

Federal Court



Cour fédérale

Date: 20191115

Docket: IMM-197-19

Citation: 2019 FC 1428

Ottawa, Ontario, November 15, 2019

PRESENT: Madam Justice Simpson

BETWEEN:

HAI WANG

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Delivered orally from the Bench in Toronto, Ontario on October 29, 2019)

I. Proceeding

[1] This application is for judicial review of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board, dated December 4, 2018, in which the Panel denied the Applicant's claim for refugee protection based on its conclusion that the claim had no credible basis [the Decision]. This application was brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA].

[2] The Applicant is a 48-year-old male citizen of China. His claim is based on a fear of persecution in China for being a gay man.

[3] The Applicant's parents divorced when he was 3 years old, and he was raised by his father in Harbin, China. His father is gay.

[4] The Panel's conclusion that there was no credible basis for the claim was based on the following findings:

1. material facts described in testimony were omitted from the Basis of Claim form [BOC];
2. inconsistent evidence was given at the two sittings of the RPD hearing. They were held close together on November 19 and 28, 2018; and
3. there were no material and reliable corroborating documents.

[5] I will deal with each in turn.

1. *The BOC*

[6] The BOC states that the Applicant's father brought partners home and that "he, his partner[s] and I slept on the same bed". There was no mention of sexual activity involving the Applicant. However, in his testimony the Applicant said that his father prostituted him for money to his gay partners including public officials and that his father then tried to blackmail those officials.

[7] The BOC says that the Applicant became homosexual due to his father's influence including the fact that he took him to homosexual clubs. There was no mention of beatings by his father. However, in testimony he said that he became homosexual because his father beat him when he associated with girls.

[8] In his BOC he said that his home was demolished without compensation and that he was detained by the PSB when he tried to appeal. There is no mention of a reason for the lack of compensation. However, in his oral testimony he said that he and his father were not compensated because they were gay.

[9] In his BOC he stated that he fled to Shenzhen after being released from custody. There he worked in a factory and as a street vendor and chose to marry a sympathetic woman. No mention was made of his same sex partner. However, in evidence he stated that he went to Shenzhen to live with his partner and that they survived as prostitutes. He also testified that they were arrested several times for prostitution and sexually assaulted while in detention.

[10] The omissions from the BOC dealing with his father's prostituting him, his same sex partner, their prostitution, and repeated sexual assaults while in PSB custody were key elements supporting his claim. In my view, these events were important and determinative elements of the claim and the Panel reasonably concluded that the claim could be dismissed on the basis of these omissions. In this regard, see *Ortez Villalta v. Canada (Citizenship and Immigration)*, 2010 FC 1126.

2. *Inconsistencies*

[11] At the first sitting, the Applicant testified that he never had problems with the PSB after his arrest for protesting the demolition of his home. However, at the second sitting he stated that he was detained by the PSB for prostitution in Shenzhen and that he was sexually assaulted while detained. In addition, the Applicant testified at the first sitting that he had only one sexual partner in his life. However, at the second sitting he mentioned the existence of previous partners.

3. *Corroborative Documents*

[12] The Applicant did establish that he and his father owned an apartment in Harbin. However, there was no documentation to show that it had been demolished, so the RPD did not find the ownership document to be material. The Applicant also provided a marriage certificate which was issued for a marriage in Kowloon. However, the Applicant testified that he was married in Shenzhen and that he could not travel to Kowloon.

[13] Most of these omissions and contradictions were not explained. The Applicant did say, however, that he was embarrassed to be truthful when writing his BOC. This explanation was not accepted given the seriousness of the omissions and their importance to his refugee claim.

[14] The Panel also expressed concern that the Applicant, who was traumatized at a young age, did not display the emotions and had not taken the steps to access the kind of treatments or support groups that one would expect he would need. I am not persuaded that this conclusion was reasonable as these findings were beyond the Panel's expertise. However, I am also not persuaded that this error was material. There were other numerous and compelling reasons to reasonably conclude that this claim had no credible basis.

[15] Finally, the Panel made implausibility findings based on the Applicant's evidence that homosexual men in China met in parks and engaged in prostitution. This finding was unreasonable as the country condition documents showed that this conduct did occur in China. The Applicant submitted that these findings tainted the decision. However, in view of the seriousness of the omissions from the BOC, I have concluded that this error was also immaterial.

II. Certification

[16] No question was posed for certification for appeal.

III. Conclusion

[17] An Order will be made dismissing the application.

JUDGMENT IN IMM-197-19

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

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-197-19

STYLE OF CAUSE: HAI WANG v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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JUDGMENT AND REASONS: SIMPSON J.

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