

Federal Court



Cour fédérale

Date: 20230208

Docket: IMM-6947-21

Citation: 2023 FC 187

Ottawa, Ontario, February 8, 2023

PRESENT: Madam Justice Pallotta

BETWEEN:

CHUNYAN XU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant, Chunyan Xu, seeks judicial review of a September 3, 2021 decision of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board. The RAD dismissed Ms. Xu's appeal and confirmed the Refugee Protection Division's (RPD) determination that she is not a Convention refugee or a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] Ms. Xu is a citizen of China who fears religious persecution based on her Christian faith. Ms. Xu states she turned to Christianity to help cope with the physical and emotional abuse inflicted by her former husband, and she continues to fear him and the Chinese authorities.

[3] Credibility was the determinative issue before the RPD and the RAD. The RPD found Ms. Xu's allegations of domestic abuse and religious persecution were not credible. On appeal, the RAD found the RPD was correct to conclude Ms. Xu had not established that she fled China because of domestic abuse. The RAD also considered the RPD's findings regarding the genuineness of Ms. Xu's Christian faith. Although the RAD found the RPD had erred with respect to some of its negative credibility findings, the RAD agreed with the RPD that Ms. Xu was not credible with respect to the genuineness of her religious faith.

[4] Ms. Xu submits the RAD supported its decision to dismiss her appeal with a number of findings based on speculation or a misapprehension of the evidence, including a misapprehension of the objective country condition evidence. She contends these errors render the decision unreasonable.

[5] The respondent submits the RAD independently assessed the evidence to conclude that despite some errors, the RPD's determination was nevertheless supported by other findings, including findings that Ms. Xu did not challenge on appeal. The respondent submits the RAD's decision is reasonable.

[6] The reasonableness of the RAD's decision is reviewed according to the guiding principles set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]. Reasonableness is a deferential but robust standard of review: *Vavilov* at paras 12-13, 75 and 85. In applying the reasonableness standard, the reviewing court determines whether the decision bears the hallmarks of reasonableness—justification, transparency, and intelligibility: *Vavilov* at para 99. A reasonable decision is based on an internally coherent and rational chain of analysis and it is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85. The party challenging the decision bears the onus of demonstrating that it is unreasonable: *Vavilov* at para 100.

[7] Ms. Xu submits the RAD erred in its findings about where she was living in China, her divorce, the lack of a coercive summons from the Public Security Bureau (PSB), and the genuineness of her Christian faith.

[8] The RAD agreed with the RPD's finding that Ms. Xu had been living alone since 2015, and this undermined her claim that she fled China in 2018 to escape domestic abuse. The RAD found the RPD had not erred in preferring the information reflected in two government-issued documents—Ms. Xu's resident identity card (RIC) and *hukou* registration. In light of other credibility findings, the RAD agreed these documents were a more reliable source of information than Ms. Xu's testimony.

[9] Ms. Xu submits the RAD erred in finding she was not living with her husband at the material times. She alleges the RAD failed to consider objective country condition evidence in

the National Documentation Package (NDP) for China, which establishes that RIC cardholders are not required to update their cards when they move, and the *hukou* is not necessarily tied to an individual's place of residence.

[10] I am not persuaded of an error in these findings. The RAD preferred the information in the government-issued documents, as there were reasons for doubting Ms. Xu's testimony. The RAD also noted that Ms. Xu had not challenged the RPD's finding that her testimony about leaving her husband in 2017 and moving in with her parents was not credible because these points were not mentioned in her basis of claim (BOC) narrative. In my view, the country condition evidence does not conflict with the RAD's findings. As the respondent points out, Ms. Xu did in fact update government documents to indicate she had moved to a property that she owns in 2015.

[11] Ms. Xu submits the RAD erred in undermining her credibility on the basis that she "was asked several times if she obtained a divorce and indicated she had not when the documentary evidence points to the contrary". Ms. Xu submits the RAD misunderstood her testimony, exaggerated a perceived inconsistency in her testimony about her divorce, and erred by undermining her credibility on this basis. Furthermore, Ms. Xu submits the RAD erred by relying on the fact she had not challenged the RPD's negative credibility inference that was based on an inability to answer questions about the divorce, for two reasons. First, the RAD erred in drawing a distinction between challenged and unchallenged findings when the findings related to the same issue, namely whether she had been in an abusive relationship. Second, the RAD went further than the RPD, exaggerating the evidence by stating Ms. Xu was asked

“several times” if she had obtained a divorce when she was asked once, and she explained that she meant she did not get divorced at the time she raised divorce with her husband in 2017. Ms. Xu submits this was a reasonable explanation.

[12] Ms. Xu has not established that the RAD erred in this regard. The RAD correctly stated that Ms. Xu did not challenge the RPD’s negative credibility findings that related to her separation from her husband, being stalked by him, or her divorce. These findings by the RPD related to the allegations of domestic violence, the RAD agreed with them, and the RAD provided a number of reasons to support the finding that Ms. Xu had failed to establish she fled China because of domestic abuse. The RAD held that the concerns with Ms. Xu’s evidence regarding her separation and divorce, her husband stalking her, her marital status, and the address listed in her *hukou* and RIC undermined her credibility and the merits of her claimed fear of her former husband.

[13] I am not persuaded that the RAD relied on an exaggeration of Ms. Xu’s evidence regarding the divorce, and in my view the RAD’s findings were not materially different from the unchallenged findings of the RPD. The RPD panel noted: Ms. Xu had been asked if she ever considered getting a divorce, and answered that she had proposed one but her husband disagreed; when asked again she confirmed she was not divorced; when the panel later asked for help to understand why Ms. Xu said she was not divorced when she had disclosed a divorce certificate, she stated her husband proposed they get divorced because the PSB was looking for her; when asked if she had anything to add, Ms. Xu was silent; when asked a second time why she testified that she is not divorced if she is divorced, Ms. Xu stated she meant she did not get divorced

when she proposed it in 2017, but she did get divorced in 2020. As I read the RAD's reasons, the statement that Ms. Xu was asked "several times" was not an exaggeration. The RAD did not mean that Ms. Xu persisted in denying that she was divorced, but rather, that she had been asked several questions about obtaining a divorce. I am not persuaded that the RAD erred by relying on testimony that was reasonable and not contradictory in order to impugn Ms. Xu's credibility. In response to a direct question, "So you didn't get a legal divorce?", Ms. Xu answered "You are right". In my view, the RAD's findings were reasonably open to it.

[14] With respect to the lack of a coercive summons, Ms. Xu submits the RAD relied on unwarranted speculation and effectively made a finding based on what it would have done had it been "in the shoes" of the PSB authorities. Ms. Xu points to documents from the NDP indicating the PSB has the discretion to issue a coercive summons, but does not always do so. She contends the NDP documents do not support a finding that the PSB would have escalated enforcement measures against her.

[15] In my view, the RAD considered Ms. Xu's arguments about the lack of a coercive summons and addressed them fully and reasonably. The RAD noted Ms. Xu's allegations about the level of interest in her, including that the PSB had been trying to locate Ms. Xu at her former husband's home and her parents' home after she had left China, and that she had failed to attend for an interrogation as required by a non-coercive summons left with her sister. The RAD found it unlikely that the PSB would "continue the futile effort of simply attending residences of family members even though she is not there", without escalating the enforcement measures against her by exercising the discretion to issue a coercive summons.

[16] Finally, Ms. Xu states the RAD erred in finding that she is not a genuine Christian based on a poor knowledge of Christian beliefs. Ms. Xu submits she provided direct answers to the RPD's open-ended questions, which did not appear to be aimed at testing her knowledge, and the RAD effectively adopted the RPD's reasons without conducting an independent assessment. Ms. Xu contends the RAD erred by failing to articulate independent findings, and by providing inadequate reasons to explain why it found her knowledge of Christianity to be inconsistent with a genuine belief.

[17] I disagree that the RAD erred in assessing the genuineness of Ms. Xu's faith.

[18] On appeal to the RAD, Ms. Xu challenged the RPD's findings about her Christian faith on the basis that the RPD had imported its erroneous credibility findings into the analysis of whether she was a genuine Christian. Since it had erred in making its credibility findings, she argued the RPD's ultimate determination regarding her identity as a genuine Christian must fail.

[19] The RAD acknowledged that the RPD had erred in making some of its credibility findings, but found the RPD did not conclude that Ms. Xu was not a genuine Christian based on the importation of its prior negative credibility findings alone. As the respondent notes, the RAD stated it had independently assessed the record and concluded that, despite some errors, the RPD's determination was supported by other findings, including significant findings about events in China and Ms. Xu's Christian faith that she did not challenge on appeal. The RAD found that the RPD's finding about Ms. Xu's Christian faith was based to a large extent on her

poor knowledge and vague testimony about her Christian beliefs and faith. The RAD agreed with RPD's rationale and saw no reason to disturb the RPD's findings.

[20] I note that the RPD devoted about a quarter of its decision—two and a half pages—to the reasons why it believed Ms. Xu's knowledge of Christianity undermined the credibility of her identity as a Christian practitioner. The RPD pointed to examples of Ms. Xu's testimony, including answers that she gave to questions that were posed by her counsel, and explained why it found her knowledge to be inconsistent with a genuine belief. Ms. Xu did not challenge these findings on appeal to the RAD.

[21] The RAD agreed with the RPD that Ms. Xu had failed to establish the domestic abuse allegations that were the impetus for her conversion to Christianity, and found the evidence was insufficient to establish that she is a genuine Christian practitioner who would face persecution on account of religion upon return to China. Ms. Xu has not established a reviewable error in the RAD's approach or findings.

[22] Ms. Xu has not established that the RAD's decision was unreasonable. Accordingly, the application for judicial review is dismissed. Neither party proposed a question for certification and I find there is no question to certify.

JUDGMENT in IMM-6947-21

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no question to certify.

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6947-21

STYLE OF CAUSE: CHUNYAN XU v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: OCTOBER 20, 2022

JUDGMENT AND REASONS: PALLOTTA J.

DATED: FEBRUARY 8, 2023

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