Federal Court  Cour fédérale

Date: 20230118

Docket: IMM-5398-21

Citation: 2022 FC 1767

Ottawa, Ontario, January 18, 2023

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

YUANBIAO YE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] Yuanbiao Ye [Applicant] initially sought refugee protection in 2018. The Refugee Protection Division [RPD] dismissed his claim. This Court granted the Applicant's application for judicial review in *Ye v Canada (Citizenship and Immigration)*, 2019 FC 587, resulting in the Applicant's refugee claim being remitted to the RPD for re-determination. The Applicant now

seeks judicial review of the RPD's July 2, 2021 re-determination decision that, once again, dismissed his refugee claim [Decision].

[2] The application for judicial review is dismissed.

II. Background Facts

[3] The Applicant is a citizen of China. On April 20, 2012, the Applicant claims that he, along with approximately 35 property owners, received notice to relocate from their homes by July 20, 2012 because the Chinese government wished to expropriate their properties. Approximately 10 days later, the property owners received a compensation notice, but felt that the compensation was insufficient.

[4] The Applicant and four other representatives [Representatives] were selected by the property owners to speak with the town government about the insufficient compensation. The Representatives submitted documentation showing the value of their properties, but received no response.

[5] Partial demolition of the homes began on July 18, 2012, and some individuals who tried to prevent the demolition were beaten. The demolition office threatened to demolish the properties by force.

[6] On July 19 2012, the property owners held a protest without a permit. That evening, while the Applicant was away from his home, the Public Security Bureau [PSB] went to the

Applicant's home to arrest him. The Applicant's wife told him that the PSB accused him of leading the protest. The Applicant fled to his cousin's home. While hiding, the PSB arrested three other Representatives.

[7] On July 20, 2012, the demolition officers, along with the police, arrived to destroy the homes. The PSB left a summons with the Applicant's wife, requiring the Applicant to report to the PSB office. Thereafter, the PSB searched for the Applicant at his relatives' homes.

[8] The Applicant hired an agent to flee China. On October 5, 2012, the Applicant travelled from Hong Kong to the United States. On October 23, 2012, he crossed the border into British Columbia without reporting to customs or border officials. He then flew to Toronto. Five days later, the Applicant filed his refugee claim pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2011, c 27 [*IRPA*].

[9] In January 2013, the Applicant learned that the three Representatives were sentenced to four years in prison.

III. The Decision

[10] The RPD held that the Applicant failed to establish a nexus to a Convention ground, namely, political opinion, with reliable and credible evidence. Accordingly, the RPD assessed the Applicant's claim pursuant to subsection 97(1) of *IRPA*. The determinative issues for the RPD were credibility and a well-founded fear of persecution.

[11] In first considering credibility, the RPD accepted that the events leading up to and immediately after the protest occurred as alleged by the Applicant. However, the RPD disbelieved that the PSB continued to visit the Applicant's home and seek out the Applicant.

[12] The RPD noted the Applicant's testimony that the PSB most recently visited his home in February 2021. The RPD drew a negative inference from the absence of documents illustrating the PSB's continued interest in him or an affidavit from the Applicant's wife attesting to the PSB's visits. When the RPD asked the Applicant why his wife did not swear an affidavit, the Applicant stated that he had not asked his wife. The RPD disbelieved that the PSB would continue to look for the Applicant for eight years and not leave any documents with his wife.

[13] Turning to a well-founded fear of persecution, the RPD concluded that the evidence failed to show that the Applicant would face persecution if returned to China. Concerning the arrest of the three Representatives, the RPD noted that the Applicant did not know whether authorities had released those individuals or whether anyone had received compensation for the expropriation.

[14] The RPD also concluded that the Applicant's previous efforts to come to Canada on vacation undermined his fear of persecution. The RPD ultimately held that the evidence indicated that he had come to Canada for "economic reasons." The RPD also found that the Applicant was not forthcoming about who assisted him in this process.

[15] Finally, the RPD held that even if the PSB has a continued interest in the Applicant, there was insufficient evidence to show that the Applicant would be subject to persecution. Rather, the RPD concluded that the Applicant would be subject to prosecution for contravening a law of general application, protesting without a permit, which applies to the "whole population without differentiation", and not for having a specific political opinion (*Zolfagharkhani v Canada (Minister of Employment and Immigration)*, [1993] 3 FC 540 at 10-11, 155 NR 311 (FCA) [*Zolfagharkhani*]). The RPD noted that the punishment for "unlawfully opposing an expropriation" in China is harsher than in Canada, but that this does not itself amount to persecution.

[16] Ultimately, the RPD held that the Applicant is not a Convention refugee or a person in need of protection.

IV. Issues and Standard of Review

[17] After considering the parties' submissions, the sole issue is whether the Decision is reasonable. The sub-issues are best characterized as:

1. Did the RPD reasonably conclude that the Applicant lacks a nexus to the definition of a Convention refugee?
2. Are the RPD's credibility findings reasonable?

[18] The Respondent submits that the standard of review is reasonableness and emphasizes that *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] does

not call for a more deferential review than past jurisprudence. The Applicant submits that the standard of review is both reasonableness and correctness.

[19] I agree with the Respondent that the standard of review is reasonableness. None of the exceptions warranting a departure from the presumption of reasonableness are engaged in this matter (*Vavilov* at paras 16-17). In assessing the reasonableness of a decision, the Court must consider "the outcome of an administrative decision in light of its underlying rationale to ensure that the decision as a whole is transparent, intelligible and justified" (*Vavilov* at para 15). For a decision to be reasonable, a decision-maker must adequately account for the evidence before it and be responsive to the Applicant's submissions (*Vavilov* at paras 125-28). A decision will be unreasonable if it contains flaws that are sufficiently central or significant (*Vavilov* at para 100). 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).

V. Analysis

A. *Did the RPD reasonably conclude that the Applicant lacks a nexus to the definition of a Convention refugee?*

(1) Applicant's Position

[20] The RPD unreasonably concluded that the Applicant failed to establish a nexus to a Convention ground. The RPD quoted from *Huang v Canada (Citizenship and Immigration)*, 2019 FC 148 [*Huang*] and, without any analysis, baldly concluded that the Applicant has not

established a nexus. The RPD also failed to consider whether the law of general application is "inherently or for some other reason persecutory" (*Zolfagharkhani* at 10).

[21] Further, the RPD's conclusion that any prosecution for a contravention of a law of general application would not amount to persecution is difficult to reconcile with the evidence. For instance, the RPD should have considered the US Department of State Report included in Item 2.1 of the National Documentation Package [Item 2.1], which states that there are "serious restrictions" on petitioners' freedom of expression, including "physical attacks" and restrictions on their right to assemble. Item 2.1 also describes petitioners being incarcerated for "brief periods" in "extralegal 'black jails.'"

[22] Finally, the Decision is unreasonable because it runs contrary to the definition of "political opinion", which is "any opinion on any matter in which the machinery of the state government, and policy may be engaged" (*Canada (AG) v Ward*, [1993] 2 SCR 689 at 746, 103 DLR (4th) 1, citing Guy S Goodwin-Gill, *The Refugee in International Law* (Oxford: Clarendon Press, 1983) at 31; *Zhou v Canada (Citizenship and Immigration)*, 2013 FC 619 at para 34 [*Zhou*]). While laws of general application are not generally persecutory, the source of persecution in this case is the state's suppression of the protest. Protesting a law, even one of general application, is an expression of political opinion, and it is that political opinion for which the Applicant was being persecuted.

(2) Respondent's Position

[23] The RPD reasonably concluded that the Applicant failed to establish a nexus to a Convention ground and that he would face persecution for breaking a law of general application. The RPD considered all of the evidence and reasonably concluded that if the PSB was still seeking the Applicant, it was because he broke a law of general application. To establish a risk of persecution, a refugee claimant must demonstrate that prosecution under a law of general application is linked to a Convention ground. The claimant must also demonstrate that they face more than a mere possibility of persecution, which the Applicant failed to do (*Zolfagharkhani* at 10).

[24] The RPD's findings are consistent with this Court's jurisprudence (*Huang* at paras 40-41; *Ni v Canada (Citizenship and Immigration)*, 2018 FC 948 at paras 24-27 [*Ni*]; *Yan v Canada (Citizenship and Immigration)*, 2018 FC 781 at paras 13, 21-23 [*Yan*]; *Jiang v Canada (Citizenship and Immigration)*, 2015 FC 486 at paras 11-16 [*Jiang*]; *You v Canada (Citizenship and Immigration)*, 2013 FC 100 at paras 19-25 [*You*]).

(3) Conclusion

[25] To qualify as a Convention refugee, claimants must establish that the persecution they fear is linked to race, religion, nationality, membership in a particular social group, or political opinion (*IRPA*, s 96; *Rizkallah v Canada (Minister of Employment and Immigration)*, [1992] FCJ No 412 at 1, 156 NR 1 (FCA)).

[26] I disagree with the Applicant that the RPD failed to analyze whether the Applicant established a nexus to a Convention ground. While the RPD's analysis on this issue occurs at

two separate points in the Decision, when read holistically, the Decision is reasonable (*Vavilov* at para 97).

[27] The RPD first considers the issue of nexus under the heading “NEXUS”. The RPD cites paragraphs 41-44 of *Huang*, in which Associate Chief Justice Gagné wrote:

> I note that in *Ni v Canada (Citizenship and Immigration)*, 2018 FC 948, Justice Elizabeth Walker found reasonable the RPD's decision that being involved in a protest to demand fair compensation did not amount to persecution on a Convention ground. Further, shouting anti-government slogans does not necessarily mean that there is a nexus to a Convention ground (*Yan v Canada (Citizenship and Immigration)*, 2018 FC 781 at para 22).
>
> Even if I had accepted that the Applicants were wanted, they have not established that they would be persecuted, they have only established that they would be prosecuted for contravening a law of general application. Mr. Huang testified that he did not want to return to China because he would be arrested and put in jail, not 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.
>
> While it is true that the Applicants specifically pointed to objective country evidence documenting certain cases of abuse of individuals who protest against land expropriation, the RPD found there was insufficient evidence that the Applicants themselves would be subjected to treatment amounting to persecution.
>
> I find this conclusion to be reasonable. In other words, <u>there is no evidence that persons who have opposed land expropriation are systematically subjected to treatment amounting to persecution, such that it renders unreasonable the RPD's conclusion that the Applicants will not be subjected to persecution. I also note that the government has already expropriated the Applicants' land and would have only a limited, if any, interest in the principal Applicant other than to prosecute him for having participated in an illegal gathering. Lastly, the fact that the sentence for unlawfully opposing an expropriation is harsher in China than in Canada does not amount to persecution.</u>
>
> [Emphasis added.]

[28] In the matter at hand, the RPD concluded that the Applicant failed to establish an imputed political opinion, and therefore failed to establish a nexus. However, the RPD did not end its analysis there. Toward the end of the Decision, the RPD analyzed the nature of the protest, noting that the protestors held banners and chanted slogans, the PSB told protestors to leave because the protest was illegal, and the protestors left peacefully without any arrests. The RPD concluded that the PSB pursued the Applicant because he broke a law of general application and that the protest was based on inadequate compensation, not political opinion. I find that reading these separate points of analysis together reveals that the RPD reasonably engaged with the evidence in determining whether the Applicant had established a nexus to a Convention ground. As such, the RPD's reasons are sufficiently justified, transparent, and intelligible.

[29] I also disagree with the Applicant that the RPD failed to consider whether the law of general application is inherently persecutory. This Court has previously held that the Chinese law of expropriation is presumptively neutral and valid (*Ni* at para 26, citing *Jiang* at para 14). The burden is on a claimant, not the RPD, to show that a law of general application is "inherently or for some other reason persecutory" (*Zolfagharkhani* at 10). The Applicant has not pointed to any submissions before the RPD about the law in question being inherently persecutory.

[30] The Applicant cites *Zhou* for the proposition that protesting expropriation constitutes a political opinion. At paragraph 34 of *Zhou*, Justice O'Keefe stated:

> Finally, I note the Board's finding that the applicant's opinion concerning the expropriation of his home was apolitical. I would note, however, that the protest was about more than the value of the applicant's home. If he is found to be credible, his PIF clearly states that a large crowd of people attended the protest and were

> shouting slogans such as “The government is unfair”. Such conduct to me sounds to be an anti-government protest.

[31] The applicant in *Yan* similarly cited *Zhou* for the same proposition (*Yan* at para 12). Justice McVeigh rejected Ms. Yan’s argument, noting that “[t]he decision in *Zhou* does not stand for the proposition that a nexus is always established when certain statements are made during a protest” (*Yan* at para 22).

[32] I agree that “each case will turn on its facts” (*Yan* at para 22). In this case, the RPD considered the nature and the circumstances of the protest. The RPD’s approach is consistent with this Court’s jurisprudence. For instance, Justice Phelan noted at paragraphs 20-21 of *You*:

> The real dispute was over money not a grounds under the Convention. The monetary dispute cannot be dressed up as a political dispute just because it is against a government decision.
>
> It was not unreasonable to conclude that there was no nexus to a Convention grounds given the nature of the dispute and protest activities.
>
> [Emphasis added.]

[33] In *Yan*, Justice McVeigh similarly considered the nature and circumstances of the protest. Ms. Yan testified that she shouted, “[g]overnment corrupt, compensation unfair, destroy our homes, respect human rights… [and] police assaulting people.” Justice McVeigh also considered Ms. Yan’s testimony about the importance of her home and the inadequacy of the compensation and found that the RPD reasonably concluded that the protest was primarily about compensation (*Yan* at paras 16-21).

[34] In the present matter, the Applicant has not made submissions about any specific slogans chanted during the protest. The RPD transcript indicates that the Applicant only described the broader topics of the chants. The RPD considered the Applicant's answers and reasonably characterized the protest as pertaining to unfair compensation rather than an anti-government political opinion. In the absence of anything in the record pointing to the contrary, the RPD's finding that the Applicant failed to establish a nexus to a Convention ground is reasonable.

[35] Finally, the Applicant argues that the RPD failed to consider Item 2.1. In my view, this submission has no merit. The RPD clearly cites Item 2.1 and acknowledges the restrictions that petitioners face at paragraph 49 of the Decision:

> The panel acknowledges that unauthorized protests and demonstrations are restricted in China, and that administrative detentions, such as that this claimant fears, may be used to deter such activities. In this regard, the panel, however, notes that the mere fact that the sentence for unlawfully opposing an expropriation may be harsher in China than in Canada does not amount to persecution.

[36] In my view, the Applicant is simply asking the Court to reweigh the evidence on this point, which is not the function of judicial review (*Vavilov* at para 125). This aspect of the Decision is also reasonable.

B. *Are the RPD's credibility findings reasonable?*

(1) Applicant's Position

[37] The RPD erred in making a negative credibility finding on the basis that the PSB did not leave any documents with the Applicant's wife (*Wang v Canada (Citizenship and Immigration),*

2018 FC 1124 at paras 39-44). Unlike *Huang*, the absence of documents in this case is clearly determinative to the RPD's negative credibility findings (*Huang* at paras 28-31).

[38] The RPD similarly erred in requiring the Applicant to provide corroborating evidence from his wife (*Mora Zapata v Canada (Citizenship and Immigration)*, 2008 FC 329 at paras 7-8). The requirement for corroborating evidence runs contrary to the presumption of truth articulated by the Federal Court of Appeal in *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302, [1979] FCJ No 248 (FCA) [*Maldonado*]. Further, it is not incumbent on refugee claimants to seek written or oral testimony from persons in the country they fear persecution. To do so would put both the Applicant and his wife at risk, thereby running contrary to the intention of subparagraph 166(b)(i) of *IRPA*. The evidence before the RPD indicates that the Chinese government frequently intercepts private communications.

(2) Respondent's Position

[39] The RPD's negative credibility findings were reasonable. The RPD may draw an adverse credibility finding from an applicant's failure to produce corroborating evidence (*Cekim v Canada (Citizenship and Immigration)*, 2011 FC 177 at para 14; *Muchirahondo v Canada (Citizenship and Immigration)*, 2008 FC 546 at para 18).

(3) Conclusion

[40] After reviewing the totality of the record, I find the RPD's credibility findings reasonable.

[41] The onus is always on refugee claimants to prove their case. While I agree that gathering evidence from individuals in the country they fear may put the claimant and witnesses at risk, the Applicant never offered this justification before the RPD. Rather, when the RPD asked why the Applicant failed to tender an affidavit sworn by his wife, he simply stated that he thought it was unnecessary.

[42] I also disagree with the Applicant that this case is distinguishable from *Huang*. In *Huang*, Associate Chief Justice Gagné considered this Court's divergent perspectives on whether a decision-maker may draw a negative credibility finding where an applicant fails to produce a PSB summons (at paras 28-31).

[43] In this case, the Applicant's failure to produce a summons was not a determinative credibility finding (*Huang* at para 30; *Sun v Canada (Citizenship and Immigration)*, 2008 FC 1255 at para 13; *Deng v Canada (Citizenship and Immigration)*, 2015 FC 176 at para 14). To the contrary, the RPD drew multiple adverse inferences based on the Applicant's demeanour, his previous efforts to come to Canada, and his failure to tender an affidavit sworn by his wife.

[44] At paragraph 44 of the Decision, the RPD considered the Applicant's unsuccessful Canadian visa application that he applied for "before his problems started on July 19, 2012." More importantly, the RPD noted inconsistencies pertaining to why the Applicant initially applied for the visa, and that the Applicant was not forthcoming about who assisted him in this process. In my view, when the Decision is considered in light of the record, the RPD reasonably

drew negative credibility findings (*Vavilov* at paras 91-98). The RPD transcript illustrates the inconsistencies the RPD member took issue with:

> **Member:** Okay, so when you filed your visa application to come to Canada Did you get somebody help?
>
> …
>
> **Interpreter:** Yes, yes. That was someone who helped me to to fill in it.
>
> **Member:** Who will help you
>
> **Interpreter:** It was long time ago I don't remember
>
> **Member:** Did you pay the person money to help you?
>
> **Interpreter:** At that time, we might have to hire some someone to help us to like for this application but it was long time ago. I don't I don't really remember.
>
> **Member:** You don't remember paying anything.
>
> **Interpreter:** We should just pay for the visa fee.
>
> **Member:** Okay, you paid for the visa fee. But did you pay the person who help you anything? If you remember if you don't remember? That's fine.
>
> **Interpreter:** I don't remember.
>
> …
>
> **Member:** Now why did you apply for the visa? Why did you want to come to Canada
>
> **Interpreter:** So at that time we were as for commercial for business to to go there to check it out.
>
> **Member:** Sorry to come for the business and ?
>
> **Interpreter:** yeah to check it out. mainly for commercial
>
> **Member:** <u>So after the hearing and also in your paper document that you have [filed]. You have said that you were coming for sightseeing. they were no mention also coming for business purposes</u>.

> **Interpreter:** I don't remember but as I remember it should be for commercial and like it's just like to check it to check the place.
>
> **Member:** To check the place you mean to check opportunity in Canada?
>
> **Interpreter:** Yes. To you see whether there's any development for business? yeah, for like the business market
>
> **Member:** and what kind of business you were exploring or you were planning to explore?
>
> **Interpreter:** So because our company's involved in the business, say for the like, Wi fi, the speaker for the sound equipment. So just wanted to check whether there were any opportunities in that field
>
> **Member**: was it a company sponsored trip? was your company sending you?
>
> **Interpreter**: yes the company send me
>
> **Member:** sir I know you told me you don't remember but there's no reference of any of this in your previous testimony or the documentation.
>
> [Emphasis added.]

[45] In light of the above excerpt of the hearing transcript, I find that the RPD reasonably drew a negative inference from inconsistencies in the Applicant's evidence and demeanour. In this regard, I note that credibility findings fall within the heartland of the RPD's expertise (*Giron v Canada (Minister of Employment and Immigration)*, [1992] FCJ No 481 at 1, 143 NR 238 (FCA)). I also note that deference is owed to administrative decision-makers, partially because of the "relatively advantageous position of the first instance decision maker" (*Vavilov* at para 125).

[46] In *He v Canada (Citizenship and Immigration)*, 2020 FC 825 [*He*], Justice McHaffie considered the relationship between the presumption of truth and corroborating evidence. He noted, "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" (*He* at para 20; *Luo v Canada (Citizenship and Immigration)*, 2019 FC 823 at paras 18-22; *Maldonado* at 305; *He v Canada (Citizenship and Immigration)*, 2019 FC 2 at paras 22-25). The RPD correctly noted this rule at paragraph 39 of the Decision.

[47] I also note that this case is similar to *Yan*, *Su v Canada (Citizenship and Immigration)*, 2015 FC 666 [*Su*], *Liu v Canada (Citizenship and Immigration)*, 2012 FC 1362 [*Liu*], and *Jia v Canada (Citizenship and Immigration)*, 2012 FC 444 [*Jia*]. In those cases, the Court held that it was reasonable to expect a warrant or summons since the claimants testified that the PSB was relentlessly pursuing them (*Yan* at paras 37-38; *Su* at para 16; *Liu* at para 56; *Jia* at paras 37-38). Here, the Applicant testified that he was being pursued by the PSB for eight years. As noted by the RPD at paragraph 40 of the Decision:

> The panel finds it not credible, on a balance of probabilities, that the PSB would continue to visit the claimant's home, his relatives' homes on numerous occasions as alleged, for more than eight years, yet leave no documents with his wife. This finding detracts from the claimant's credibility in that the PSB has continued to look for the claimant in order to arrest him, or that he would be persecuted upon return to China as alleged.

[48] Given this Court's decisions in *Yan*, *Su*, *Liu*, and *Jia*, it was reasonably open to the RPD to reach this conclusion. In light of the RPD's various negative credibility findings and the jurisprudence noted above, the RPD did not err in drawing a negative inference due to a lack of corroborating evidence.

VI. Conclusion

[49] In my view, the Decision is intelligible, justified, and transparent. Accordingly, the application for judicial review is dismissed.

[50] The parties have not proposed questions for certification and I agree that none arise.

JUDGMENT in IMM-5398-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

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

"Paul Favel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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