Federal Court  Cour fédérale

Date: 20241002

Docket: IMM-13332-23

Citation: 2024 FC 1550

Ottawa, Ontario, October 2, 2024

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

JINGFENG HAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant Jingfeng Han is a citizen of China. He fears persecution by Chinese authorities because of his practice of Falun Gong. He thus made a claim for refugee protection shortly after coming to Canada on a multiple entry visitor visa and study permit that he obtained with the help of a smuggler.

[2] The Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB] rejected Mr. Han's claim for refugee protection. The Refugee Appeal Division [RAD] of the IRB dismissed the Mr. Han's appeal from the RPD. Credibility was an issue for both the RPD and the RAD. Mr. Han's application for leave and judicial review of the RAD decision was dismissed.

[3] Mr. Han seeks judicial review of the redetermination of his pre-removal risk assessment [PRRA] application [Decision]. The parties settled Mr. Han's previous judicial review application of the PRRA by the Applicant discontinuing the application and the Respondent agreeing to the redetermination by a different officer.

[4] Mr. Han raises three issues in this matter, namely, whether the PRRA officer:

A. breached procedural fairness or natural justice in failing to convoke an oral hearing and to explain why none was in order;

B. treated the corroborative evidence unreasonably; and

C. erred in finding that Mr. Han would not face a serious risk of persecution as a Falun Gong practitioner if he were to return to China

[5] For the reasons below, I find that the officer treated some of Mr. Han's corroborative evidence unreasonably and erred in finding that he would not face a risk of persecution in returning to China. The judicial review application thus will be granted.

[6] See Annex "A" for relevant legislative provisions.

II. Standard of Review

[7] A reasonable decision is one that exhibits the hallmarks of justification, transparency and intelligibility, and is justified in the context of the applicable factual and legal constraints: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 99. The party challenging an administrative decision has the burden of showing that it is unreasonable: *Vavilov*, above at para 100.

[8] Questions of procedural fairness attract a correctness like standard of review: *Benchery v Canada (Citizenship and Immigration)*, 2020 FC 217 at paras 8-9; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54; *Vavilov*, above at para 77. The focus of the reviewing court is whether the process was fair in the circumstances: *Chaudhry v Canada (Citizenship and Immigration)*, 2019 FC 520 at para 24.

III. Analysis

A. *PRRA officer did not breach procedural fairness*

[9] I am not persuaded that the PRRA officer erred in not convoking an oral hearing, nor am I convinced that the officer provided no explanation for proceeding without one, as Mr. Han contends.

[10] Noting the divergence in the Court's jurisprudence about the review standard applicable to this issue, Mr. Han submits in his supporting memorandum of argument that the officer's

decision not to convoke an oral hearing involves principles of natural justice that engage procedural fairness issues, and therefore, the correctness standard should apply. According to Mr. Han, the ultimate question is whether he knew the case he had to meet and had a full and fair chance to respond. At the hearing of this matter, Mr. Han argued that either review standard is met in his circumstances.

[11] The Respondent disagrees and, citing the same divergence in the jurisprudence, says that the standard of review on this issue is reasonableness.

[12] This Court has acknowledged that a division in the jurisprudence exists: *Susal v Canada (Citizenship and Immigration)*, 2022 FC 1104 [*Susal*] at para 13. In *Susal*, applying *Balogh v Canada (Citizenship and Immigration)*, 2022 FC 447, this Court adopted the presumptive reasonableness standard regarding a PRRA officer's decision to convoke an oral hearing because it ultimately turns on the interpretation and application of paragraph 113(b) of the *Immigration and Refugee Protection Act*, SC 2001 c 27 and section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*].

[13] The matter presently before me is not a case where the officer simply checked a box to indicate that a hearing should not be held. In addition to checking such a box, the Decision here states that "[a]n oral hearing was not required per s. 167 of the IRPR." This Court previously has held that that an officer's reasons on whether to convoke an oral hearing can be brief and terse, so long as they "clearly explain the reason the officer declined" to do so: *Garces Canga v*

Canada (Citizenship and Immigration), 2020 FC 749 [*Garces Canga*] at para 30. I note that *Garces Canga* also applied the reasonableness review standard to this question (at para 23).

[14] Unlike in *Garces Canga*, the PRRA officer here did not state categorically that there was no credibility issue. Reading the Decision holistically, however, I find that the officer articulated their reasons for determining insufficiencies in Mr. Han's new evidence in a manner that permits the Court to understand them. While the PRRA officer described the credibility determinations of the RPD and the RAD, the focus of the PRRA officer's analysis, in my view, was the sufficiency of the new evidence which presaged the outcome: *Arif v Canada (Citizenship and Immigration)*, 2021 FC 1048 at para 45.

[15] I turn next to the issue of the PRRA officer's treatment of the corroborative evidence.

B. *Unreasonable treatment of some of Mr. Han's corroborative evidence*

[16] I find that, for the most part, Mr. Han takes issue with the way the PRRA officer assessed the new evidence and asks the Court to reweigh it. This is not the task of the Court on judicial review: *Vavilov*, above at para 125.

[17] As an example, for both the RPD and the RAD, the lack of a summons was a significant issue. Mr. Han's new evidence included a summons and two translations, both of which lack the name of the person summoned. Noting that one of the translators provided evidence about inadvertence in omitting the name, the PRRA officer describes the lack of evidence about which

of the two translations is more accurate and reasons for the discrepancies between them. The officer thus finds the translations unreliable and assigns the summons limited probative value.

[18] In my view, the officer's rationale regarding the treatment of the summons is intelligible and justified. The officer did not evaluate the reliability of the source of the summons but rather found the differing translations to be insufficient proof of the contents of the summons: *Jystina v Canada (Citizenship and Immigration)*, 2020 FC 912 at para 23.

[19] As another example, Mr. Han provided support letters from his mother and father regarding different aspects of his story. I agree with Mr. Han that it was unreasonable for the officer to discount them for possible bias because they were written by close family members who are concerned with his welfare: *Cho v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 1051 at para 9; *Rodriguez Yoshizaki v Canada (Citizenship and Immigration)*, 2022 FC 451 at para 19.

[20] Given the other reasons the officer provides for assigning little probative value to the letters from family members, including the unreliability of translation, I am satisfied that this shortcoming in the officer's reasons is not sufficiently significant, in itself, to render the Decision unreasonable. As this Court previously has held, "[e]vidence tendered by a witness with a personal interest in the matter may also be examined for its weight before considering its credibility because typically this sort of evidence requires corroboration if it is to have probative value": *Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067 at para 27.

[21] I find, however, that the officer also unreasonably speculates about whether Mr. Han's father would be willing to procure improper documents (i.e. a notice of suspension of retirement allowance in retaliation for his son's Falun Gong activities in Canada) because he previously had done so by obtaining an improper visa to assist his son leave China. I note that there was no credibility issue for the PRRA officer regarding the latter.

[22] When these instances of unreasonable treatment of the corroborative evidence are considered cumulatively with the officer's unreasonable finding of no serious risk of persecution which I address next, these determinations, in my view, affect the outcome of this judicial review in favour of Mr. Han.

C. *Unreasonable finding of no serious risk of persecution in China*

[23] I find the PRRA officer reasonably explained why they found Mr. Han's evidence insufficient to establish a *sur place* claim. I determine, however, that the officer's analysis of Mr. Han's ability to practise Falun Gong in China is unreasonable and sufficiently central to warrant the Court's interference.

[24] The officer acknowledges Mr. Han's desire to practise Falun Gong freely in China and the lack of details about what that would entail in terms of activities that could be practised at home in privacy. The officer then notes that marching in Falun Gong parades or distributing Falun Gong materials outside Chinese government buildings are not among the activities in which Mr. Han has indicated an intention to participate in should he seek to practise in China. Further, the officer acknowledges that these are activities that cannot be practised at home. The

officer concludes that the submitted evidence does not support that, on a balance of probabilities, the applicant would be at risk from Chinese authorities should he choose to practise Falun Gong privately in China.

[25] I find this chain of analysis unintelligible because it assumes, unreasonably, that Mr. Han would practise at home in privacy (i.e. in hiding) to avoid risk in China, notwithstanding his stated desire to practise Falun Gong freely. I agree with Mr. Han that the officer's rationale "defies comprehension" because it also conflates political protest (i.e. marching in Falun Gong parades or distributing Falun Gong materials outside Chinese government buildings) with religious practise.

[26] In other words, I determine that the officer's reasons on the issue of Mr. Han's ability to practise Falun Gong upon return to China exhibit illogical fallacies: *Vavilov*, above at para 104. This alone is sufficient, in my view, to set aside the Decision. The officer's unreasonable discounting of the parents' support letters on the basis of possible bias, and the unreasonable speculation about Mr. Han's father securing improper documentation to assist Mr. Han leave China, reinforce this determination.

IV. Conclusion

[27] For the above reasons, the judicial review application will be granted.

[28] Neither party proposed a serious question of general importance for certification. I find that none arises in the circumstances.

JUDGMENT in IMM-13332-23

THIS COURT'S JUDGMENT is that:

1. The Applicant's application for judicial review is granted.
2. The September 12, 2023 decision of a senior immigration officer of Immigration, Refugees and Citizenship Canada rejecting the Applicant's pre-removal risk assessment, will be set aside and remitted to a different officer for redetermination.
3. There is no question for certification.

"Janet M. Fuhrer"
Judge

Annex "A": Relevant Provisions

***Immigration and Refugee Protection Act*, SC 2001 c 27.**
***Loi sur l'immigration et la protection des réfugiés*, LC 2001, ch 27.**

Consideration of application	**Examen de la demande**
113 Consideration of an application for protection shall be as follows: […] **(b)** a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;	**113** Il est disposé de la demande comme il suit : […] **b)** une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires;

***Immigration and Refugee Protection Regulations*, SOR/2002-227.**
***Règlement sur l'immigration et la protection des* réfugiés, DORS/2002-227.**

Hearing — prescribed factors	**Facteurs pour la tenue d'une audience**
167 For the purpose of determining whether a hearing is required under paragraph 113(b) of the Act, the factors are the following: **(a)** whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act; **(b)** whether the evidence is central to the decision with respect to the application for protection; and **(c)** whether the evidence, if accepted, would justify allowing the application for protection.	**167** Pour l'application de l'alinéa 113b) de la Loi, les facteurs ci-après servent à décider si la tenue d'une audience est requise : **a)** l'existence d'éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui concerne la crédibilité du demandeur; **b)** l'importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection; **c)** la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-13332-23
STYLE OF CAUSE:	JINGFENG HAN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	SEPTEMBER 26, 2024
JUDGMENT AND REASONS:	FUHRER J.
DATED:	OCTOBER 2, 2024

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