

Federal Court



Cour fédérale

Date: 20230210

Docket: IMM-548-22

Citation: 2023 FC 196

Ottawa, Ontario, February 10, 2023

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

DINGSHAN ZHENG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Dingshan Zheng, says that he fled China so that he could practice Falun Gong free from government persecution. He seeks judicial review of the decision of the Refugee Appeal Division [RAD] dismissing his appeal from the decision of the Refugee Protection Division [RPD] that rejected his claim for refugee protection.

[2] The RPD and RAD found that the Applicant lacked credibility concerning his claim that he was an adherent of Falun Gong. Both decisions found three reasons to doubt the Applicant's

credibility: (i) his inconsistent evidence about how he began to practice Falun Gong and in particular about how his wife came to agree to him practicing, given the risks for Falun Gong adherents in China; (ii) his inability to describe what the practice meant to him, beyond reciting certain elements of the text he read, combined with the fact that he could only name one other member of the group he said he practiced daily with in Canada for two and one-half years; and (iii) the inconsistency between his Basis of Claim narrative and his testimony about when his passport was photocopied, his missing passport, and his arrival in Canada.

[3] The RAD reviewed each of the Applicant's arguments on these points in detail, and found that the RPD had not erred in its credibility assessment. The RAD found that the period when he first began to practice Falun Gong was a pivotal moment, given his and his wife's knowledge that doing so was forbidden in China. The RAD therefore found that the Applicant's failure to recount a consistent narrative on who persuaded his wife to agree to his practicing Falun Gong undermined his credibility. Similarly, the RAD agreed with the RPD that, despite the Applicant's knowledge of Falun Gong doctrines and practices, which he said he acquired by reading a text, his inability to describe what it meant to him as a person or how it helped him in his life called into question the genuineness of his belief. The RAD also found that his evidence that he had practiced daily and attended study sessions every week with the same group in Canada was called into question by his inability to name more than one other member of that group. This also diminished his credibility, according to the RAD.

[4] Finally, the RAD agreed with the RPD that the Applicant's credibility was negatively affected because he failed to provide a consistent story about his arrival in Canada and the disappearance of his passport. He produced a photocopy of portions of his Chinese passport,

saying the snakehead who smuggled him into Canada had taken the original passport after they arrived in Canada, but that he had gone with the smuggler who made a copy of a few pages upon their arrival in Canada.

[5] The problem for the Applicant is the copy of the page he produced showed his Canadian visa, but no stamp confirming his entry into Canada. The Applicant acknowledged his mistake regarding when the copy was made, but the RAD found this undermined the credibility of his claim of having used a smuggler to flee China because he feared the authorities.

[6] In addition, the RAD discounted the documentary evidence produced by the Applicant because it was not sufficient to overcome the negative credibility findings. The RAD also rejected the Applicant's argument regarding his *sur place* claim, and agreed with the RPD's conclusion that he had failed to establish it.

[7] The Applicant seeks judicial review of the RAD decision.

[8] The only issue is whether the RAD decision is reasonable in accordance with the framework set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] (see *Apena v Canada (Citizenship and Immigration)*, 2023 FC 91 at para 30).

[9] The determinative issue in this case is whether the RAD's credibility findings are reasonable – meaning they are rooted in the evidence, and adequately explained.

[10] I am not persuaded by any of the Applicant's arguments. The decision is reasonable.

[11] The Applicant largely repeated the arguments he unsuccessfully advanced before the RAD. In summary, the Applicant argued the following points:

- A. The RPD's credibility finding regarding the evidence dealing with the wife consenting to the Applicant's practice is unreasonable;
- B. The RPD's requirement for the esoteric explanation of the Applicant's adherence to Falun Gong is also unreasonable;
- C. The RPD erred in finding that the Applicant's inability to name his fellow daily practice group member's names diminished his credibility, given his knowledge of Falun Gong doctrine; and
- D. The RPD placed too much emphasis on the passport finding – in particular, the RPD conflated the snakehead 'making' versus 'giving' the Applicant the copy of the passport.

[12] While the Applicant, in submissions, referred almost exclusively to the RPD transcript and subsequent decision, he says that his arguments apply equally to the RAD decision since it is a "carbon copy" of the RPD decision.

[13] I am unable to find that any of the preceding arguments provide a basis to overturn the decision. The RAD carefully and thoroughly considered the Applicant's arguments about the errors he said the RPD had made in assessing the three points outlined above. The RAD explained why it was rejecting these arguments, in clear and logical terms. Although the RAD

disagreed with the RPD on a few of its findings, it largely agreed with the RPD's substantive credibility findings.

[14] Therefore, the RAD reasonably found that the origins of the Applicant's alleged Falun Gong practice was a key moment in his narrative and the inconsistencies in his evidence about this important period hurt his credibility. Similarly, the RAD reasonably found that the Applicant's ability to memorize certain Falun Gong teachings and doctrine was not matched by his capacity to explain what the practice meant in his life, and this called into question the genuineness of his belief. In addition, the Applicant's inability to name more than one member of the group he said he practiced with in Canada on a daily basis for over two years was also reasonably assessed by the RAD.

[15] I also find that the RAD's treatment of the documentary evidence and the *sur place* claim is reasonable.

[16] For these reasons, the application for judicial review is dismissed.

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

JUDGMENT in IMM-548-22

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-548-22

STYLE OF CAUSE: DINGSHAN ZHENG v MINISTER OF
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**JUDGMENT AND
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APPEARANCES:

Leonard Borenstein FOR THE APPLICANT

Pavel Filatov FOR THE RESPONDENT

SOLICITORS OF RECORD:

Leonard Borenstein FOR THE APPLICANT
Barristers and Solicitors
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario