

Federal Court



Cour fédérale

Date: 20211126

Docket: IMM-6463-20

Citation: 2021 FC 1310

Ottawa, Ontario, November 26, 2021

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

QUANGUO WEI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is the judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada, dismissing the Applicant's appeal of the decision of the Refugee Protection Division [RPD] finding that the Applicant is neither a Convention refugee nor a person in need of protection pursuant to s 96 and s 97, respectively, of the *Immigration and Refugee Protection Act* SC 2001 c 27 [IRPA].

Background

[2] The Applicant is a citizen of China. He claims that because he was suffering back pain he began to practice Falun Gong in May 2017. However, he was concerned that, as a Falun Gong practitioner, he would be discovered and arrested by the Public Security Bureau. Therefore, a smuggler, or “snakehead”, was hired to help him obtain a Canadian visitor visa. He traveled to Canada on June 13, 2018, and applied for refugee protection in August 2018. In a decision dated November 27, 2019, the RPD denied his claim. The RPD found the Applicant not to be credible because of his lack of knowledge about Falun Gong. It found, on a balance of probabilities, that the Applicant is not nor has he ever been a Falun Gong practitioner in China or in Canada. The Applicant appealed to the RAD.

RAD Decision

[3] The RAD noted that Falun Gong is a knowledge-based practice. In that regard the RAD referenced item 12.9 of the National Documentation Package [NDP] for China (31 March 2020) which is a Response to an Information Request [RIR]. This states that the principle Falun Dafa [Falun Gong] website is quoted as stating that the “foundation of Falun Dafa consists of a body of fundamental knowledge essential for the task of undertaking proper cultivation towards higher stages of attainment”. The RAD acknowledged jurisprudence finding that it is unreasonable to engage in microscopic and/or academic findings with respect to knowledge, however, stated that “knowledge can cast light on the genuineness of religious practice if applied in a reasonable manner”. The RAD stated that it was against this backdrop that it made its findings about the Applicant’s knowledge.

[4] The RAD considered the RPD's adverse credibility finding based on the Applicant's response to the question of what Master Li meant by "truth" – one of the three main principles of Falun Gong – and found that the RPD made the correct decision. The RAD found that the Applicant's answer was "partially correct, but also incomplete", and that he required prompting to give the answer that one important element of truth is to tell the truth about the persecution of Falun Gong by Chinese authorities.

[5] The RAD found that the RPD was incorrect to find that the Applicant was not credible with respect to a question about how Master Li describes the exercises in *Zhuan Falun* as the Applicant correctly stated that Master Li does not explain how to do the exercises in that text. However, the RAD stated that this finding did not restore the Applicant's credibility. The RAD found that while some of the RPD's questioning was microscopic, this error did not undermine its overall conclusions.

[6] The RAD agreed with the RPD's adverse credibility findings arising from the Applicant's inability to recite a verse and to name a movement of a Falun Gong exercise. The RAD noted that in *Lu v Canada (Citizenship and Immigration)*, 2006 FC 1233, this Court found that it was reasonable for the RPD to expect a claimant to know the verses and movements by heart. The RAD noted the Applicant's claim that he has practiced Falun Gong every day for two and a half years. It found that the RPD was correct to say that the Applicant would therefore have recited the verses and performed the exercises hundreds of times and, accordingly, that they should be second nature to him. The RAD found that the RPD correctly found that the Applicant was not credible in this regard.

[7] Based on his lack of knowledge of the fundamentals of Falun Gong, the RAD found that the Applicant was not a genuine practitioner.

[8] The RAD also found that the Applicant had not practiced Falun Gong in China. Further, while the Applicant displayed some Falun Gong knowledge, this was acquired for the purpose of the hearing. His practice in Canada was not for genuine reasons and did not overcome the credibility issues. The RAD found that there was no evidence that the Applicant's practice in Canada has come to the attention of the Chinese authorities and, therefore, that he did not have a *sur place* claim.

Issues and standard of review

[9] The sole issue in this matter is whether the RAD's decision was reasonable. The parties submit, and I agree, that the standard of review is reasonableness (*Canada (MCI) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 23, 48). In applying that standard a reviewing court "asks whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99).

Analysis

[10] The Applicant submits that the RAD's finding that Falun Gong is a knowledge-based practice to which knowledge is essential serves to demonstrate that the RAD subjected the Applicant's knowledge to a higher standard than required by the jurisprudence, I do not agree.

[11] This is not a circumstance such as *Lin v Canada (Citizenship and Immigration)*, 2012 FC 288, referenced by the Applicant, where the Court found that the RPD based its finding that the applicant was not a Falun Gong practitioner “on unattainable and unreasonable requirements for knowledge of the practice” (*Lin* at para 66). As will be discussed below, the RAD considered the length of time and frequency of the Applicant’s practice of Falun Gong and the fact that the concept of “truth” is a fundamental principle of the practice. The genuineness of a claimant’s religious identity may be reasonably questioned if the claimant’s knowledge of their religion is not commensurate with their claimed experience (*Gao v Canada (Citizenship and Immigration)*, 2021 FC 271 at para 32 [*Gao*]).

[12] That said, I do have concerns with the RAD’s three credibility findings.

Recital of verse

[13] The Applicant submits that the RAD’s reliance on the Applicant’s failure to recite a verse associated with a Falun Gong exercise constitutes a reviewable error, referencing *Sui v Canada (Citizenship and Immigration)*, 2016 FC 406 [*Sui*]. However, in *Sui* the parties agreed that the RAD’s reliance, in part, on the applicant's lack of knowledge of verses that were integral to the practice of Falun Gong constituted breach of procedural fairness, apparently on the basis that the applicant had not been alerted to the issue. Ultimately, however, the Court in *Sui* found that the RAD’s credibility finding based on the applicant’s lack of Falun Gong knowledge was not determinative and was not unreasonable (*Sui* at para 27-32). It is also of note that in *Sui* the Court stated:

[27] The RAD acknowledged the jurisprudence cautioning against determining religious identity based on religious knowledge, or lack thereof. The RAD assessed the applicant's credibility as a Falun Gong practitioner based on whether she was able to demonstrate a level of fundamental knowledge commensurate with her alleged experience. In my view, this was a reasonable approach to gauging the genuineness of the applicant's adherence to Falun Gong.

[14] Similarly, in *Gao*, Justice Ahmed held that it is reasonable for the RAD to assess the knowledge of alleged Falun Gong claimants:

[30] Finally, I am not persuaded by the Applicant's argument that the RAD unreasonably raised the threshold of knowledge required of a genuine Falun Gong practitioner by distinguishing Falun Gong as a "knowledge-based faith." When the RAD's decision is read as a whole, I find that the RAD reasonably considered the particulars of the religion and found that the Applicant's knowledge was not commensurate with his alleged experience. This determination follows an internally coherent and rational chain of analysis and is justified in relation to the relevant facts and law (*Vavilov* at para 85).

[31] In my view, the RAD's framing of Falun Gong as a "knowledge-based faith" is justified in relation to the evidence. As authority for this distinction, the RAD cited Item 12.9 from the National Documentation Package ("NDP") for China, 28 June 2019, which states: "[t]he foundation of Falun Dafa consists of a body of fundamental knowledge essential for the task of undertaking proper cultivation towards higher stages of attainment." By distinguishing Falun Gong as a knowledge-based faith, I understand the RAD to expect that genuine practitioners will generally have a grasp on concepts that are fundamental to the religion. This conclusion is supported by the NDP, which affirms that knowledge of certain concepts of Falun Gong is integral to its practice.

[32] The above interpretation is supported by the RAD's subsequent conclusion that "there is an expectation that a genuine practitioner would make efforts to grow in their understanding of this faith system from the time they begin their practice of Falun Gong." In my view, this conclusion is justified in relation to the jurisprudence that, as discussed above, asserts the genuineness of a claimant's religious identity may be reasonably questioned if the

claimant's knowledge of their religion is not commensurate with their claimed experience (*Qi* at para 18; *Gao* at para 29). What qualifies as commensurate must be assessed on a case-by-case basis, as it will depend on the claimant's circumstances and the features of the religion in question. In this case, the RAD was alive to that consideration: it noted the important role of religious knowledge in Falun Gong, how that role informs the profile of a practitioner with the experience claimed by the Applicant, and how the Applicant does not meet that profile.

[33] Considering the above, I find it was reasonable for the RAD to determine that the Applicant is not a genuine Falun Gong practitioner based on his lack of religious knowledge.

[15] In my view, this reasoning is equally applicable to the matter now before me.

[16] Here, the RAD found that the evidentiary record before it demonstrated that Falun Gong is a knowledge-based practice. It referenced the National Documentation Package [NDP] for China (31 March 2020), item 12.9, which is a Response to Information Request [RIR] about Falun Gong. The RIR describes Falun Gong as having a high “objective of cultivation and practice towards enlightenment. It is complete with its own system of principles and empirical techniques”. The RAD quoted the same portion of the RIR as referenced by Justice Ahmed in *Gao* (at para 31): “[t]he foundation of Falun Dafa consists of a body of fundamental knowledge essential for the task of undertaking proper cultivation towards higher stages of attainment”. The RAD explicitly acknowledged that jurisprudence finding that it is unreasonable to engage in microscopic and academic findings with respect to knowledge but that “knowledge can cast light on the genuineness of religious practice if applied in a reasonable manner”.

[17] In my view, the RAD's approach is in keeping with Justice Ahmed's statement in *Gao* that "genuine practitioners will generally have a grasp on concepts that are fundamental to the religion" (*Gao* at para 31).

[18] The RAD also properly assessed the Applicant's knowledge against the standard of "what would be commensurate with his alleged level of experience" (*Gao* at para 30; *Sui* at para 27). In that context, the RAD considered that the Applicant claimed to have been practicing Falun Gong every day for more than two and a half years, including weekly or twice weekly group sessions. Given this length of time, the RAD doubted the veracity of the Applicant's claim because of his incorrect or incomplete answers to fundamental questions about the practice and philosophy of Falun Gong.

[19] However, the RAD found that the Applicant was not credible because he was unable to recite the verse for the fourth exercise when asked to do so by the RPD – but was able to do so when asked by his counsel. The transcript of the RPD hearing adds context to this finding:

BOARD MEMBER: Sir, would you recite the fourth verse for me, and Madam Interpreter, I won't need you to interpret line-by-line. We'll let the gentleman do the fourth verse in total.

INTERPRETER: Okay.

A. The fourth set?

BOARD MEMBER: Yes, the verse for the fourth exercise. Sir, do you know the verse for the fourth exercise?

INTERPRETER: He just said, I'm sorry. I'm really nervous right now.

A. Right now, I'm really nervous. I couldn't recall of it. I'm sorry.

BOARD MEMBER: Sir, you've been practicing Falun Gong every day for over two and a half years. You would have recited them 100s and 100s of times. Why can't you recite it now?

A. Because I'm too nervous right now.

.....

MR. KABATERAINE: Q. Then you were asked to recite the words from the fourth exercise and you said you were nervous. Are you still too nervous to recite?

A. I was too nervous back then, but now, I can recall it now.

BOARD MEMBER: Just a moment. Counsel, do you want the claimant to recite the verse for the fourth exercise?

MR. KABATERAINE: Yes, please.

A. Rotate law to void. Heart clear like pure jade. Return to origin and go to truth. Move naturally as if lighting up.

MR. KABATERAINE: Q. What about the second exercise? What is the verse?

A. To increase the mind nature.

[20] The RAD agreed with the RPD that, as the Applicant claimed to have practiced Falun Gong every day since May 2017, this would have been hundreds of times and the movements and verses “ought to be second nature” to the Applicant. The RPD and the RAD rejected the Applicant’s explanation that he could not recite the verse when asked by the RPD because he was nervous. The RAD found that the RPD was correct to find that the Applicant was not credible.

[21] If the Applicant has been practicing Falun Gong for two and a half years then it would be reasonable to expect that the verses would be committed to memory as the RAD finds. However, as seen from the transcript of the RPD hearing, the Applicant was able to recite the verse from

memory when asked to do so by his counsel and there is no suggestion that his recital was not complete or accurate.

[22] If the purpose of asking questions about the principles and practices of Falun Gong is to assess the *genuineness* of the Applicant's religious identity (*Gao* at para 31; *Sui* at para 27), it is difficult to understand why it matters greatly whether the answers to the knowledge questions were provided by him in response to the question when posed by the RPD, or when posed by the Applicant's counsel. The Applicant ultimately provided the correct answer to the question asked without contradiction and without being led to it. Further, the purpose of counsel's participation in a hearing includes the examination of an applicant "to ensure that the claimant's testimony is before the decision maker" (*Thamotharem v Canada (Citizenship and Immigration)*, 2007 FCA 198 at para 49). And while the RAD bases its negative credibility finding not on a lack of knowledge but on a lack of spontaneity in providing the response, it is not inappropriate for counsel to return to questions and ask additional ones after the RPD's questions (*Islam v Canada (Citizenship and Immigration)*, 2014 FC 948).

[23] While it was open to the RPD and the RAD when assessing credibility to have regard to witness demeanour, including hesitations, vagueness, evasiveness and changing or elaborating on their version of events, in this matter it appears that the sole basis for the RAD's negative credibility finding is a lack of spontaneity. Further, the RPD and the RAD dismissed the Applicant's explanation of nervousness on the basis that he should have been able to recall the verse when asked – which he ultimately did. As will be discussed further below, in these

circumstances, and having read the transcript, I am not convinced that the RAD's reasoning reasonably supports an adverse credibility finding.

Concept of truth

[24] The RAD found that the RPD correctly found that the Applicant was not credible because he did not state that the Falun Gong concept of truth included the persecution of Falun Gong practitioners. The RAD acknowledged that the Applicant did state this second point when questioned by his counsel and when he was "prompted" by his counsel for the second time. The RAD stated "[w]hile I concede that counsel asked a neutral open-ended question that did not contain any hints to the answer, the appellant's answer was not spontaneous". The RAD noted that the RPD had asked the Applicant why he had not given this answer when it asked its question about the meaning of "truth" and why he would forget the main principle of Falun Gong. The RAD agreed with the RPD that the Applicant's explanation that he was nervous and forgot was not reasonable. The RAD stated that the persecution of Falun Gong is the reason the Applicant came to Canada and made a refugee claim and was the reason for the hearing. The RAD found that the RPD was correct to find that the Applicant's explanation undermined his credibility.

[25] The Applicant submits that the RAD's negative credibility finding is unreasonable. As noted by the RAD, the Applicant gave a partially correct but incomplete answer when questioned about the concept of truth by the RPD. However, he gave a correct and complete answer when questioned by his counsel. The Applicant submits that the fact that the complete and correct answer was given during questioning by counsel is irrelevant.

[26] I tend to agree with the Applicant on this point. As the RAD acknowledged, counsel did not ask a leading question. As noted above, the role of counsel is to elicit relevant information that may not have come out during questioning by the RPD. The transcript indicates the Applicant's (translated) response to his counsel's questions as follows:

Q. What are the basic principles of Falun Gong?

A. To be truth, true. To be truthful. To tell the truth. To spread the truth.

Q. Anything else?

A. So we need to tell the truth about the persecution that, the truth that China, Chinese government persecuting Falun Gong.

Q. Any other principles, basic principles of Falun Gong apart from truth?

A. Truthfulness, compassion and forbearance.

[27] When asked by his counsel how he incorporated those principles into his daily life, the Applicant explained that truthfulness was by the handing out of flyers, telling people about the benefits of Falun Gong and the truth that the Chinese communist party is persecuting Falun Gong, as well as being truthful, being a true man and returning to the state of origin. Compassion is shown by kind deeds, such as helping a senior, and forbearance when he hands out flyers at Pacific Mall and is received rudely but just smiles in return.

[28] While I appreciate that the definition of truth is a fundamental tenant of Falun Gong, given that the RAD founded its negative credibility finding solely on a lack of spontaneity – and not on a failure to ultimately answer the question – it is of note that the transcript reveals that the Applicant was also asked many other knowledge questions: whether Master Li describes how to

perform the exercises in *Zhuan Falun* (and correctly answered “no” as acknowledged by the RAD); about the meaning of evil cultivation and to provide examples (which he did); the purpose of the exercises (he appears to have provided four of the five purposes); what Master Li wants the practitioner to imagine themselves as being in exercise three (he responded two giant empty barrels); what is a meridian (the translator was unable to translate and the Applicant said he did not understand what it was); what Master Li wanted practitioners to think about when doing exercise number five (the Applicant responded to think of nothing so as to remain conscious and aware that you are doing the exercise). The RPD then asked the Applicant to recite the fourth verse (as discussed above) and to demonstrate the first exercise (as discussed below), and asked about the celestial eye (which the Applicant answered but the interpreter could not translate the named object); and about righteous thoughts (which the Applicant described). There is no suggestion of a lack of spontaneity when responding to any of these other questions.

[29] Further, when questioned by his counsel, the Applicant elaborated on his knowledge and practice of Falun Gong, which is not reflected in the reasons of the RPD or RAD.

[30] In my view, it was unreasonable for the RAD to found its negative credibility determination solely on a lack of spontaneity in answering this question without assessing this in the context of the Applicant’s testimony in whole.

Name of Movement

[31] The RAD also found that the Applicant failed to name one of the movements in the first exercise.

[32] The RPD in its reasons states that the Applicant demonstrated the exercise correctly “but failed to name the movement, ‘Arhat carrying a mountain on his back’ when demonstrating it. When I pointed out to the claimant his error, the claimant responded that he was too nervous...”.

[33] However, it is clear from the transcript that the Applicant himself immediately noted his omission and corrected it as part of his initial answer given to the RPD:

BOARD MEMBER: Okay. Sir, I'd like you to demonstrate the first excise for me and name each movement as you do so.

A. Yes, I can.

BOARD MEMBER: Okay.

A. [Speaking not in English], stretching his back. [Speaking not in English], powering energy into the top of the head. Hands pointing to heaven and earth. Hands pointing to heaven and earth. Golden monkey separating its body. Two dragons diving into the sea. [Speaking not in English] praying hands on the lotus flower. [Speaking not in English] topping a mountain. [Speaking not in English], topping a mountain. **Oh, sorry, the previous one was Arhat carrying a mountain on his back. Sorry.**

BOARD MEMBER: You can sit down, sir. Sir, why did you have the mix-up with respect to Arhat carrying a mountain on his back? You've done this exercise 100s and 100s of times. It should be second nature to you, shouldn't it?

I'm sorry. I'm a little bit nervous.

(emphasis added)

[34] The RAD states that the RPD found that the Applicant was not credible “because he failed to name one movement during the first exercise”, yet this is not what the transcript reflects. The RAD’s finding that the RPD was correct to find the Applicant not to be credible on this basis is therefore unreasonable. Indeed, this is essentially the same error that the RAD

acknowledged that the RPD made when finding that the Applicant was not credible on the basis that he stated that the five exercises were described in *Zhuan Falun* – when in fact the Applicant had immediately recognized that he misunderstood the question and gave the correct answer.

Conclusion

[35] For the reasons above, and in light of the transcript, the RPD's reasons and reading the RAD's decision in whole, I conclude that the RAD's decision was unreasonable.

JUDGMENT IN IMM-6463-20

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted. The decision of the RAD is set aside and the matter shall be remitted for redetermination by a different panel;
2. No question of general importance is proposed by the parties and none arises; and
3. There will be no order as to costs.

"Cecily Y. Strickland"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6463-20

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