

Federal Court



Cour fédérale

Date: 20200623

Docket: IMM-4109-19

Citation: 2020 FC 720

Ottawa, Ontario, June 23, 2020

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

YANYIN LIANG

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [IRPA] to review a decision by the Refugee Protection Division [RPD or Board], dated May 1, 2019, determining that the Applicant is neither a Convention refugee nor a person in need of protection.

[2] Yanyin Liang [the Applicant] is a citizen of China and 31 years old. She came to Canada on November 22, 2012 and claimed protection shortly thereafter, based on the practice of Falun Gong in China and fear of persecution by the Public Security Bureau [PSB]. The Applicant's hearing was eventually scheduled for April 23, 2018 and the RPD rejected the claim on April 25, 2018 concluding that the Applicant had never practised Falun Gong in China and had never been wanted by the PSB.

[3] Leave for judicial review of the April 25, 2018, decision was granted. In a judgment rendered on January 22, 2019, the application was granted and the decision was set aside, resulting in a remitting of the matter for redetermination: *Liang v Canada (Citizenship and Immigration)*, 2019 FC 90 [*Liang* 2019]. In *Liang* 2019, Justice McDonald found that the Panel had failed to weigh evidence of a summons and used circular reasoning in considering the Applicant's evidence of how she had come to leave China. In the result, Justice McDonald found the decision lacked justification.

II. Decision under Review

[4] The second RPD panel reached the same conclusions but for different reasons. The Panel found that the Applicant lacked credibility as a Falun Gong practitioner and was therefore, on a balance of probabilities, not facing persecution by the Chinese authorities. The Panel concluded the Applicant's claim that she was a practitioner in China was fraudulent. As for practice in Canada, the Panel found the knowledge she had acquired here reflected an effort to support the fraudulent claim.

[5] The negative credibility finding was reached on the basis of four main reasons: 1) the Applicant did not demonstrate sufficient knowledge of Falun Gong; 2) the Summons document does not indicate the PSB's intention to arrest (and may not be genuine); 3) the Applicant's response was inadequate as to how she left China by airplane using her valid passport in light of the Golden Shield and the PSB wanting her arrested; and 4) her *sur place* claim is not supported by credible evidence.

[6] With respect to insufficient knowledge, the Panel found that the Applicant's answers to questions at the hearing was not detailed enough and did not demonstrate knowledge of the three central principles of Falun Gong – truth, compassion, and forbearance.

[7] The Panel found that the summons document should be given little weight as it appears to be a non-coercive document and therefore inconsistent with the Applicant's testimony that the PSB were intending to arrest her. It was a *chuanpiao* or subpoena requiring a court appearance but not indicating an intention to arrest the Applicant. The Panel referred to the Jurisprudential Guide with regards to summonses and warrants in China and concluded that since Falun Gong practitioners are vigorously pursued, it is reasonable to assume that a coercive summons would be issued if the Applicant were a Falun Gong practitioner. No summons was left with the Applicant's parents when she failed to respond to the subpoena. While that rationale was sufficient to address one of the weaknesses of the first RPD decision, the second Panel further concluded that the document was fraudulent.

[8] The Applicant indicated in her Personal Information Form [PIF] that she used her own genuine passport when exiting China, with the help of a smuggler. The Panel noted that detection by border officers would have been likely given what country document evidence [the National Documentation Package or NDP] says about China's Golden Shield Project. The Applicant testified that she had to show her passport three times at the Guangzhou airport: when she received her boarding pass, when she passed through security, and again before she boarded the plane. Although the Applicant used a smuggler or "snakehead", the Panel found it implausible that a smuggler could get her through all three passport checkpoints without detection or incident and drew a negative inference from her claim to this effect.

[9] The Panel held that the Applicant's *sur place* claim, based on the evidence of two letters and photographs depicting Falun Gong practice here in Canada, did not overcome the credibility concerns and did not establish on a balance of probabilities that the Applicant is a genuine Falun Gong practitioner. The two letters the Applicant proffered stating that she publicly practised Falun Gong here in Canada were given little weight as the authors of the two letters were not present to attest to the veracity of their statements. In response to the argument that the Applicant's claims of Falun Gong membership could be assessed entirely on the basis of her activities in Canada over 6 years, the Panel disagreed, holding that it is important to consider the totality of evidence adduced in testimony and documentation, including evidence pertaining to events in China.

III. Issues

[10] The determinative issue is whether the Panel was reasonable in its credibility assessment.

IV. Standard of Review

[11] This application was heard after the Supreme Court of Canada released its decision in *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. It was confirmed in *Vavilov* at para 30 that reasonableness is the presumptive standard for most categories of questions on judicial review, a presumption that avoids undue interference with the administrative decision maker's discharge of its functions. None of the exceptions to the presumption arise in the present case.

[12] Credibility findings by the RPD demand a high level of judicial deference and should only be overturned in the clearest of cases (*Khan v Canada (Citizenship and Immigration)*, 2011 FC 1330 at para 30). Credibility determinations have been described as "the heartland of the Board's jurisdiction", given that they are essentially pure findings of fact which are reviewable on a reasonableness standard (*Zhou v Canada (Citizenship and Immigration)*, 2013 FC 619 at para 26; and *Cetinkaya v Canada (Citizenship and Immigration)*, 2012 FC 8 at para 17).

[13] Under the *Vavilov* framework, the Court must respect and cannot interfere with a credibility assessment unless it is satisfied that the reasons of the RPD are not "justified, intelligible and transparent" which is assessed "not in the abstract" but from the point of view of the "individuals subject to" the decision (*Vavilov* at para 95). It is important for the reviewing court to ensure that an administrative decision maker has not abdicated its duty to "justify to the affected party, in a manner that is transparent and intelligible, the basis on which it arrived at a particular conclusion" (*Vavilov* at para 96). For the Applicant to succeed in the present matter,

she must satisfy the Court that there are “sufficiently serious shortcomings in the decision” (*Vavilov* at para 100).

V. **Analysis**

A. *Adherence to Falun Gong*

[14] Assessing the genuineness of a person’s practice in Falun Gong is not an easy matter given that there is no clear definition of a member or practitioner. As the Applicant noted, there are no “certificates of Baptism” or other official documents confirming membership. In a ‘Response to Information Request’ from the IRB in the Application Record at p. 63, it is noted that:

Membership [in Falun Gong] may not be an entirely applicable concept. In fact, although the movement recommends a nine-day introduction course and frequent contacts with local centres, it also states that everybody can simply start practising Falun Gong by following the instructions from one of the many books, cassettes and websites ... quickly available in a variety of languages. The possibility of such self-initiation, without a master and a lengthy discipline, is at the core of the criticism by other Qi Gong groups against Li and his movement.

[15] The Panel observed that Falun Gong has a strong knowledge component to its core beliefs, and that testing the level of knowledge can be used to assess a person’s practice.

The panel noted in the hearing that Master Li has stated that doing the exercises and reading Zhuan Falun is not enough to gain the benefits of Falun Gong, and that cultivation required a practitioner to live according to the three principles of Falun Gong – truth, compassion, and forbearance. The panel notes this is a basic teaching of Falun Gong, and finds it reasonable that someone who has allegedly been practising for six years would have been able to provide this information almost automatically.

[16] The Panel drew a negative inference from the Applicant's lack of knowledge of those three principles.

[17] In *Gao v Canada (Citizenship and Immigration)*, 2015 FC 1139 [*Gao*] at paragraph 26 it was held that the Board can assess an applicant's knowledge of their alleged religious practice:

My reading of the jurisprudence is that it is not improper for the Board to engage in religious questioning in an effort to gauge the genuineness of a claimant's beliefs, but that such questioning and resulting analysis must indeed focus on the genuineness of those beliefs and not whether they are theologically correct. This can be a difficult task for the Board, as it is entitled to consider whether the claimant holds a level of religious knowledge that would be expected of someone in the claimant's position but should not reach an adverse conclusion based on minutiae or holding the claimant to an unreasonably high standard of religious knowledge.

[18] In my view, the Panel's analysis of the Applicant's knowledge of Falun Gong did not step over the line described in *Gao* or in other decisions such as *Huang v Canada (Citizenship and Immigration)*, 2008 FC 346 and *Lin v Canada (Citizenship and Immigration)*, 2012 FC 288.

B. The "Chuanpiao" Document

[19] With regard to the document which the Applicant argued was a coercive summons consistent with the PSB seeking her arrest, the Panel found that at best, if genuine, it was a non-coercive subpoena. While it is well known that fraudulent documents are widely available in China, the RPD is obliged to examine and weigh the actual documents before it rather than simply rejecting them out of hand: *Lin v Canada (Citizenship and Immigration)*, 2012 FC 157

[Lin]. This was one of the principal reasons why Justice McDonald allowed the application from the first decision in the present matter.

[20] The *chuanpiao* in question, dated Sept 5, 2012, is addressed to Yanyin Liang and directs her to report to the 4th Criminal Division of the People's Court of Chancheng District Foshan City, on September 6, 2012, at 8:10a.m. The summons states that it regards a case of "being involved in illegal Falun Gong, recruiting members for the organization, sabotaging the social order".

[21] The CTR contains a 'Response to Information Request' from the Research Directorate of the IRB, which addresses the issues of summonses and subpoenas in China. An Associate Professor of law at the Procedural Law Research Institute of the China University of Political Science and Law [CUPL] explained there is a "significant difference" between the legal systems in China and Canada, but that the distinction between summonses and subpoenas is similar: summonses indicate "the official requirement to defendant[s] to [appear] before the authorities to attend the court", whereas subpoenas are "the official requirement to witnesses to testify before the authorities or in the trial". From the US Department of State *Country Reports on Human Rights Practices for 2011*, relied upon by the Respondent, it appears that fewer than 10% of subpoenaed witnesses actually appear in court which lends support to the Panel's conclusion that a *chuanpiao* is non-coercive.

[22] The Applicant contends the Panel's finding that the document is not genuine is a reviewable error. But that was not the main focus of the Panel's reasons. Its findings on this

point support its conclusion that the Applicant's claim is undermined by the lack of a coercive summons. The PSB's visits to her home after delivering the document were not followed up by compelled appearance notices. This reasonably raised doubts as to whether the Applicant was genuinely being pursued and therefore persecuted by the state authorities.

[23] This Court must approach the Panel's reasons as an organic whole, and the decision should not be disturbed based on a treasure hunt for error: *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 at para 54.

C. *Exit from China in light of the Golden Shield*

[24] The manner of the Applicant's departure from China was a significant issue in the Board's decision. It did not question her evidence that she had left on her own passport with the assistance of a smuggler. Rather, the Panel found it would not have been possible for her to do so if she was wanted by the PSB.

[25] Each case is dependent upon its own facts and the evidence adduced in support of the claim that the border control authorities were evaded with the aid of a smuggler. There is no general principle that the mere assertion of such a claim is to be accepted by the Board or the Court as was stated by Justice Russell in *Huang v Canada (Citizenship and Immigration)*, 2017 FC 762 [*Huang 2017*] at para 72:

I am aware that similar cases to the present have arisen frequently in the Court, particularly with regard to the issue of whether claimants are able to exit China with their own passports given the Golden Shield system in place. Decisions have gone both ways. In my view – and the Respondent acknowledges this – it really

depends upon the facts and evidence adduced in each case. In the present case, I think there are sufficient concerns about the factual findings of the RAD, as outlined above, to require a reconsideration of this case. This does not mean that I am establishing any kind of precedent that can be applied in future cases.

[26] The Applicant challenges the Panel's reliance on the Jurisprudential Guide, Decision TB6-11632, adopted in July 2017, which analyzed Chinese exit control procedures and the ability for those being sought by the authorities to exit China via an airport using a genuine passport. The guide was revoked in June 2019 because of a specific factual finding relating to facial recognition technology and because of updates to the China NDP. However, it remained valid at the time of the decision and RPD members were expected to apply such guides in cases with similar facts: *Huang v Canada (Citizenship and Immigration)*, 2019 FC 148 [*Huang 2019*] at para 38.

[27] Reliance on the guide did not result in the fettering of the Board's discretion. It was clear that the Panel considered opposing jurisprudence including *Huang 2017*, above, and analyzed the case based on its own facts. No doubt some individuals are able to evade border controls with the aid of smugglers but there was little evidence about how this could have been done in the Applicant's case. It was open to the Panel, in my view, to make a negative credibility assessment on the evidence.

D. Evidence supporting the sur place claims

[28] The Applicant contends the documents provided by her (letters and photographs) offered "clear evidence in support" of her Falun Gong practice in Canada. She argues that "even if the

Panel finds that the Applicant entered Canada fraudulently and has not established that the events in China occurred as alleged, there is still sufficient evidence to analyze whether at the time of the hearing the Applicant is a genuine Falun Gong practitioner”.

[29] The Panel took the position that it was entitled to import its finding that the Applicant was not a genuine Falun Gong practitioner into its *sur place* analysis. There is support for this in the jurisprudence: *Jiang v Canada (Citizenship and Immigration)*, 2012 FC 1067 at paras 27-28 ; *Zhou v Canada (Citizenship and Immigration)*, 2015 FC 5 at para 23; *Hou v Canada (Citizenship and Immigration)*, 2012 FC 993 at para 65. In *Su v Canada (Citizenship and Immigration)*, 2013 FC 518 at para 17, the Court stated that “there is nothing unreasonable in finding that a few letters and pictures do not 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”.

[30] There is support in the NDP for the contention that the Chinese authorities could be monitoring Falun Gong practitioners abroad. However, the burden to establish that an applicant’s activities in this country have come to the attention of the foreign state’s authorities rests on the claimant: *Li v Canada (Citizenship and Immigration)*, 2018 FC 877 at para 30. No evidence was led that the PSB or other authorities were monitoring the Applicant.

VI. Conclusions

[31] I am satisfied that this is a case where the Board’s findings are owed deference. The Panel’s reasons indicate that it engaged with the objective documentary evidence and that the

Applicant's evidence and arguments were considered. The Panel's reasoning was transparent, intelligible, and justified, and there is no "sufficiently serious shortcoming" here to warrant this Court's intervention (*Vavilov* at para 100).

[32] The parties have not proposed any serious questions of general importance for certification under section 74(d) of the IRPA and I am satisfied that none arise on the facts of this case.

JUDGMENT IN IMM-4109-19

THIS COURT'S JUDGMENT is that the application is dismissed. No questions are certified.

"Richard G. Mosley"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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APPEARANCES:

Olha Senyshyn FOR THE APPLICANT

Kevin Spykerman FOR THE RESPONDENT

SOLICITORS OF RECORD:

Levine Associates FOR THE APPLICANT
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario