

Federal Court



Cour fédérale

Date: 20230828

Docket: IMM-6949-22

Citation: 2023 FC 1160

Ottawa, Ontario, August 28, 2023

PRESENT: Mr. Justice Pentney

BETWEEN:

JUN ZHAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Jun Zhan, 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 Applicant concedes that there was a discrepancy in his evidence regarding his passport (and former passport), but he submits this is a peripheral matter. He challenges the

RAD's credibility findings and says that it failed to assess the core element of his claim relating to his adherence to Falun Gong. The Applicant contends that the RAD's failure to analyze this essential aspect of his refugee claim makes its decision unreasonable.

[3] I do not agree. The RAD made several credibility findings, listed below, which added up to undermine his overall credibility. Its conclusion that he had failed to establish that he is a genuine practitioner of Falun Gong is based on the evidence, clearly explained, and reasonable.

[4] For these reasons, the application for judicial review will be dismissed.

I. Background

[5] The Applicant is a citizen of China, who says he fled the country fearing persecution from police and public security authorities because of his practice of Falun Gong. He states that he began to practice Falun Gong after a friend told him about the health benefits. One day, he saw a police car outside of the location where his Falun Gong group practiced and then went into hiding. He learned that several of the group members had been arrested, and another member was in hiding. With the assistance of a smuggler, the Applicant says he obtained a visitor's visa to Canada; he arrived in August 2018 and claimed refugee status. Subsequent to his arrival, the Applicant was advised by his sister that officers from the Public Security Bureau [PSB] visited his home in China several times asking about his location.

[6] The RPD rejected the Applicant's claim, finding that his claim to be a Falun Gong practitioner lacked credibility. On appeal, the RAD disagreed with certain of the RPD's

credibility findings, but nevertheless dismissed the appeal based on its own assessment of the Applicant's credibility. The key findings of the RAD are discussed below, in the context of the analysis of the Applicant's submissions on judicial review.

II. Issues and Standard of Review

[7] The only issue in this case is whether the RAD's decision is reasonable. This is to be assessed in accordance with the framework set out by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[8] In summary, under the *Vavilov* framework, 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). An administrative decision-maker's exercise of public power must be "justified, intelligible and transparent" (*Vavilov* at para 95). The onus is on the Applicant to demonstrate flaws in the decision that are "sufficiently central or significant" (*Vavilov* at para 100).

[9] The decision should be assessed in light of the history and context of the proceedings, including the evidence and submission made to the decision-maker (*Vavilov* at para 94). A reviewing court should not interfere with a decision-maker's factual findings "absent exceptional circumstances" (*Vavilov* at para 125). However, a decision-maker's failure to "meaningfully grapple with key issues or central arguments raised by the parties" may render a decision unreasonable (*Vavilov* at para 128).

III. Analysis

[10] The Applicant argues that the RAD decision is unreasonable, focusing on four elements, listed below. Under each heading, I will briefly summarize the RAD's findings, then the Applicant's submissions, followed by my analysis of each.

A. *Discrepancies regarding his previous passport*

[11] A key finding by both the RPD and the RAD was that discrepancies between the documentary evidence and the Applicant's testimony about the passport he used to travel to Canada and his previous international travel undermined his credibility. The Applicant testified that this passport was genuine, and that his trip to Canada was his only international travel. The RPD pointed out that this version of the Applicant's passport contained an official notation indicating that it was a replacement for a previous passport and included the number of that original passport. A copy of the previous passport had been included with the Applicant's application for a Canadian visitor's visa, and it showed that he had previously travelled to Brunei.

[12] When questioned by the RPD about this, the Applicant stated that he did not know anything about this, that the earlier passport was forged by the smuggler and that he had no clue about the indication that he had travelled to Brunei. The RPD did not find his explanation to be credible, and found that his testimony undermined his credibility.

[13] The RAD was also not persuaded by the Applicant's explanation on this point, noting that he had testified that the passport was genuine and had been issued before his involvement with Falun Gong and the smuggler. The RAD concluded that the passport could be relied on for the truth of its contents, including the notation that it was a replacement for a previous passport. Based on this, and considering the Applicant's testimony on this point, the RAD stated:

From this, it would appear that the [Applicant's] claims of not ever having more than one passport or leaving China prior to coming to Canada are falsehoods and, on a balance of probability, I find that that [Applicant] had his previous passport cancelled and replaced by the one dated May 29, 2018, in order to conceal his prior international travel to Brunei, and that it is for this same reason that he continues to deny the authenticity of the original passport.

[14] The RAD drew a negative credibility inference from this, and found that although this was not determinative of his credibility, it was an appropriate consideration because it was not a trivial matter. Instead, the RAD found it demonstrated the Applicant's apparent ongoing willingness to mislead the Board.

[15] At the hearing, the Applicant conceded that the RAD's finding of an inconsistency was reasonable, but claimed that this was a peripheral matter that did not address the core of his refugee claim about persecution because he is an adherent of Falun Gong. The Applicant acknowledged that this inconsistency could affect his overall credibility.

[16] On this point, the Respondent argued that it is important to consider the ramifications of this finding (and the concession): the Applicant acknowledged being untruthful before the Board, and he persisted in that conduct after the discrepancies were pointed out to him. By any measure,

according to the Respondent, this is a major blow to the Applicant's credibility and it was a central foundation of the RAD's analysis.

[17] I agree with the Respondent on this point. The Applicant has conceded that he was not truthful in the evidence he put before the Board. While this evidence did not directly address the core of his refugee claim, it is hardly peripheral since his passport is a basic identity document, he used it to flee China (which is discussed below), and the Applicant's testimony about it was found to be completely untruthful. The RAD reasonably concluded that this undermined the Applicant's credibility.

B. *The police visit to the Applicant's home*

[18] The RAD noted that during the RPD hearing, the Applicant testified that the police had come to his home in China seeking to arrest him and to search his home shortly after he left the country. When the RPD questioned him about why he had not included these details in his Basis of Claim form or his Addendum, the Applicant stated he had not thought about it.

[19] The RAD rejected the Applicant's claim that his explanation should have been accepted because he could not be expected to know how much to include in his BOC and that he was not required to provide "encyclopaedic detail" in his narrative. The RAD found that this evidence was not a minor matter, but rather was "a – if not the – seminal detail in establishing the threat he faces in China, as he is wanted by the police." (RAD Decision at para 18). As such, the RAD found it was exactly the sort of material information that should have been recorded in the Applicant's narrative because it "most establishes the danger that he claims to face." In addition,

the RAD noted that the Applicant had been unable to provide even general information about when he first learned that the police had come to his house.

[20] Based on this, the RAD concluded:

[19] Given all of the above, I find, on a balance of probabilities, that the Appellant was not being truthful, but rather embellishing his evidence by adding this account – for the first time – in his testimony at the hearing. I find that this, too, undermines the credibility of the Appellant and his allegations of being pursued by the police. I also note that this finding is significant, as it goes to the very heart of the Appellant’s claim. His fear of persecution at the hands of the Chinese authorities, due to his Falun Gong participation, is allegedly what triggered his flight to Canada. That these allegations have been significantly undermined throws into doubt not only the allegations of pursuit, but also the foundation of the Appellant’s entire claim.

[21] The Applicant submits that the RAD misunderstood the RPD’s finding regarding the nature of the omission. Contrary to the RAD’s finding, he says that he had mentioned the police visit in his BOC Addendum. Similarly, he argues that the fact that he could not recall exactly when he learned of these visits should not weigh against his credibility because this is an inconsequential detail. The RPD had asked him to provide the day, month and year that he learned of this, and his failure to provide such specific information does not call into question his evidence that such visits happened. The Applicant contends that the RAD’s findings on this point amount to an unreasonably microscopic analysis, and that it erred in drawing a negative inference from his evidence on this point.

[22] The Respondent contends that the Applicant is simply reiterating the arguments that failed to sway the RAD. Overall, the Respondent submits that the RAD reasonably and

comprehensively dealt with the Applicant's arguments regarding this late addition to his narrative, and that this is one more reasonable credibility finding that added to the cumulative total that combined to undermine the Applicant's overall credibility.

[23] I do not agree with the Applicant that the RAD failed to take account of this BOC Addendum, and the RAD's conclusion that his testimony on this question undermined his credibility was reasonable.

[24] The RAD specifically mentioned that the Applicant had filed a BOC Addendum, dated October 16, 2020 (see paras 16 and 18), and so it cannot be said to have ignored this evidence. On the contrary, a review of the BOC Addendum confirms that the RAD's analysis is reasonable. The relevant portion of the Addendum states:

3. As well, since arriving in Canada, the police have come to look for me at my house. My daughter has told me that they have come to my house many times to locate me but she did not tell me when or how many exactly. She also told me that she tells the police that she lost contact with me.

[25] The generality of this statement stands in contrast to the Applicant's testimony that the police had come to his home seeking to arrest him on August 30, 2018. The RAD reasonably noted that this detail was omitted from the BOC and BOC Addendum, and that it was not reasonable that he would not have thought to include such a central element of his claim, in particular because he was represented by counsel. The RAD also found that this evidence went to the heart of the Applicant's refugee claim, since he says he fled China fearing persecution by the authorities because of his practice of Falun Gong.

[26] I can find no basis to question the RAD's conclusion on this point. This late addition of a crucial fact was not satisfactorily explained by the Applicant, and the RAD reasonably found that it undermined his credibility. The details he omitted from his BOC form about the arrest were key evidence that supported his claimed fear of persecution, and it was reasonable to find that only mentioning them during his testimony diminish his credibility.

C. *The PSB's continued search after the Applicant left China*

[27] The RPD found that it was not logical that the police would continue to search for the Applicant after his departure, given that he had used his own passport when leaving the country and authorities would have known that he had departed because China has such strict exit controls and authorities have access to so much information.

[28] The RAD upheld this finding, noting that the Applicant had not challenged it in his appeal submissions, and also that it agreed with the substance of the RPD's analysis.

[29] The Applicant argues that this is unreasonable speculation. The RAD had no way of knowing whether authorities would have actually obtained the information about his departure, or why they might continue to harass his family even if he had left. He also noted that the PSB came to his house seeking his whereabouts, which is different than coming to find him there. On this reading of the evidence, the Applicant submits that it was entirely plausible that Chinese authorities would come to his house to question his family members, because his departure from China would probably raise suspicions about his activities and location.

[30] The Respondent submits that this argument cannot be accepted because the Applicant did not challenge the RPD's finding in his RAD appeal. It cannot be raised for the first time on judicial review, according to the Respondent. In addition, the Respondent says that the RPD's and RAD's findings on this point are reasonable. In its written memorandum, the Respondent makes the following submission: "the Applicant's argument that his departure would, on the one hand, raise police suspicions (i.e. he concedes they were aware that he had left the country), but on the other, they would still look for him, makes no sense and does not show an error." (Respondent's Factum at para 35).

[31] I agree with the Respondent that the Applicant's argument on this point must fail because he did not challenge the RPD's findings in his RAD appeal, but rather he raised an argument about a finding that the RPD did not actually make. In his RAD submissions, the Applicant argued that the RPD had erred in finding it to be implausible that he had been able to leave China using his own passport. As the RAD correctly noted, this is not, in fact, what the RPD found and so it did not address this argument.

[32] On the substance of the matter, I agree to a degree with the Applicant's submission that to the extent this is a plausibility finding, the RAD's conclusion is questionable. However, upon a closer examination, I find that the RAD did not make a general plausibility finding, but rather considered the Applicant's evidence in the context of his overall claim. The RPD set out the evidence regarding the tracking and control mechanisms used by the Chinese government, including its strict exit controls, which are aided by the biometrics embedded in its official passports. It also noted that such information is available to police officials and the system has

been used to track down Falun Gong practitioners. Based on this, the RPD found that the Applicant's claim that police had come to his home searching for him on many occasions was not credible, and that it was an embellishment to bolster his claim.

[33] On appeal, the RAD agreed with the RPD's analysis and found that this undermined the Applicant's credibility of the claims that the PSB has repeatedly sought him at his home in China.

[34] Two things should be noted about this finding: first, it is largely based on the evidence about the nature and extent of the Chinese government's tracking system and strict exit controls, and the Applicant takes no issue with that. Second, the RAD's specific finding is that the Applicant's evidence, set out in his BOC Addendum and his testimony, was that the PSB had come to his home on many occasions, seeking to find him. As noted above, the Applicant's BOC Addendum states: "...the police have come to look for me at my house... [and] they have come to my house many times to locate me..." There is no evidence that the Applicant's daughter or other family members were questioned at length or otherwise pressured to disclose the Applicant's specific location; instead, he says the police came looking for him. This is the basis for the RPD's and RAD's conclusion that it was not reasonable to think that the police would have done this, given their ready access to the exit control information that would show he had departed the country.

[35] On the specific evidence before it, and in the context of the case as a whole, I find the RAD's conclusions on this point to be reasonable.

D. *The sur place claim*

[36] The RAD found that the Applicant had failed to establish that he is a genuine Falun Gong practitioner and to demonstrate that his Falun Gong activities in Canada supported a finding that he was at risk of persecution if he returned to China. The RAD found that the Applicant had tendered almost no specific evidence with respect to his Falun Gong activities in Canada, nor did he provide any evidence of any sort of publicity or coverage of his activities here. The RAD concluded at paragraph 28:

Given this, even if one were to accept that the Chinese authorities engage in some sort of widespread monitoring of overseas Falun Gong activities, there has been no indication or evidence tendered to indicate that accounts of the [Applicant's] activities have appeared in the public realm or media, which begs the question of how the authorities he fears could have become aware of his activities in Canada.

[37] The Applicant submits that the RAD ignored the ample documentary evidence about the extent to which China monitors Falun Gong practitioners, including information from Canadian representatives. This includes taking photographs of Falun Gong protesters at overseas embassies, and allegations that government spies monitor such activities and report back. The Applicant argues that the RAD applied the wrong test: the question is not whether the Applicant's practice of Falun Gong in Canada has come to the attention of Chinese authorities, but rather whether there is a reasonable chance that he would face persecution due to his association with the practice in Canada. The Applicant contends that the RAD was not able to undertake a realistic assessment of what information Chinese authorities collect in Canada and

whether his religious activities were being monitored by the Chinese government. Because of this, the Applicant submits that the RAD's finding is unreasonable.

[38] The Respondent submits that the RAD engaged with the evidence, considered the documentary evidence about the Chinese government's monitoring of overseas activities as well as the photographic evidence submitted by the Applicant, and reasonably concluded that he did not have a credible *sur place* claim.

[39] I agree with the Respondent's argument. The RAD conducted a nuanced and thorough review of the evidence of the *sur place* claim. The Applicant does not mention the RAD's findings regarding the lack of specificity in his evidence about his activities in Canada, or the absence of evidence that any of the photographs he submitted had become publicly available. These findings are core to the RAD's overall conclusion on this point, and I can find no basis to find them to be unreasonable. The Applicant did not provide sufficient evidence to support his *sur place* claim, and the RAD's conclusion is based on the evidence that he did bring forward, as well as its assessment of the documentary evidence. The conclusion is also explained in clear terms. It is reasonable.

E. *Conclusion*

[40] For all of the reasons set out above, the application for judicial review will be dismissed. The RAD's analysis meets the reasonableness test, and its findings on each of the credibility issues discussed above, as well as others mentioned in its decision, added up to undermine the credibility of the Applicant's claim. The RAD's analysis is based in the evidence and responsive

to the Applicant's submissions on appeal. The findings are clearly explained. That is all that reasonableness requires.

[41] The Applicant's written submissions set out a number of other arguments about the RAD decision, but these were not addressed during the hearing. I would add that I am not persuaded by any of these other claims.

[42] I am also not persuaded by the Applicant's more general submission that the RAD failed to make determinative findings on whether he is a genuine adherent of Falun Gong, which lies at the heart of his refugee claim. Based on the accumulated weight of the negative credibility findings it made, the RAD found that the Applicant had failed to establish that he is a genuine Falun Gong practitioner (RAD Decision at para 30). While I agree with the Applicant that the decision does not contain much analysis of the Applicant's knowledge of Falun Gong, this is not fatal, given the other findings made by the RAD. On this point, it should be mentioned that the RAD notes at several points in its decision that the Applicant did not provide detailed evidence regarding his practice or about its significance in this life. The RAD's conclusion that the Applicant failed to establish that he is an adherent of Falun Gong is both clear and reasonable.

[43] For the reasons set out above, the application for judicial review will be dismissed.

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

JUDGMENT in IMM-6949-22

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

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