

Federal Court



Cour fédérale

Date: 20210514

Docket: IMM-6735-19

Citation: 2021 FC 424

Ottawa, Ontario, May 14, 2021

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

ZHONG QIANG HUANG

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, a Chinese citizen, applies for judicial review of a September 23, 2019 decision [Decision] of the Refugee Appeal Division [RAD] pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The RAD dismissed the Applicant's appeal of the Refugee Protection Division's [RPD] decision, rejecting the Applicant's claim for refugee protection under section 96 and subsection 97(1) of the *IRPA*.

[2] The Applicant claims religious persecution for being a Christian adhering to the Shouters church, which is illegal in China. The RAD held that the RPD erred in adjudicating the claim but found, on its own analysis, that the Applicant is not a Convention refugee nor a person in need of protection.

[3] Having reviewed the Decision, the record, and the parties' submissions, the application for judicial review is dismissed for the reasons below.

II. Background

[4] The facts are set out in the Basis of Claim [BOC] and the RAD Decision. The Applicant's grandmother, a Christian, raised him. When he was a teenager, he discovered his grandmother's religion but she told him to keep it a secret.

[5] In December 2016, the Applicant was working on a renovation at a funeral home. The things he saw caused him anxiety and nightmares. The Applicant found some relief by praying with his grandmother. In late February 2017, the Applicant's grandmother suggested that he attend the house church that she previously attended before she began to pray only at home. The Applicant was introduced to Mr. Long, the leader of the house church, and began attending church regularly.

[6] That Applicant states that on June 15, 2017, the police came to the church and arrested all of the attendees. The police took them to the police station where they interrogated and beat them. The police detained them for a day and fined them 3000 RMB. The police released the

Applicant on the condition that he would have no further involvement with illegal religious activities. The church suspended its services and the Applicant began to pray at home.

[7] In August 2017, the police arrested another member of the church. The police also brought the Applicant to the police station for questioning. The Applicant denied any involvement with the church member but was again beaten by the police and told he might be brought back to the police station to help with their investigation. After his release, he decided to leave China because he could no longer attend church services and he feared further police violence.

[8] On October 2, 2017, the Applicant left China with the help of a smuggler who provided him with a false Hong Kong passport. He travelled to Cuba and then to an unknown island where he took a boat to Miami, USA. He entered Canada in British Columbia and travelled from Vancouver to Toronto using his own passport but alleges the smuggler took this passport from him upon his arrival in Toronto. He has no copies of this passport and he was unable to get it back from the smuggler. After arriving in Canada, the Applicant made a refugee claim and found a church that he began attending regularly.

III. The Decision

[9] The RAD agreed with the Applicant that the RPD erred in adjudicating the claim but it found, on its own analysis of the evidence, that the Applicant is not a Convention refugee or a person in need of protection.

[10] The RAD noted that the Applicant needed to adduce evidence proving a well-founded basis for fearing that the Chinese authorities will persecute or harm him on his return to China because of his Christian faith. The RAD found, on a balance of probabilities that the evidence failed to establish that the Applicant had a religious profile of interest to the authorities in China and the elements defining a Convention refugee or person in need of protection were not established. The RAD held that it was not sufficient to merely point out that country condition documentation confirms a general possibility of religious persecution.

[11] The Applicant's Christian profile was at the heart of his claim. The RAD outlined the following factors that are relevant to the analysis of whether a religious profile is genuine: evidence about how one is introduced to Christianity, the logical progression of faith formation and development, participation in religious activities including church, and consequences of religion in the person's life.

[12] The RAD stated, "even allowing for the vagaries of memory, his evidence about his grandmother's Christianity as a factor in developing his own faith lacked credibility". The RAD found that the Applicant was unclear about the timing of his grandmother's influence, how his connection to the house church started, and gave vague or confusing testimony about his grandmother's religious practices. The RAD stated that the Applicant's lack of knowledge of his grandmother's religious practice was "notable given the significance of a Christian conversion, her alleged contribution to that conversion, and the opportunity to share one's faith with a trusted family member".

[13] The RAD states that it is relevant to assess evidence of religious activities and faith formation by enquiring about the Applicant's knowledge of Christianity to determine the sincerity of his belief. The RAD found that the RPD "maintained reasonable confines for this enquiry and correctly found that the [Applicant's] evidence did not establish sufficient knowledge of the basic characteristics of the local church in China or his profile as an adherent of the 'Shouter's' church to show sincere or personal belief".

[14] The RAD held that the Applicant was uncertain about the significance of 'shouting' and could not logically explain the difference between a sanctioned church in China and one that was illegal and why he could not attend a state sanctioned church. The RAD found that the Applicant's evidence about any relationship between the Toronto church he attended and the house church in China was weak. Further, the Toronto church specifically stated that it is not associated with the 'Shouter's Church' sect of China and that the Applicant "seemed unaware of how this was or was not significant". The concept of 'shouting' was held to be the underlying motivation of the authorities to detain the Applicant.

[15] The RAD found that the document in support of the alleged detention and the fine receipt were, more likely than not, inauthentic. The RAD stated that one reason to believe these documents are inauthentic is that they refer to the Applicant being involved in "illegal evil cut [sic] – shouters organization", but this is not supported by the Applicant's testimony. A second reason for finding the documents inauthentic was the uncertainty of the source. The documents were copies of the alleged originals, mailed to the Applicant from China. The RAD found that the Applicant's testimony that he failed to provide the original documents because he did not

know he should. This was inconsistent with his awareness that he had to provide original documents to prove his identity. The RAD also found that the Applicant stated that his mother sent him the original documents but offered no evidence of how she obtained them.

[16] Finally, the RAD concluded that the Applicant had not established a *sur place* claim because he failed to establish that his actions in Canada had come to the attention of the authorities in China.

IV. Issue and Standard of Review

[17] The only issue is whether the Decision is reasonable. The Applicant submitted that the standard of review is reasonableness while the Respondent was silent on the standard of review.

[18] I agree that reasonableness is the standard of review. Reasonableness is now the presumptive standard of review, and I see no exception here that would rebut it (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65).

V. Positions of the Parties

A. *Applicant's Position*

[19] The Applicant submits that the RAD erred in finding that he did not establish his Christian identity and in finding that the Applicant's religious profile was not of concern to Chinese authorities.

[20] Concerning his Christian identity, the Applicant submits that there were five areas where the RAD erred in its treatment of the evidence in making adverse credibility findings: (1) his first trip to the church; (2) his grandmother's religious practices; (3) his knowledge of the Church; (4) the treatment of the corroborative evidence; (5) the Canadian church letter.

[21] As to whether the Applicant possessed a profile that Chinese authorities would be interested in, the Applicant submits that the RAD erred when it considered the Applicant's inability to distinguish between a state sanctioned church and an illegal church. He further submits that the RAD did not consider whether the Applicant could practice his religion openly.

B. *Respondent's Position*

[22] The Respondent's states that it was open to the RAD to draw a negative inference from the Applicant's failure to provide straightforward evidence about his grandmother's role in his religious practice, given her significance in leading him to Christianity. Additionally, the Applicant's argument that his unclear testimony was brought on by nerves and interpreter issues does not amount to an error of the RAD.

[23] The Respondent states that it was reasonable for the RAD to draw a negative inference from the Applicant's inability to distinguish between a state-sanctioned church and an illegal church. As an adult, the Applicant made the decision to practice with an illegal group and, therefore, it would be reasonable to expect the Applicant to be able to explain his reasons for doing so.

[24] Further, the Respondent submits that it was open to the RAD to give little weight to the Applicant's corroborating documents and determine that their source was uncertain given that the Applicant only provided copies despite claiming he had the originals and noting he brought original identity documents. The RAD was justified in its finding because the Applicant failed to provide details of how his mother had obtained the documents for him.

[25] The Respondent states that the RAD did not err by failing to consider the Applicant's photographs of his participation at the Toronto church because the RAD did not take issue with the Applicant's claims about his practice of Christianity in Canada.

[26] The Respondent also submits that the Applicant failed to establish his *sur place* claim because to do so he must establish a genuine belief in the 'Shouter' faith such that he would continue to practice it upon returning to China. To ground a *sur place* claim, the Applicant needed to show either that he converted to his faith in Canada and would continue to practice in China or that his religious practice in Canada had come to the attention of the Chinese authorities putting him at risk upon return. The Respondent submits that it was reasonable for the RAD to conclude that the Applicant had not met this burden because the Applicant could not explain why his faith required him to practice with the illegal sect in China, and his documentary evidence indicated no association between the Toronto church and the 'Shouter's' church.

[27] Finally, the Respondent submits that the RAD did not err in not addressing the country condition documentation concerning the treatment of Christians who practice at state-sanctioned

churches in China. The Respondent submits the Applicant specifically confined his concerns to practising Christianity at non-state-sanctioned churches.

VI. Analysis

[28] The jurisprudence requires a claimant to discharge the onus to “make out his or her claim in clear and unmistakable terms” (*Hassan v Canada (Minister of Citizenship & Immigration)*, 2006 FC 1183 at para 18 citing *Ranganathan v Canada (Minister of Citizenship & Immigration)*, [2001] 2 FC 164 at paras 10-11). I find that the RAD did not err in its assessment of the record in concluding that the Applicant was not a Convention refugee or a person in need of protection.

[29] The RAD acknowledged that a claimant’s evidence is presumed to be true unless there is reason to doubt it. In this case, the RAD found that there was reason to doubt the Applicant’s evidence because it was, at times, illogical or vague, internally inconsistent and because of inconsistencies between his BOC, visa application, and RPD hearing testimony.

[30] The RAD found that the Applicant’s testimony regarding his grandmother’s influence on his conversion to Christianity lacked credibility. I am not persuaded by the Applicant’s argument that the RAD was unreasonable in seeking certain information about the Applicant’s grandmother’s religious practices. The RAD explained that one’s introduction to and progression of faith are important considerations in assessing whether a religious profile is genuine and found that the Applicant provided inconsistent details of his grandmother’s influence. The RAD provided specific examples of these inconsistencies, including that he contradicted himself when

testifying about when she taught him to pray, his knowledge of his grandmother's practices, and her involvement in referring him to the house church.

[31] The RAD found that the Applicant's testimony regarding his introduction to the house church evolved as questioning progressed. The Applicant first stated that he went on his own and then stated later that he went with Mr. Long, the church leader. The Applicant submits that it is plausible that he did not change his story; rather, he meant that he walked to the church alone and then went in with Mr. Long. The RPD member, however, specifically asked the Applicant about the discrepancy in his testimony and provided him with an opportunity to clarify. The Applicant failed to answer the question directly.

[32] The RAD explained that asking about the Applicant's knowledge of Christianity is relevant in determining whether the Applicant holds a sincere belief. The RAD acknowledged that it is unreasonable to expect "sound articulation of a religious theology", however, it observed that the RPD correctly found that the Applicant's "evidence did not establish sufficient knowledge of the basic characteristics of the local church in China or his profile as an adherent of the 'Shouter's' church to show sincere personal belief".

[33] The Applicant submits that his responses to questions regarding the significance of 'shouting' were objectively reasonable for someone relatively new to the religion. However, as the RAD determined, "the shouter feature underlies the perceived evil cult that motivated the authorities to detain and warn [the Applicant]". The RAD found that the Applicant was uncertain about the significant of 'shouting'. The Applicant could not logically explain the difference

between a state sanctioned church in China and one that was illegal. Given that at the heart of the Applicant's claim was his affiliation with the Shouter's church, it was reasonable for the RAD to draw a negative inference from the Applicant's failure to demonstrate an understanding of the particular sect of Christianity central to his claim. I am not persuaded by the Applicant's argument that this constituted a microscopic examination.

[34] The Applicant submits that the RAD's reasoning with regard to his supporting documentation is unintelligible, highly speculative, and does not logically take into account the totality of the evidence. In concluding that the documents were likely inauthentic, however, the RAD pointed to the fact that the receipt adduced to support the Applicant's claim that he was fined by the authorities referred to the Applicant being involved in "illegal evil cut [sic] – shouters organization". Read in context, the RAD's inference was reasonable. The Applicant had failed to demonstrate an understanding of the Shouters' denomination, therefore, it could be inferred that the authorities would not have detained and charged him for being a member of the Shouters' denomination. While I agree that the RAD's reasoning here may be tenuous, the RAD further supported its finding of inauthenticity by pointing to the Applicant's failure to produce original documents and his inability to provide details of the source of the documents.

[35] The RAD agreed with the Applicant that it was an error for the RPD not to consider if he had a *sur place* claim. However, the RAD concluded that the Applicant did not have a *sur place* claim because he did not establish that his religious activities have or will come to the attention of the Chinese authorities and put him at risk. In *Girmaeyesus v Canada (Minister of Citizenship and Immigration)*, 2010 FC 53 at paras 28-30, the Court confirmed that the key issue in a *sur*

place claim is whether the activities of the claimant have come to the attention of the relevant authorities. There was no evidence of this. There is no error in the RAD's assessment of this aspect of the Applicant's claim.

VII. Conclusion

[36] The Application for judicial review is dismissed. When viewed as a whole, the Decision meets the standard of justification, transparency, and intelligibility and falls within the range of possible, acceptable outcomes that are defensible in respect of the facts and law.

JUDGMENT in IMM-6735-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question for certification and none arises.
3. There is no order for costs.

"Paul Favel"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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APPEARANCES:

Gavin MacLean FOR THE APPLICANT

Amy King FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lewis & Associates FOR THE APPLICANT
Barristers and Solicitors
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario