:

they were undated, unverifiable and did not demonstrate the genuineness of his practice. It also explained why it rejected the Principal Applicant's explanation that despite having taken photos in both 2013 and in 2018, he was not allowed to take photos. The RPD found it simply implausible that photos could be taken in one year and not for the four years that followed.

[33] The RPD also assessed the letters from fellow practitioners and explained why it assigned them little weight: they were not probative with respect to the genuineness of their practice of Falun Gong. It noted that it would have been more probative had one of the witnesses been called, but that the Principal Applicant stated that neither could attend as one was working and the other was babysitting.

[34] Third, although the Decision does not refer to the documentary evidence that Falun Gong practitioners in Canada are monitored by Chinese authorities and upon return have been intimidated, detained and interrogated, there is no obligation on a decision-maker to refer to each piece of evidence (*Canada (Citizenship and Immigration) v Alharbi*, 2019 FC 395 at para 14). Moreover, this evidence does not contradict the RPD's finding that the Applicants had not provided sufficient credible evidence to demonstrate the genuineness of their Falun Gong practice in Canada.

VI. Conclusion

[35] Reasons need not be perfect but they must "allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (*Newfoundland and Labrador Nurses' Union v Newfoundland*

and Labrador (Treasury Board), 2011 SCC 62 at para 16). In my view, the RPD's reasons were open to it both on the basis of the credibility and *sur place* findings. The Decision is thus reasonable. This application for judicial review is accordingly dismissed. No questions are certified and no costs are ordered.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. No questions for certification were argued, and none arise.
3. There is no award as to costs.

"Alan S. Diner"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

No one appeared

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