Federal Court  Cour fédérale

Date: 20220420

Docket: IMM-4121-20

Citation: 2022 FC 564

Ottawa, Ontario, April 20, 2022

PRESENT: Mr. Justice Pentney

BETWEEN:

JIANGBO YIN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondents

- JUDGMENT AND REASONS

[1] The Applicant, Jiangbo Yin, is a citizen of China who claimed refugee status in Canada based on his fear of persecution because of his religion. The Refugee Protection Division (RPD) denied the Applicant's claim, and the Refugee Appeal Division (RAD) dismissed his appeal. The Applicant seeks judicial review of the RAD decision.

I. Background

[2] The Applicant claims that a friend introduced him to Christianity in September 2016, and he began to attend an underground church at that time. He came to Canada in March 2017, and stayed for a few months before returning to China. He came back to Canada in December 2017. He claims that in January 2018, a friend in China told him that two members of his church had been arrested, and advised him to stay in Canada.

[3] Some time later, the Applicant learned from his wife that in June 2018, the Public Security Bureau (PSB) had come to their home looking for him and accusing him of being a member of an illegal underground church. His wife said that the PSB had ordered him to surrender to authorities immediately. He says in June 2016, the PSB returned to his house and left a summons for him.

[4] The Applicant then made a refugee claim in Canada. The RPD denied his claim because the panel found that he had failed to establish that the PSB was interested in him or that he faced a serious possibility of persecution because of his religion. The RAD dismissed the Applicant's appeal. The RAD found that the summons submitted by the Applicant was fraudulent – which undermined his credibility. The RAD also found that the objective evidence did not support his fear of persecution in the particular location where he lived in China.

II. Issues and Standard of Review

[5] The Applicant argues that the RAD decision is unreasonable because of the panel's treatment of the summons; he also claims that he was denied procedural fairness because the

RAD raised a new issue regarding the objective risk he faced, and did not give him an opportunity to respond by providing new evidence or submissions on this question.

[6] The first issue is to be assessed under the reasonableness standard of review, in accordance with *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]. Under the *Vavilov* framework, a reviewing court "is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints" (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post*] at para 2). The burden is on the applicant to satisfy the Court "that any shortcomings or flaws relied on… are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100, cited with approval in *Canada Post* at para 33).

[7] Questions of procedural fairness require an approach resembling the correctness standard of review, by asking "whether the procedure was fair having regard to all of the circumstances" (*Canadian Pacific Railway Company v Canada (AG)*, 2018 FCA 69 at para 54 [*Canadian Pacifi*c]). As noted in *Canadian Pacific* at paragraph 56, "the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond."

III. Analysis

A. *The RAD's analysis of the summons was reasonable*

[8] The RAD found that the summons was fraudulent because of the differences between the document submitted by the Applicant and the one found in the National Documentation Package

(NDP). The Applicant submits that the RAD's analysis was unreasonable because it relied on a sample summons from 2013, which is not probative evidence to assess the validity of the summons he received in 2018. Further, the Applicant submits that the differences the RAD focused on were microscopic in nature and that the panel erred in failing to grasp the essence of the document. He argues that the fact that the PSB left a summons at his house is proof that he faces a risk of persecution based on his religion, and the RAD unreasonably failed to grasp that key point.

[9] The Applicant relies on two decisions of this Court. He points out that in *Lin v Canada (Citizenship and Immigration)*, 2012 FC 288 [*Lin*], the Court overturned a decision of the RPD, finding that it was unreasonable for the decision maker to rely on a version of a summons from 2004 to assess the validity of one issued in 2009. The Court stated at paragraph 52 "[i]t is highly unlikely that this document could be a reliable authority as to what a [summons] issued in 2009 would look like" and found that the differences between the documents were "neither surprising nor suspicious."

[10] In addition, the Applicant refers to *Ma v Canada (Citizenship and Immigration)*, 2018 FC 163 [*Ma*]. There, the Court noted that the documentary evidence showed that the 2003 version of the summons had not been updated as of 2013, but went on to find, at paragraph 22, "there is no evidence related to the period after 2013 and the date of the RAD decision. It is entirely possible that the small differences may be attributable to changes made during the intervening time." The Court also found that the differences relied on by the RAD in that case were not material, and thus could not form the basis for a negative credibility finding (see paragraph 23).

[11] The Applicant submits that the RAD committed identical errors to those found in *Lin* and *Ma*: there was no evidence whether the summons had been altered after 2013, and the RAD relied on very minor discrepancies as the basis for concluding that it was fraudulent.

[12] I am not persuaded that the RAD's analysis of the summons was unreasonable. I agree with the parties that the utility of some of the earlier decisions is limited because without seeing the exact document they discuss, it is difficult to know how persuasive they are in the current case.

[13] There are recent authorities, however, that deal with an almost identical situation as the case before me in sufficient detail to be able to assess the similarities in the version of the summons relied on. The first of these is *Gong v Canada (Citizenship and Immigration)*, 2020 FC 163 [*Gong*]. In that case, Justice Norris dismissed the application for judicial review, rejecting the Applicant's challenge to the RAD's finding that the summons was not genuine. The RAD's analysis of the discrepancies in the summons is summarized at paragraph 22:

> First, with respect to the summons, the RAD member affirmed the RPD's finding that it was not a reliable document because it was inconsistent with the example in the NDP. The RAD member did agree with the applicants that the RPD had provided no details to substantiate its conclusion that there were material differences between the applicants' document and the example in the NDP so the RAD member conducted her own analysis of the document. She explained that she found the structure and format of the summons were inconsistent with the NDP sample. According to the NDP, however, a standard format is used for this document and it had not changed since 2003. The RAD member also pointed to several specific issues with the format of the applicants' document, namely: (i) "the identifier and the date were missing from top right corner above the enclosed box;" (ii) the Chinese characters and wording in the third and fourth box were inconsistent with the sample documentation; (iii) the case number on the first box of the enclosed body did not appear in the samples; and (iv) the

> instructions at the bottom of the subpoena were inconsistent with the structure of the NDP sample.

[14] The following passage from the RAD's decision in this case demonstrates the similarity between the two cases:

> [9] The RAD has conducted an independent assessment of the summons submitted by the [Applicant] and agrees with the RPD that little weight can be assigned to this document. The RAD further finds that the summons is not a genuine document. The RAD observes that the summons submitted by the [Applicant] is inconsistent in appearance with what is shown in the country conditions documentary evidence. The RAD notes the documentary evidence from 2013 in the record clearly states that there has been no variation in the format of summonses and subpoenas since 2003. This information is not contradicted by any more recent evidence. The documentation goes on to state that such forms are supposed to be used throughout the country and that "'regional variations are not meant to exist' [citation omitted]." Observing the summons submitted by the [Applicant] and comparing it to the samples in the [NDP] documentation, the RAD finds that structure and format of the summons is not consistent with the documentation. The identifier prior to the name of the individual concerned (top left) is missing. The structure of the second and third line are inconsistent with the NDP documentation, specifically the caricature before a number 30 is on the second line, not the third. In observing the spacing for the bottom three lines of the document, it is inconsistent with the documentation provided in the NDP. The RAD finds, on a balance of probabilities, that the summons submitted is fraudulent, and draws a negative inference regarding the Appellant's credibility in submitting a fraudulent document to support his case.

[15] In view of the similarity between the versions of the summons considered in these cases, I find that the *Gong* decision is a particularly persuasive authority, as compared with the earlier decisions relied on by the Applicant. I adopt the following passage from Justice Norris' decision, which addresses the Applicant's arguments on this point:

> [38] It was open to the RAD to question the authenticity of the applicants' summons based on differences – even small ones –

> between it and an authentic counterpart: see *Zhuang v Canada (Citizenship and Immigration)*, 2019 FC 263 at para 17 [*Zhuang*] and the cases cited therein. As the Chief Justice observed *in Jiang v Canada (Citizenship and Immigration)*, 2018 FC 1064 at para 31 [*Jiang*], it is in the details where a forgery may well be exposed. The RAD is owed deference in its assessment of such documents: see *Zhuang* at para 17. Even to the untrained eye, the format of the applicants' summons differs in obvious ways from that of the example of a genuine summons in the NDP. As well, while some of the pre-printed Chinese characters are the same in both, others are different. Contrary to the applicants' submissions, it is not necessary to know Chinese to be able to see these differences. Unlike the RPD, the RAD member specifically mentioned the discrepancies she observed. This gives her finding that the applicants' summons is not genuine the requisite degree of transparency and intelligibility and, together with the fact that a standard form of summons is used, the requisite degree of justification. This distinguishes the present case from *Feng v Canada (Citizenship and Immigration)*, 2019 FC 18, where the RAD had concluded that a subpoena was fraudulent without engaging in any analysis of the document itself (see para 31).

[16] The Applicant seeks to distinguish *Gong* because there were other credibility issues – in addition to the problem with the summons – which the RAD found undermined that claimant's case, but I am not persuaded that this is a satisfactory basis to disregard this decision. The other credibility findings are not pertinent to an assessment of the reasonableness of the RAD's analysis of the validity of the summons, and on that point, the two cases are very similar.

[17] Another recent authority, cited by Justice Norris in *Gong*, supports the reasonableness of the RAD's approach in this case, and addresses very similar discrepancies between the versions of the summons. In *Zhuang*, Justice Strickland upheld a RAD decision that relied, in part, on a comparison of a summons submitted by the claimant ostensibly left at his home in 2017 with the 2013 version in the NDP.

[18] The RAD had found that the structure and format of the claimant's version was not consistent with the sample summons. The RAD specifically found "that an 'identifier' prior to the name of the person concerned is missing, that the 'caricature' before the number 30 is on the second, rather than the third line of the summons; and, the spacing of the bottom three lines is inconsistent" (at para 16). It should be noted that, as in *Gong*, these discrepancies are almost identical to those identified by the RAD in the present case.

[19] In *Zhuang*, Justice Strickland upheld the RAD's findings, noting that inconsistencies on the face of a document may provide grounds to conclude it is not genuine, and observing that the RAD's assessment of the authenticity of a document is owed deference (para 17).

[20] Similarly, in *He v Canada (Citizenship and Immigration)*, 2018 FC 627 [*He*], Associate Chief Justice Gagné dismissed a challenge to a RAD decision that relied on the 2013 version of the summons to assess the version submitted by the claimant. The Court distinguished the *Lin* case relied on by the Applicant, because the RAD explicitly cited the statement in the NDP that there had been no variation in the format of the summons since 2003 and that regional variations were not to exist. The RAD made a similar finding in the instant case, a further reason to give less weight to the *Lin* decision.

[21] As in *He*, *Zhuang* and *Gong*, the Applicant did not submit any evidence before the RAD that the format of the summons had changed in the intervening period, and thus it was reasonable for the RAD to rely on the sample version in the NDP.

[22] In addition, the Applicant submitted that the RAD erred when it found that the Applicant's claim was undermined because his failure to respond to the summons left at his

house did not result in the issuance of a coercive summons. He claims that the RAD engaged in unwarranted speculation that he would have been summoned by force for failing to respond to the initial summons. He notes that the law does not mandate that a coercive summons be issued, and therefore it was wrong for the RAD to draw a negative inference from its absence.

[23] I am not persuaded that even if this amounts to an error by the RAD, it is of any significance. At paragraph 13 of its decision, the RAD notes that there was no evidence the police forcibly summoned the Applicant. The RAD also observes that he had testified that the police never returned to his home after they allegedly left the summons, and that his family members had not been bothered by the authorities despite the threats that had allegedly been made. This finding is supported in the record, and it answers the Applicant's argument about the RAD's reference to the absence of a coercive summons. The reasoning is clear and supported in the Applicant's own evidence. This is not a basis to overturn the decision.

[24] For these reasons, I reject the Applicant's submission that the RAD's analysis of the summons was unreasonable.

B. *The procedure was fair in the circumstances*

[25] The Applicant challenges the fairness of the process by which the RAD concluded that he would not face an objective risk of persecution as a Christian in the Don Hai region of the Jiangsu province in China – the location where he lived. He notes that the RPD did not raise the issue of the risk of persecution at his hearing, and so he did not make submissions on the point. He argues that the issue only arose when the RAD undertook an independent analysis of his

claim, but the RAD failed to advise him that the issue was under consideration, thereby denying him the opportunity to file evidence or make submissions on it.

[26] The Applicant argues that the RAD denied him a fair hearing as a result. He asserts that there was new evidence that he could have submitted that would have contradicted the RAD's findings, which he says the tribunal based on outdated documentation regarding religious freedom in China. He argues that this magnifies the importance of the RAD's failing in this respect.

[27] I am not persuaded by the Applicant's arguments on this point.

[28] First, the Applicant's claim is grounded in large part on his assertion that the PSB had arrested other church members, and came to his house searching for him before eventually leaving a summons. He claims this is an indication of the persecution he faces if he returns to his home in China. Whether there is an objective basis for this claim is a relevant consideration.

[29] Second, it is not entirely accurate to state that the RPD's findings did not indicate any concern over the objective risk of persecution. The RPD concluded that the Applicant had "not established, on a balance of probabilities, that the PSB is interested in him, nor that they would be should he return to China." (RPD Decision at para 57). The RPD found that the Applicant had "not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, nor that on a balance of probabilities, that he would personally be subjected to a risk to life or a risk of cruel and unusual treatment or punishment or a danger of torture upon return to China" (RPD Decision at para 58). While the RPD's decision mainly focuses on the genuineness

of the Applicant's claim that he is a Christian, the panel's conclusion also puts in question whether he faces any risk of persecution upon return to China.

[30] The Applicant had an opportunity to seek to introduce new evidence before the RAD. The role of the RAD has been described in the following way by Justice Diner in *Mekhashishvili v Canada (Citizenship and Immigration)*, 2021 FC 65:

> [17] The RAD, on the other hand, conducts a correctness review of the RPD's decision (*Kreishan v Canada (Citizenship and Immigration)*, 2019 FCA 223 at paras 43-44; *Canada (Minister of Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 103 [*Huruglica*]). This amounts to conducting its own analysis, focusing on errors identified by the appellant: *Fatime v Canada (Citizenship and Immigration)*, 2020 FC 594 at para 19 [*Fatime*]; *Huruglica* at para 103). In performing such a review, the RAD must reach its own conclusions supported by reasons demonstrating internally coherent and rational justification (*Fatime* at paras 19, 21; *Vavilov* at para 85).

[31] Given the RAD's duty to carry out an independent review of the case on a correctness standard, it was reasonable for the RAD to assess this aspect of his claim. I am not persuaded that this is the type of new issue that demands that notice be provided so that a claimant can address it. The question of objective risk in the location where the Applicant had lived in China was central to his claim, and the RAD did not breach procedural fairness by reviewing the objective evidence on this question.

[32] There is one point on this question, however, on which I agree with the Applicant. He correctly points out that the RAD has misquoted a United Kingdom Home Office document. There are two problems with this reference in the RAD's decision. First, the panel cites the source document as item 3.1.1 in the NDP (RAD Decision at para 16). However, it appears that the appropriate citation for the document is the NDP for China dated March 29, 2019, Heading

Number 1.10, section 3.1.1. In addition, the second sentence in the portion quoted by the RAD does not appear in the NDP documentation. I agree, however, with the Respondent's submission that this is an inconsequential error, and I find it does not undermine the rest of the RAD's analysis.

[33] Ultimately, the Court's task in assessing a claim of procedural unfairness is to step back and to ask one simple question: was the claimant given an opportunity to know the case he had to meet and a full and fair chance to be heard? On both points, I find that the RAD's procedure met the requirements of fairness. I am unable to agree with the Applicant that the RAD breached procedural fairness by analyzing the issue of objective risk without specifically advising him that they were considering the issue.

[34] The Applicant directly raised the question of the risk of persecution in his refugee claim; he had an opportunity to address it before the RPD, and could have sought to file new evidence before the RAD if he felt there was crucial new evidence to bolster his claim. The RAD cannot be faulted for addressing the question in its review of the Applicant's appeal, and was under no obligation to specifically invite submissions on the matter.

IV. Conclusion

[35] For all of these reasons, the application for judicial review is dismissed.

[36] There is no question of general importance for certification.

JUDGMENT in IMM-4121-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question of general importance for certification.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4121-20
STYLE OF CAUSE:	JIANGBO YIN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	BY VIDEOCONFERENCE
DATE OF HEARING:	SEPTEMBER 14, 2021
REASONS FOR JUDGMENT AND JUDGMENT:	PENTNEY J.
DATED:	APRIL 20, 2022

APPEARANCES:

Stacey Duong	FOR THE APPLICANT JIANGBO YIN
Gordon Lee	FOR THE RESPONDENT THE MINISTER OF CITIZENSHIP AND IMMIGRATION

SOLICITORS OF RECORD:

S Duong Law Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT JIANGBO YIN
Attorney General of Canada Barrister and Solicitor Toronto, Ontario	FOR THE RESPONDENT THE MINISTER OF CITIZENSHIP AND IMMIGRATION