

Federal Court



Cour fédérale

Date: 20220414

Docket: IMM-6110-20

Citation: 2022 FC 546

Ottawa, Ontario, April 14, 2022

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

JIANCAI WANG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Jiancai Wang, seeks judicial review of a decision of the Refugee Appeal Division (“RAD”), dated November 17, 2020, confirming the determination of the Refugee Protection Division (“RPD”) that the Applicant is neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“IRPA”).

[2] The Applicant fears persecution in China at the hands of Chinese authorities including the Public Security Bureau (“PSB”), due to her Christian faith and her membership in an underground church. The RAD dismissed the Applicant’s appeal because it found that the Applicant is not a genuine Christian and that she is not being investigated by authorities in China for her Christian activities.

[3] The Applicant submits that the RAD’s decision is unreasonable because the RAD erred in its negative credibility findings.

[4] For the reasons that follow, I find that the RAD’s decision is unreasonable. This application for judicial review is allowed.

II. **Facts**

A. *The Applicant*

[5] The Applicant is a 39-year-old citizen of China. She is from Qingzhou City, in the Shandong Province.

[6] The Applicant states that she was introduced to Christianity following her suicide attempt in June 2016. In August 2016, the Applicant joined her cousin’s underground church and began attending church services once a week. The Applicant states that this helped her regain a positive outlook on life.

[7] The Applicant alleges that in December 2016, nine Christians from a neighbouring village were arrested, detained for two days, and abused. Following this incident, the Applicant's underground church suspended its services until May 2017.

[8] On October 15, 2017, the Applicant's underground church was allegedly raided by the PSB. The Applicant claims that she was interrogated, abused, and detained at the local police station along with other church members. After three days, the Applicant paid a fine of 3000 yuan and was released.

[9] On December 23, 2017, the Applicant states that she was called to the police station and warned that she would be arrested and detained if she engaged in any illegal Christian activities.

[10] The Applicant left China on February 23, 2018, and came to Canada with the assistance of a smuggler. Since her arrival in Canada, the Applicant has been attending regular services at the Living Stone Assembly Church.

B. *The RPD Decision*

[11] In a decision dated December 17, 2019, the RPD rejected the Applicant's refugee claim, finding that the Applicant does not face a serious possibility of harm should she return to China. The determinative ground for the refusal was credibility. The RPD made the following findings:

- The Applicant's testimony was often evasive, vague and evolving, and the Applicant did not provide straightforward answers. The Applicant's testimony regarding how she was introduced to Christianity was not credible.
- The Applicant failed to establish, on a balance of probabilities, that she is a Christian. Given the length of time she has been practicing her faith, and the frequency of her practice in both China and Canada, the Applicant did not have the requisite knowledge expected and her testimony regarding core beliefs of Christianity demonstrated only a superficial understanding of the religion.
- Two documents provided by the Applicant – an Administrative Punishment Decision and a Fine Receipt, both issued by the PBS – are inauthentic.
- The Applicant's *sur place* claim was rejected on the grounds that there is insufficient evidence to find that the Applicant's participation in Christian activities in Canada was brought to the attention of Chinese authorities.

C. *Decision Under Review*

[12] The Applicant appealed the RPD decision to the RAD. In a decision dated November 17, 2020, the RAD dismissed the Applicant's appeal and confirmed the RPD's determination that the Applicant is neither a Convention refugee nor a person in need of protection. The RAD made the following findings:

- The RPD was correct in finding that the Applicant has not established that she is a genuine Christian or that she is being sought by the Chinese authorities.
- The RPD was correct to dismiss the two documents allegedly issued by the PSB on the grounds that they are not genuine. The authenticity of the Administrative Punishment Decision document is undermined by anomalies between the *Public Security Administrative Punishment Law* of China and the Applicant's account of her detention.
- Despite allegedly being under investigation by Chinese authorities, the Applicant was able to exit China. Under Chinese law, Chinese citizens are prevented from exiting China when they are suspects or defendants in criminal cases. There is no indication as to how the Applicant was able to bypass the strict enforcement of China's exit law.
- The country conditions evidence does not show any arrests or detention of underground church members in the Shandong Province where the Applicant resided. A Chinese government policy states that family and friends have the right to meet at home for worship, including prayer and Bible study, without registering with the government. Thus, the RAD found that the Applicant was never arrested and detained for practicing Christianity in China.
- The RPD was correct to find that although the Applicant has some knowledge of Christianity, her lack of knowledge of the Bible and the ritual of the Holy

Communion raises a credibility concern, given the length of time the Applicant has allegedly practised Christianity.

- The RPD was correct to reject the Applicant's *sur place* claim. The Applicant has joined a Christian congregation in Canada and has learned about the faith only for the purpose of supporting a fraudulent refugee claim.

[13] The RAD concluded that given several significant credibility issues that touch on core aspects of the Applicant's claim, and given her limited knowledge of Christianity, the Applicant is not a genuine Christian.

III. Issue and Standard of Review

[14] The sole issue in this application for judicial review is whether the RAD's decision is reasonable.

[15] Both parties submit that the applicable standard of review in evaluating the RAD's decision is reasonableness. I agree (*Adelani v Canada (Citizenship and Immigration)*, 2021 FC 23 at paras 13-15; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("Vavilov") at paras 10, 16-17).

[16] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable

decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker (*Vavilov* at para 85).

Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[17] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156, at para 36).

IV. Analysis

A. *Country Condition Evidence*

[18] The Applicant submits that the RAD mischaracterized the evidence and failed to adequately consider the country conditions documentation on record. The Applicant argues that the RAD erred by concluding that there is no evidence that Christians practicing Christianity underground have been arrested and detained in Qingzhou City, Shandong province.

[19] I agree. I find that the RAD selectively reviewed the evidence and failed to mention evidence that contradicted its conclusion. While the RAD’s findings refer specifically to a lack of evidence of arrests and detentions in Qingzhou City, I note that some of the country condition evidence provides examples from the Shandong province, where Qingzhou City is located. For instance, according to the 2019 Report on International Religious Freedom from United States Department of State ("DOS Report"): “In 2019, authorities in Shandong arrested more than 6,000 members of the Church of Almighty God as part of a nationwide crackdown”. The 2018 Annual Report from the ChinaAid Association – a document that was cited by the RAD – also provides examples of the forcible demolition of churches, attacks on underground house churches, and investigations into religious activity in the Shandong province.

[20] Given this evidence, the following statements made by the RAD are unjustified:

[...] country conditions documentary evidence does not show any incidents of arrest or detention of house church members in Qingzhou city, Shandong province [...]

[...] I find, on a balance of probabilities, that, if there were recent arrests or detentions of individuals relating to the practice of Protestant Christianity in Qingzhou City, Shandong province, there would be some documentation of these arrests and detentions by reliable sources.

[21] Furthermore, the 2018 DOS Report raises concerns about “intense new government crackdown on Christians in China” and notes that groups unaffiliated with one of the five state-sanctioned “patriotic religious associations”, including Protestant “house” churches, are not permitted to register with the government to legally hold worship services and are required to disband. The 2018 DOS Report also states:

A statement from the July 24-26 U.S. Government-hosted Ministerial to Advance Religious Freedom said, “Many members of religious minority groups in China – including Uighurs, Hui, and Kazakh Muslims; Tibetan Buddhists; Catholics; Protestants; and Falun Gong – face severe repression and discrimination because of their beliefs. These communities consistently report incidents, in which the authorities allegedly torture, physically abuse, arbitrarily arrest, detain, sentence to prison, or harass adherents of both registered and unregistered religious groups for activities related to their religious beliefs and peaceful practices [...]”.

[22] This contradicts the RAD’s finding that “family and friends have the right to meet at home for worship, including prayer and Bible study, without registering with the government.”

While the RAD’s decision relies on the 2019 DOS Report, and not the 2018 DOS Report, I note that the 2019 DOS Report also states:

According to a report released by The Church of Almighty God, during the year at least 32,815 Church members were directly persecuted by authorities, compared with 23,567 in 2018. The report stated that authorities harassed at least 26,683 church members (at least 12,456 in 2018), arrested 6,132 (11,111 in 2018), detained 4,161 (6,757 in 2018), tortured 3,824 (685 in 2018), sentenced 1,355 (392 in 2018), and seized at least RMB 390 million (\$56 million) in Church and personal assets. At least 19 Church members died as a result of abuse (20 in 2018). These 19 included two who died as a result of undergoing physical abuse and forced labor, three who committed suicide as a result of authorities surveilling and pressuring them to renounce their faith, and 11 who died of medical complications during or following their detention.

[23] The RAD is presumed to have considered all the evidence before it and is not required to refer to each piece of evidence (*Ruszo v Canada (Citizenship and Immigration)*, 2018 FC 943 at para 34). However, when the evidence is central to the claim and clearly contradicts the RAD’s

findings, it becomes necessary to address the evidence in order for a decision to be considered reasonable (*Jama v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1459 at para 17). It is my view that the RAD conducted a selective review of the evidence by failing to consider contradictory evidence, leading to an unreasonable conclusion.

B. *Exit from China*

[24] The Applicant submits that the RAD's credibility findings regarding her exit from China were not supported by the evidence. The RAD's reasons for the decision notes:

Article 12 of the *Exit and Entry Administration Law of the People's Republic of China* states that Chinese citizens are not allowed to exit China when they are suspects or defendants in criminal cases.

[25] The Applicant argues that since she is neither a suspect nor a defendant in a criminal case, she is not under investigation pursuant to the *Criminal Law of the People's Republic of China*. As such, it was unreasonable for the RAD to use her exit from China to undermine the credibility of her claim. Specifically, the Applicant states that the RAD erred by concluding that the Administrative Punishment Decision is fraudulent and that she is not credible on the basis that she was able to exit China without trouble from border officials and by-pass the strict enforcement of China's *Exit and Entry Administration Law*.

[26] The Respondent contends that the *Exit and Entry Administration Law* of China does not specify that a citizen must be charged pursuant to the *Criminal Law of the People's Republic of China* in order to remain a suspect.

[27] I agree with the Applicant. I find that the RAD's analysis on this point lacks justification and intelligibility, and is thus unreasonable. It is unclear from the RAD's reasons how Article 12 of the *Exit and Entry Administration Law* applies to the Applicant – notably how an individual under investigation pursuant to China's *Public Security Administration Punishments Law* is considered to be a suspect or defendant in a criminal case. As noted by the Applicant, she was not issued a summons, and the RAD failed to identify any evidence of her interactions with the PBS that would have affected her exit. This case is comparable to the situation discussed by my colleague Justice Campbell in *He v Canada (Citizenship and Immigration)*, 2017 FC 1089 at paragraphs 9 and 10:

[9] For a person who is Falun Gong and who has been persecuted by the PSB or police, two possible inferences arise from that person not being stopped when transiting security measures at an airport in China having used their own genuine passport: the person is lying that she or he is a Falun Gong practitioner; or no record exists on the Golden Shield system that negatively relates to him or her. Accordingly, it is not possible to assume only that the former of the two possible conclusions is true.

[10] In the present case there is no evidence to support a finding that a record was made as a result of PSB contact with the Applicants, no evidence to support a finding that such a record was placed on the Golden Shield system, or that any record exists on the Golden Shield system that negatively relates to the Applicants.

[Emphasis added]

C. *Knowledge of Christianity*

[28] The Applicant submits that the RAD conducted an unreasonable assessment of her knowledge of Christianity. The Applicant argues that, in finding that her beliefs were not genuine, the RAD failed to account for the subjective nature and sincerity of her religious beliefs. Furthermore, while the RAD did acknowledge that the Applicant had some knowledge of Christianity, it concluded that this was acquired in Canada for the purpose of supporting the Applicant's fraudulent refugee claim, thus putting the Applicant in a 'catch-22' situation, with no way to establish the genuineness of her faith. The Applicant further submits that the RAD's analysis of her *sur place* claim was tainted by its previous credibility findings.

[29] The Respondent contends that the RAD was entitled to question the sincerity of the Applicant's beliefs and her knowledge of Christianity, and that the Applicant's inability to demonstrate basic knowledge of core aspects of Christianity was relevant to the RAD's assessment of her credibility. The Respondent further submits that it was reasonable of the RAD to find that, given the Applicant's alleged experience and the length of time she has been practicing Christianity, the Applicant's limited knowledge of Christianity is inconsistent with that of a genuine practitioner.

[30] In its decision, the RAD found that the Applicant is not a genuine Christian as she was unable to answer questions related to core beliefs of the religion, including questions about the Bible and the Holy Communion. Although I agree with the Respondent that the RAD is entitled to question the genuineness of the Applicant's religious belief, I find that in this case the RAD

erred by conducting a microscopic analysis of the Applicant's theological knowledge (*Gao v Canada (Citizenship and Immigration)*, 2015 FC 1139 at para 26). Despite accepting that the Applicant has some level of knowledge of Christianity, the RAD disregarded how the Applicant's knowledge was in fact related to core elements of the religion. For instance, the Applicant was able to recount stories from the Bible, cite her favourite passage from the Bible, and describe what takes place during Holy Communion. Still, the RAD focused on how the Applicant was unable to explain how the Bible is divided, and how she was unable to answer whether anything was given to eat or drink during the Holy Communion ritual. I do not find it reasonable to conclude that the Applicant is not a genuine practitioner based on her inability to answer these peripheral questions. As in *Chen v Canada (Citizenship and Immigration)*, 2012 FC 510, I find that the RAD failed to balance its negative findings against what the Applicant did know about Christianity (at para 66).

[31] Furthermore, there is a low standard of religious knowledge necessary to ground an Applicant's sincerity of belief (*Ren v Canada (Citizenship and Immigration)*, 2015 FC 1402 at para 23; *Huang v Canada (Citizenship and Immigration)*, 2012 FC 1002 at para 15). Since the Applicant did demonstrate some knowledge of Christianity, I do not find that the RAD's conclusion follows a rational chain of analysis.

[32] With regards to the Applicant's *sur place* claim, the RAD found that it was reasonable of the RPD to conclude that the Applicant's participation in Christian activities in Canada had not been brought to the attention of Chinese authorities. The RAD noted:

Having found that the Appellant was not credible about her practice of Christianity in China, and having no evidence of an impetus to practice Christianity in Canada, I find, on a balance of probabilities [...] that the Appellant joined a Christian congregation and has learned about the faith in Canada only for the purpose of supporting a refugee claim. I find that the Appellant's attendance at church and her baptism in Canada can attest to her participation, but cannot attest to her motivation. In this regard, case law indicates that, when finding the Appellant has advanced a fraudulent claim of being a Christian in China, the RPD can reasonably reject evidence advanced to support the *sur place* claim.

[33] When assessing a *sur place* claim, the RAD must consider the credible evidence of an applicant's activities while in Canada, even if the motivation behind the activities is found to be non-genuine (*Ejtehadian v Canada (Citizenship and Immigration)*, 2007 FC 158 at para 11). I find that in this case, the RAD's *sur place* assessment relied on its previous findings that the Applicant's practice of Christianity in China was not credible, and that she lacked motivation to practice in Canada. This is an error in law. I agree with the Applicant that the RAD's *sur place* analysis was tainted by its previous credibility findings. The RAD ought to have considered the Applicant's practice of Christianity in Canada, particularly since the RAD accepted that the Applicant is attending church and Bible classes in Canada.

[34] Nonetheless, I find that both the RPD and the RAD came to the reasonable conclusion that, on a balance of probabilities, and based on the evidence provided, it is unlikely that the Applicant's religious activities in Canada were brought to the attention of Chinese authorities (*Mohammed v Canada (Citizenship and Immigration)*, 2020 FC 234 at paras 34 and 38).

V. **Conclusion**

[35] The RAD erred by selectively reviewing the evidence on the record and failed to demonstrate a rational chain of analysis with respect to its credibility findings involving the evidence of treatment of Christians in the Shandong province, the Applicant's exit from China, and the Applicant's knowledge of Christianity. Overall, I find that this decision lacks justification, transparent and intelligibility and is thus unreasonable. Accordingly, this application for judicial review is allowed. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-6110-20

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is allowed. The decision under review is set aside and the matter is referred back for redetermination by a differently constituted panel.
2. There is no question to certify.

"Shirzad A."

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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