

Federal Court



Cour fédérale

**Date: 20200814**

**Docket: IMM-2125-19**

**Citation: 2020 FC 825**

**Ottawa, Ontario, August 14, 2020**

**PRESENT: Mr. Justice McHaffie**

**BETWEEN:**

**YAO HE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Refugee Appeal Division (RAD) found that Yao He had filed no probative documents to support his claim that he was in danger from China's Public Safety Bureau (PSB) because of his parents' practice of Falun Gong. The RAD found that the lack of documentation provided by Mr. He to establish the PSB's continuing interest in him, including the absence of any documentation from the PSB, undermined the credibility of his allegations that the PSB had

sought him out multiple times, arrested several of his parents' friends, and threatened to arrest both Mr. He and his parents. The RAD also found that if Mr. He's claims were credible, he would not have been able to leave China using his own passport as he did.

[2] Despite Mr. He's challenges to these findings, I conclude that the RAD's decision was reasonable. Mr. He's evidence was that he was not identified in Chinese police databases for arrest, which allowed him to leave the country without incident, and it was reasonable for the RAD to conclude that this undermined Mr. He's claim that he was wanted by the PSB. Similarly, I find that it was reasonable for the RAD to conclude that the lack of any probative documentation to substantiate his allegations adversely affected the credibility of his claim.

[3] The application for judicial review is therefore dismissed.

## II. Issues and Standard of Review

[4] Mr. He's challenges to the RAD's decision raise two issues:

- A. Was it reasonable for the RAD to conclude that if Mr. He's claim were credible, he would not have been able to leave China on his own documentation?
- B. Was it reasonable for the RAD to conclude that the absence of documentation undermined the credibility of Mr. He's claim?

[5] Each of these issues, which go to the credibility of Mr. He's claim for refugee protection, is to be reviewed on the reasonableness standard: *Huang v Canada (Citizenship and Immigration)*, 2017 FC 762 at paras 24–25 [*Guimei Huang*]; *Yan v Canada (Citizenship and Immigration)*, 2018 FC 781 at para 11. While this matter was argued shortly before the release of

the Supreme Court of Canada's decision in *Vavilov*, that decision does not affect either the applicable standard of review or its application in this case, but simply confirms that the reasonableness standard applies: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25.

[6] As Justice McVeigh noted in *Yan*, the reasonableness standard does not allow the Court to revisit or reweigh the evidence, make its own findings of fact, or substitute its own preferred outcome for that of the decision maker: *Yan* at para 23. Rather, reasonableness involves an assessment of whether the decision is justified, transparent and intelligible.

### III. Analysis

#### A. *The RAD's Conclusion Regarding Mr. He's Departure from China was Reasonable*

[7] Mr. He alleged that the PSB had sought him out several times owing to his parents' practice of Falun Gong. He claimed the PSB sought information from him about his parents' whereabouts, and threatened him with arrest if he concealed information. Mr. He asserted that he was "wanted" by the PSB, and fled China with the assistance of a smuggler.

[8] The RAD concluded that if Mr. He's "allegation about the continuing visitations of the PSB were credible, he would not be able to leave on his own documentation, on a balance of probabilities." This conclusion upheld the decision of the Refugee Protection Division (RPD), which similarly reasoned that Mr. He would likely have been prevented from leaving China if the PSB had any genuine interest in pursuing him. The RAD noted the RPD's reference to a

Response to Information Request (RIR) in the National Documentation Package (NDP) that described China's "Golden Shield" as being capable of flagging wanted fugitives for investigation at border exits.

[9] Mr. He points to a number of decisions of this Court that have recognized the plausibility of a smuggler helping a Chinese national bypass security restrictions by bribing officials: *Guimei Huang* at paras 63–68; *Yao v Canada (Citizenship and Immigration)*, 2016 FC 927 at paras 16–18; *Ren v Canada (Citizenship and Immigration)*, 2015 FC 1402 at para 16; *Sun v Canada (Citizenship and Immigration)*, 2015 FC 387 at para 26.

[10] The difficulty with Mr. He's reliance on these cases is that they each speak to circumstances in which a smuggler is alleged to have used bribery, corruption and/or a false passport to bypass official border control inspection. In other words, they dealt with the plausibility of leaving China despite a party being identified in the police database. In the present case, Mr. He's evidence was that the smuggler in fact confirmed that Mr. He's name was not in the police database: "there was no information about the PSB wanting to arrest me in their system." The RAD's finding regarding Mr. He's ability to leave China was thus effectively a finding that it was not credible that he would be wanted by the PSB to the extent that they visited him several times prior to his departure, and yet not appear in the database.

[11] In *Yan*, Justice McVeigh noted that a situation in which the claimant "never alleged that officials were bribed to circumvent the system" was different from the situation described in *Guimei Huang*: *Yan* at para 32. Similarly, in this case, Mr. He's allegation is not that officials

were bribed to circumvent the system, but that he was able to leave the country because he was not identified in the police computer system. He nonetheless maintained that he was wanted by, and in danger from, the Chinese authorities. The RAD concluded that this was not credible.

[12] Mr. He argues that it was unreasonable for the RAD to infer that he would be in the police database, given the evidence that shows that Falun Gong practitioners are treated and detained arbitrarily and not given “due process.” However, the evidence pointed to by Mr. He does not speak to due process broadly, or the likelihood of family members of Falun Gong practitioners being wanted by the PSB but still not being identified in the database. The country condition evidence referenced by Mr. He cites a third party report that “Falun Gong practitioners are sometimes placed in ‘temporary detention facilities’ used to ‘enforce...government policies or punish...dissent’ and are not provided with ‘due process review’.” Neither this nor other evidence identified by Mr. He speaks to the possibility or likelihood of someone being wanted for arrest by the PSB but not being identified to that effect in the police database. In such circumstances, I cannot conclude that it was unreasonable for the RAD to infer that a person pursued by the authorities to the extent described by Mr. He would appear in the computer system, and to draw adverse credibility conclusions about his account from the fact that he did not.

B. *The RAD’s Conclusion Regarding the Lack of Supporting Documents was Reasonable*

[13] The RAD concluded that “no probative documentation has been submitted to validate the basic allegations of the claim: the parents of the Appellant were Falun Gong practitioners sought by the PSB, and that the Appellant was sought for arrest by the PSB.” The RAD noted in

particular that some documentation to support the allegations of the PSB wanting to arrest Mr. He's parents would reasonably have been given to Mr. He or his grandparents by the PSB.

[14] Mr. He argues that this amounts to a plausibility finding—that it is implausible that the PSB would pursue him or his parents without leaving documentation to that effect—which should not be made except in the “clearest of cases”: *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at paras 7–8. Mr. He again points to the same evidence of Falun Gong practitioners not being given “due process review” of detention, suggesting that this indicates it was plausible that the PSB would not leave any documentation. He also points to various reports of arrests and other mistreatment of Falun Gong practitioners, arguing this shows it is plausible that he was targeted by the PSB. However, Mr. He did not point the RAD to any evidence of PSB practices with respect to the leaving of documentation, either in Mr. He's province of Fujian or in China generally, and either in the context of investigations of Falun Gong practitioners or otherwise.

[15] A number of cases in this Court have raised concerns about relying on a conclusion that the PSB would have left a summons or other record of their interest: see, e.g., *Liang v Canada (Citizenship and Immigration)*, 2011 FC 65 at paras 11–14; *Wang v Canada (Citizenship and Immigration)*, 2018 FC 1124 at paras 42–43; *Guimei Huang* at para 69. In other cases, an adverse inference based on the absence of a summons has been upheld as reasonable where an applicant asserts that they have been repeatedly pursued by the PSB: *Yan* at paras 37–38; *Lin v Canada (Citizenship and Immigration)*, 2012 FC 1200 at paras 28–30; *Cao v Canada*

(*Citizenship and Immigration*), 2012 FC 1398 at para 35; *Zhang v Canada (Citizenship and Immigration)*, 2011 FC 654 at paras 19–23.

[16] Associate Chief Justice Gagné recently addressed these differences in *Huang v Canada (Citizenship and Immigration)*, 2019 FC 148 at paras 28–31 [*Shaoqian Huang*]. After reviewing a number of decisions addressing the question, she concluded as follows at paragraph 31:

In my opinion, given the factual record that a summons is not always issued, it would have been an unreasonable error for the RPD to find that the lack of a summons was determinative. However, this negative credibility finding is made in a context where the RPD disbelieves many other elements in the Applicants' story. In other words, it is clear that the absence of a summons is not determinative, but rather, is made as part of a series of negative inferences which lead to an adverse credibility finding. Therefore, this aspect of the RPD's decision is reasonable.

[17] In the present case, the RAD did not engage in an analysis of what the NDP said about the PSB's practices with respect to summonses, warrants, or other documentation. This distinguishes the case from some of the cases referred to above and by the Associate Chief Justice in *Shaoqian Huang*. However, the RAD's analysis must also be considered in the context of the arguments made and evidence put before it by Mr. He, which were limited to the generalized evidence of mistreatment of Falun Gong members and family members, and the lack of "due process review" in cases of detention.

[18] Mr. He's situation can thus be accurately described by the following language from paragraph 30 of *Lin*:

No evidence was adduced by the Applicants to demonstrate that, in the context of their claim, the PSB followed common procedures. This distinguishes this case from the situation in *Liang* where the

Court held that “the norm in the Applicant’s region is for the PSB not to leave a summons/warrant for anyone other than the person who is named, then presumably that norm is followed regardless of how many times the PSB visits the Applicant’s home or how many people in the Applicant’s house church would have been arrested and sentenced” (see *Liang* at para 14). There was no evidence presented to demonstrate that the PSB does not leave warrants with family members in Fujian province. The Board reasonably determined that the PSB was not looking for the Applicants in China.

[19] As was the case in *Shaoqian Huang*, the RAD’s negative credibility finding was made as a reasonable part of a series of negative inferences related to Mr. He’s evidence. Notably, the RAD’s conclusions regarding the absence of documentation from the PSB were part of a larger concern that Mr. He had not put forward any probative documentation at all to substantiate the main allegations of his claim.

[20] As thoughtfully summarized by Justice Strickland in *Luo*, the presumption is that a claimant is telling the truth in sworn testimony, and a claimant is thus not required to present corroborative evidence unless there are reasons to doubt their testimony: *Luo v Canada (Citizenship and Immigration)*, 2019 FC 823 at paras 18–22; *Maldonado v Canada (Employment and Immigration)*, [1980] 2 FC 302 (FCA) at p 305; *He v Canada (Citizenship and Immigration)*, 2019 FC 2 at paras 22-25. However, the onus remains on the claimant to establish their case, and adverse inferences may be drawn from a failure to produce evidence that is reasonably expected, in the claimant’s circumstances, to be available: *Luo* at paras 18, 21. This was the nature of the RAD’s conclusion in this case, both with respect to the absence of documentation from the PSB and the broader point that Mr. He had produced no probative documentation at all to establish his allegations that his parents were Falun Gong practitioners,



that he had been sought by the PSB on a number of occasions, and that he was wanted by and in danger from the PSB.

[21] In this context, I am not satisfied that it was unreasonable for the RAD to reach an adverse inference regarding the credibility of Mr. He's claim based on the absence of supporting documentation, including the absence of any documentation left by the PSB.

#### IV. Conclusion

[22] I conclude that the RAD's decision met the requirements of justification, transparency and intelligibility and was reasonable. The application for judicial review is therefore dismissed.

[23] Neither party proposed a question for certification. I agree that no question arises in the matter that meets the test for certification.

**JUDGMENT IN IMM-2125-19**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is dismissed.

“Nicholas McHaffie”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2125-19

**STYLE OF CAUSE:** YAO HE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

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