

Federal Court



Cour fédérale

Date: 20230406

Docket: IMM-9254-21

Citation: 2023 FC 491

Toronto, Ontario, April 06, 2023

PRESENT: Justice Andrew D. Little

BETWEEN:

GAOFENG LIN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant asks the Court to set aside a decision of the Refugee Appeal Division (“RAD”) dated December 1, 2021.

[2] The applicant claimed protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act* (“IRPA”). Both the RAD and the Refugee Protection Division (the “RPD”) denied his claims.

[3] The applicant argued that the RAD's decision was unreasonable, applying the principles in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653.

[4] The application will be dismissed, because the applicant has not shown that the RAD made a reviewable error in its decision. The reasons are as follows.

I. Events Leading to this Application

[5] The applicant is a citizen of China. He based his claim for *IRPA* protection on a fear of persecution by the Chinese authorities due to his Christian faith.

[6] The applicant was introduced to Christianity in November 2018 by his friend, Mr Shuiguan Lin. Beginning in January 2019, the applicant attended an underground house church.

[7] In August 2019, the police arrested the applicant and two other church attendees for alleged illegal religious activities. He was detained for 7 days and then released after paying a fine. At that time, he received a Confirmation of Release (the "COR") certificate and a written receipt for payment of the fine (the "Receipt").

[8] In October 2019, the applicant entered Canada with the assistance of a smuggler and applied for *IRPA* protection upon arrival.

[9] The RPD rejected the applicant's claim for protection on credibility grounds. The applicant appealed to the RAD, which dismissed his claim by decision dated December 1, 2021.

[10] Both the RPD and the RAD made negative credibility findings against the applicant. Both concluded that the COR and the Receipt were not authentic. The RAD found that the letter from Mr Shuiguan Lin was insufficient to overcome credibility concerns and gave "medium weight" to the letter. The RAD also found that the applicant had not reasonably explained inconsistencies in his statements to the Canada Border Services Agency ("CBSA"), his Basis of Claim narrative and his RPD testimony concerning the police raid on the house church. The inconsistencies related to the number of officers involved and whether they were in uniform or plain clothes.

II. Analysis

[11] The standard of review for the RAD's decision is reasonableness. Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision has the attributes of transparency, intelligibility and justification: *Vavilov*, at paras 12-13 and 15. The starting point is the reasons provided by the decision maker, which are read holistically and contextually, and in conjunction with the record that was before the decision maker. A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision maker: *Vavilov*, esp. at paras 85, 91-97, 103, 105-106 and 194; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, [2019] 4 SCR 900, at paras 2, 28-33, 61.

[12] The applicant's position was that the RAD's decision was based on unreasonable credibility findings. The applicant's submissions focused mainly on alleged reviewable errors concerning the RAD's findings on three documents: the COR, the Receipt and the letter from Mr Shuiguan Lin. I will address them each in turn.

A. *Alleged Reviewable Error related to the COR*

[13] The RAD concluded that the COR was not authentic. It did so on different grounds than the RPD. The RAD reviewed and set out an excerpt from country evidence – a Response to Information Request (“RIR”) that addressed the issuance of a COR by a detention centre in China. The RIR confirmed that upon expiration of the detention of a detainee, the detention centre “shall release the detainee on time, [and] issue a certificate of release from detention ...” The RIR also confirmed that a COR is issued by the detention centre, not the public security organ that imposed the administrative penalty.

[14] The RAD found that the RIR provided “an evidentiary basis for expecting that a document issued and stamped by a detention centre would also refer to the detention centre in the header rather than refer to the police authority”. The RAD found that the Public Security Bureau (“PSB”) was on the letterhead of the COR rather than the detention centre. The RAD considered the applicant's argument that the police in China acted in arbitrary and extralegal ways, but concluded that none of the “ample evidence” of examples of such behaviour explained why the COR header referred to the PSB rather than the detention centre.

[15] The RAD concluded that the inconsistency in the COR compared to the country documentation was significant and put into question its authenticity. On balance, the RAD concluded that the COR was not genuine and gave it no weight. The RAD also concluded that the submission of a non-genuine document had a significant impact on the general credibility of the applicant. The RAD found that the applicant tendered the non-genuine COR to corroborate his allegation that he was detained by police, which put into doubt a central element of his claim and raised doubts about the trustworthiness of his remaining evidence.

[16] The applicant challenged this analysis as unreasonable under *Vavilov* principles. The applicant submitted that the RAD committed a reviewable error because his COR met all of the criteria set out in the RIR as identified by the RAD. The applicant noted that the COR stated that it was issued and stamped by the detention centre. According to the applicant, the RAD made a reviewable error by misconstruing the evidence and concluding that the COR was not genuine.

[17] In my view, the RAD made no reviewable error. The applicant's argument is, in substance, an invitation to the Court to review the COR itself to determine whether it is genuine by applying the criteria in the RIR. That approach would constitute correctness review, which is not permitted on this application: *Vavilov*, at paras 83, 125.

[18] It was open to the RAD on the evidence to find that there was an evidentiary basis for expecting that the document issued and stamped by the detention centre would refer to the detention centre rather than the police authority. The quoted contents of the RIR did not

constrain the RAD to conclude or infer otherwise because, as the applicant acknowledged at the hearing, nothing in the RIR referred specifically to the contents of a document's header.

[19] The applicant has not demonstrated a reviewable error in the RAD's findings related to the COR.

B. *Alleged Reviewable Error related to the Receipt*

[20] The RAD conducted its own independent assessment of the Receipt and concluded that it was not authentic. The RAD compared it to the example in the latest National Documentation Package ("NDP") for China. The RAD noted several differences. While "cognizant that all receipts cannot be assumed to be uniform, [the RAD found] that these discrepancies and the [applicant]'s submission of a non-genuine COR are sufficient to establish, on a balance of probabilities, that the Receipt is not authentic". The RAD found that the submission of a second non-genuine document had a further significant impact on the general credibility of the applicant. The Receipt also put into doubt a central element of his claim and raised doubts as to the trustworthiness of the remaining evidence.

[21] The applicant submitted that the RAD's conclusion was tainted by the unreasonableness of its first conclusion concerning the COR. This submission has no merit because, as already noted, the conclusion related to the COR was reasonable.

[22] The applicant contended that the RAD's reasoning related to the Receipt was internally inconsistent. The applicant submitted that if one cannot assume the uniformity of all receipts in

China (and the NDP example originated from a different province than the one issued to the applicant) then, according to the applicant, the RAD was unreasonable to criticize the applicant's Receipt for its inconsistencies compared with the NDP example.

[23] I find no internal inconsistency in the RAD's reasoning. The RAD acknowledged that while it did not expect uniformity, the inconsistencies in the present case were sufficient to render the Receipt non-genuine. The RAD's reasoning on this issue was intelligible and transparent. Indeed, if accepted the applicant's position implies that it would be unlawful for the RAD to find a receipt to be fraudulent based on inconsistencies with the example in the NDP. The applicant did not refer to any law or rule that constrained the RAD's ability to assess a receipt against an example in the NDP and reach a conclusion on the merits of each submitted receipt.

[24] I therefore conclude that the applicant has not demonstrated a reviewable error in the RAD's findings related to the Receipt.

C. Alleged Reviewable Error related to Mr Shuiguan Lin's Letter

[25] The applicant's friend, Mr Shuiguan Lin, provided a short letter that the applicant tendered into evidence. In relevant part, the letter stated that the applicant was a Christian and was one of his fellow church members. The letter advised that after certain events occurred, Mr Shuiguan Lin observed that the applicant became very sad and very down. "Seeing him so down, I comforted him. I preached Christianity to him. In Jan 2019, [the applicant] joined our church

house. As the religion is not allowed [the applicant] was detained and fined. Because of the persecution, he had to leave China and went to Canada for protection.”

[26] The RAD gave the letter “medium weight”. It concluded that the letter was insufficient to establish the applicant’s allegations, comparing it to the numerous negative credibility findings with respect to inconsistencies in the applicant’s statements to the CBSA and his testimony about his arrest, as well as the submission of non-genuine documents purporting to corroborate his arrest and detention.

[27] The applicant submitted that the RAD made a reviewable error by giving the letter medium weight. According to the applicant, the RAD was obliged to give the letter either full weight (in which case the letter corroborated his position that he was a Christian and member of a house church and therefore feared persecution in China) or no weight at all. The applicant relied on *Osikoya v Canada (Citizenship and Immigration)*, 2018 FC 720, at paras 50-53.

[28] The respondent submitted that the RAD made no such error. Mr Shuiguan Lin had no first-hand evidence to give about the applicant’s arrest, detention and release. He only had personal knowledge that he preached Christianity to the applicant, that he believed the applicant to be a Christian, and that they were members of the same house church. The RAD made no reviewable error in giving the letter medium weight.

[29] In reply, the applicant submitted that Mr Shuiguan Lin had first-hand knowledge to provide evidence to support the applicant’s substantive claims for *IRPA* protection, but failed to

follow that evidence to its logical conclusion and failed to explain why it did not accept that evidence as supportive of the applicant's claims.

[30] I agree with the respondent that RAD did not make a reviewable error. The concerns in *Osikoya* are not engaged in this case. In the pertinent paragraph in the RAD's reasons, the RAD expressly recognized that Mr Shuiguan Lin introduced the applicant to Christianity because he was sad and that the applicant joined his house church in January 2019. With respect to Mr. Shuiguan Lin's statement that the applicant was detained and fined, the RAD noted that the letter did not provide any detail about the arrest or how Mr Shuiguan Lin obtained knowledge of the applicant's arrest and detention. On that basis, the RAD gave the letter medium weight. As I read the decision, the RAD was not analyzing the authenticity or credibility of the letter or its contents. Rather, the RAD recognized that some of the letter's contents came from its author's personal knowledge, and some did not. The Court in *Osikoya* recognized the same distinction, albeit in evidence provided by two different parties: *Osikoya*, at paras 51-52. In addition, the Court has recognized that it is open to a decision maker to assess the weight or probative value of evidence without considering whether it is credible: *Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067, at paras 25-27; *Arsu v. Canada (Citizenship and Immigration)*, 2020 FC 617, at paras 37, 41. Here, the RAD found that the part of Mr Shuiguan Lin's letter that came from his personal knowledge was insufficient to establish the applicant's allegations, given the RAD's concerns about other elements of the applicant's evidence. The overall weight given to the letter reflected its mixed contents. The RAD made no reviewable error in reaching its conclusion.

D. *Alleged Reviewable Error related to Statements at the Port of Entry (“POE”)*

[31] The applicant’s written submissions contended that the RAD unreasonably impugned his allegations based on inconsistencies between his testimony and his statements to immigration officials at the POE. These submissions were not raised at the oral hearing.

[32] The applicant argued that the RAD placed “undue emphasis” on discrepancies between the applicant’s POE statements, his Basis of Claim and his testimony at the RPD hearing. The applicant gave inconsistent evidence about the police officers at his first CBSA interview, his second CBSA interview and his testimony at the RPD.

[33] As is apparent from the analysis above, the RAD’s negative credibility inferences about the inconsistencies between the applicant’s testimony and the POE statements were not the sole basis for its conclusion on the applicant’s credibility or the credibility of his evidence: see *Güven v. Canada (Citizenship and Immigration)*, 2018 FC 38, at paras 42, 43-46; *Cetinkaya v Canada (Minister of Citizenship and Immigration)*, 2012 FC 8, at para 51. Indeed, there were other inconsistencies in his evidence (beyond those discussed in these Reasons) that the applicant did not challenge before the RAD.

[34] In the circumstances, there is no basis for the Court to intervene on the basis that the RAD gave undue emphasis to discrepancies based in part on his POE statements.

III. Conclusion

[35] The application is dismissed.

[36] Neither party proposed a question to certify for appeal and none will be stated.

JUDGMENT in IMM-9254-21

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. No question is certified for appeal under paragraph 74(d) of the *Immigration and Refugee Protection Act*.

"Andrew D. Little"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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