

Federal Court



Cour fédérale

Date: 20121126

Docket: IMM-1977-12

Citation: 2012 FC 1362

Ottawa, Ontario, November 26, 2012

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

JIAN BING LIU

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (Act) for judicial review of the decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated 3 February 2012 (Decision), which refused the Applicant's application to be deemed a Convention refugee or a person in need of protection under sections 96 and 97 of the Act.

BACKGROUND

[2] The Applicant is a 28-year-old citizen of China. He seeks protection in Canada from the Chinese Public Security Bureau (PSB). The following narrative was laid out in the Applicant's Personal Information Form (PIF) submitted with his refugee claim.

PIF Narrative

[3] The Applicant was born and raised in Sunjiazhuang Village, Shijiazhuang City, Hebei Province, China. His parents operated a fruit orchard on a piece of land which they leased from the village. In February 2007, his parents renewed their lease with the village for another twenty years. The Applicant used his university education to help his parents market their fruit and expand the business.

[4] In early January 2009, the village notified the Applicant's parents that it was planning to expropriate the land their orchard was on to build a factory. They were directed to remove all the pear trees by 16 February 2009, or the land would be cleared by bulldozers. The compensation the village offered the Applicant's parents was not even enough to cover the investment they put into the business that year, much less their labour costs. The Applicant felt that as the oldest son in his family it was his responsibility to sort out the problem.

[5] In mid-January, the Applicant went to the village government to talk about the expropriation. After talking to officials a few times he was finally seen by an officer in late January 2009. The officer had the Applicant fill out a complaint form and said that he would be advised of the outcome. The Applicant did not think anything would come of this, and so he decided he should

talk to a higher level of authority. The superior level of authority to the town government was the municipal government.

[6] At the end of January 2009, the Applicant went to talk to the municipal government. He was asked to fill out another form of complaint, and told to wait until a government official had time to see him. He waited one week, and then was told that he should return home and the matter would be reviewed. The Applicant returned to the municipal government building and was told by a clerk that the town government was in charge of the matter and the municipal government was not going to change the town's decision.

[7] The Applicant returned to the town government on 13 February 2009, and tried to negotiate the matter with the mayor. The mayor was not open to changing the decision. The Applicant became very frustrated and angry and shouted "Don't you know you are destroying life for a family? We are human beings, we are not animals. You are officials for ordinary people, and it is your responsibility to take care of our life instead of destroying our life." The mayor shouted "Get out of my office!" and the Applicant was escorted out of the office by three security guards. The Applicant shouted in the lobby of the building "Don't trust the government; they play with people like we are nothing. The government is corrupted! Officials are corrupted!" An official demanded the Applicant stop shouting and the Applicant yelled "You officials of the Communist Party are corrupt, you are all the running dogs of the government, you treat people like trash." The official started saying something to the person beside him, and the Applicant overheard someone in the lobby say "You are in serious trouble now, the one is the head of the PSB". The Applicant realized the severity of the situation, and fled the government building and went to hide at his uncle's house.

[8] Later the same day, the Applicant's wife called him and said the PSB had showed up at their house looking for him. The PSB alleged the Applicant had interfered with their authority, disrupted the government and social order, insulted government officials, and spread antigovernment rumours. The Applicant's wife said the officers seemed angry and aggressive, and they demanded the Applicant report to them immediately.

[9] The Applicant stayed in hiding, but kept in contact with his family. The Applicant's wife told him that all the trees at the orchard had been cut down and the land taken away. PSB officials were still coming to the Applicant's home to look for him, and they had gone to the home of other relatives as well. The PSB officials threatened the Applicant's wife and parents that if the Applicant continued hiding, they would be punished instead. The Applicant found out that his neighbour who also owned an orchard, Mr. Gao, had protested his land being taken away by the government and had been arrested.

[10] After learning about Mr. Gao, the Applicant felt there was no way he could remain in China and be safe. He hired a smuggler to make arrangements for him to come to Canada. The Applicant arrived in Canada and made his refugee claim on 21 July 2009. Since coming to Canada, the PSB still comes looking for the Applicant every 3-4 months, and Mr. Gao is still in custody.

[11] The RPD heard the Applicant's claim on 29-30 June 2011 and refused it on 1 February 2012. It notified the Applicant of the Decision on 3 February 2012.

DECISION UNDER REVIEW

[12] The RPD found that the Applicant was not credible, and refused his claim on this basis. The RPD was concerned that the Applicant did not provide any education or employment-related documents, or any documents such as a driver's license which would establish that he was actually in China after 2006. The Applicant explained that he was never employed in China and the smuggler who brought him to Canada took his school documents while in was in Toronto. The RPD did not accept this explanation; it did not make sense that the Applicant would allow the smuggler to take his documents when he was safe in Canada and when he would need them in order to find employment.

[13] The RPD did not think the Applicant's testimony about his interactions with the authorities in China was credible. The RPD cited the Federal Court of Appeal's decision in *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (CA) as establishing that there is a presumption of truth in regards to the Applicant's testimony, unless there is reason to doubt its truthfulness. The RPD also cited *Dan-Ash v Canada (Minister of Employment and Immigration)*, (1988) 93 NR 33 (FCA), for the following: "The existence of contradictions in the evidence could be a valid basis for a finding of a lack of credibility. However, even when the evidence is uncontradicted, it may be that the evidence does not accord with the known country conditions." The RPD stated that it is entitled to assess credibility based on rationality and common sense, and to compare the Applicant's testimony to the preponderance of probabilities that a reasonable person would expect to have occurred, considering the circumstances.

[14] The RPD did not think that the Applicant had produced sufficient credible evidence that his parents had operated an orchard on leased government land. The Applicant produced a copy of the

lease which was made in 2007 for a period of twenty years. The Applicant testified that his parents' annual rent was 20,000RMB, but did not produce any receipts for rent payments his parents allegedly made to the town. In his PIF the Applicant said that his parents renewed the lease for the orchard, but the copy of the lease submitted into evidence did not refer to a previous lease. The Applicant also never referred to his parents having that piece of land before 2007. In essence, the Applicant produced no evidence that his parents were running an orchard before 2007.

[15] The Applicant testified that his parents invested 80,000RMB into the orchard, but the only documentation he produced in this regard were two receipts for fertilizer. The Applicant stated that his parents could not find any other receipts, but the RPD found that it was not plausible that his parents would not keep any other receipts if they were indeed running a business. The Applicant testified that after graduating from university he helped his parents run the business by advertising to wholesalers and advising them on ways to plant and package the fruit. The RPD stated that it would therefore be reasonable to expect that the Applicant would have also helped them to keep records, since he testified that he had no other job.

[16] The RPD did not think the Applicant was credible with regards to the expropriation notice he claims the village gave to his father. The Applicant did not produce a copy of the expropriation notice, but claimed that his parents sent him the notice and it got lost in the mail. The Applicant was asked why this document was sent separately from all the other documents, and he responded that his parents had trouble finding it and so sent the other documents first and this one separately. The RPD did not think it credible that the Applicant's parents would have misplaced such an important document, especially when considering they would have known it would be important to the Applicant in establishing his refugee claim. The Applicant filed his claim in July 2009, with the

assistance of counsel. Presumably, he would have alerted his parents as to what documents he required.

[17] The Applicant also said that his parents borrowed money from his uncle and some friends to invest in the orchard, and when they received the 20,000RMB as compensation they used that money to pay down the loans. The Applicant testified there were no corroborating documents related to the loans; the RPD did not think it credible that there would be no documentation of any sort.

[18] The Applicant did submit a notice of compensation addressed to the Applicant's father, indicating that factories are to be built in the village, and that he would be compensated 20,000RMB for the land. The document was only four lines long, and not very businesslike in contrast to the lease agreement. The RPD noted that it did not include the Applicant's father's address; nor did it include the location or description of the land where the orchard was located. The RPD found, on a balance of probabilities, that this document was not genuine.

[19] The RPD concluded that the Applicant's testimony about the 20,000RMB compensation was not credible. He testified that he had no documentation related to his parents receiving the money because his parents were paid in cash. The RPD pointed out that the village had a sophisticated lease agreement, and the Applicant testified that the village gave notice of the compensation in writing. It would be reasonable to assume that the Applicant's parents would have at least obtained a receipt upon payment of the compensation.

[20] Furthermore, the notice of compensation submitted by the Applicant states that compensation would begin after the lessee returned the lease. The Applicant confirmed that the

20,000RMB compensation was to be paid once his parents returned the land lease. The Applicant's explanation as to why his parents still had the lease but had also been paid the compensation was that, because his parents were not in agreement with the situation, village officials came to their house and gave them the money in cash, stating that whether they surrendered the lease or not that was all the money they would get. The RPD found this was not a reasonable explanation; it did not make sense that the officials would have given the Applicant's parents cash if they did not have to. As for the notice of compensation, the RPD concluded that "As fraudulent documents of all sorts are readily available in China, I find, on a balance of probabilities, that this simple document cannot be relied upon as being genuine."

[21] At the hearing, the Applicant provided the RPD with two photographs of the alleged orchard, showing a field of trees, some of which have their branches cut off. The Applicant testified that the photos were taken in February 2009, by a friend of his father. The RPD found the photographs did not corroborate that this orchard is the one his parents operated, or that the field pictured was being readied for the removal of the trees.

[22] The RPD also noted inconsistencies in the Applicant's oral testimony and his PIF as regards the timing of when he approached government officials. In his PIF, the Applicant claimed he went to the municipal offices at the end of January, but in his oral testimony the Applicant said he went to the town authorities from January 12-14, and the municipal authorities from January 15-17. The incident that caused the Applicant to go into hiding allegedly occurred two weeks after the Applicant visited the municipal authorities; according to his PIF this was on 13 February 2009, but according to the dates he indicated in his oral testimony this would have been at the end of January or the beginning of February. The RPD concluded it would be reasonable to expect the Applicant to

remember when this event occurred, as it profoundly changed his life, and the RPD drew a negative inference from the Applicant's failure to explain the inconsistency.

[23] With regards to the incident at the mayor's office that sent the Applicant into hiding, the RPD asked why he was not apprehended right then after causing such a large disturbance. The Applicant replied that he did not know. The Applicant testified that the PSB continue to come looking for him every two weeks. When asked to confirm this, he said they come every two to three weeks. However, in the Applicant's PIF he said that the PSB comes looking for him every three months, not weeks.

[24] Further, the RPD did not find it plausible that the PSB would continue looking for the Applicant so diligently over such a long period of time, when all that the Applicant did was shout at and insult officials on one occasion. At the time of the incident the Applicant was 24 years old, and he was not a party to the contract that was allegedly breached. The RPD stated that the "resources expanded by the PSB on the search for the claimant appear to be out of proportion to the 'crime' the claimant allegedly committed."

[25] The Applicant testified that the PSB did not leave a summons at his house when they came looking for him. The RPD said that the documentary evidence suggests that a summons would almost always be issued to the individual rather than the household or family member. It is common in China for the summons to be left with family members, instructing them to pass it along to the person named. This is not actually the proper procedure, but it is very common in cases where the person in the summons is not easily locatable. The RPD found that, in view of the fact that the Applicant claims the PSB has been searching for him for two and a half years and continues to search for him, they would likely have left some form of summons at some point. The RPD drew a

negative inference from the absence of a summons or some other documentation to show that the PSB was still looking for the Applicant.

[26] At the hearing, the Applicant was asked how his parents have been affected by the events that unfolded. He testified that PSB threatened that his parents would be penalized if they did not reveal where the Applicant was. However, he also said that his parents were hired by the village to do sanitation work, and the village has been paying them. Although this job is menial, the RPD found that the fact that the town gave the Applicant's parents employment demonstrates that the PSB is not interested in penalizing them for the absence of their son.

[27] The Applicant also testified that his neighbour, Mr. Gao, also had his orchard expropriated. The Applicant said that by the time Mr. Gao learned about the compensation his land had already been expropriated, and when he complained the town government had him arrested for interfering with the social order. When the Applicant was asked what Mr. Gao did to provoke this treatment, he replied that maybe he shouted at an officer, and then added that his parents learned from other villagers that Mr. Gao had shouted. The RPD found that the Applicant could not rely on Mr. Gao as a similarly situated person, as he did not really know why Mr. Gao was arrested, and his family did not obtain any information directly from Mr. Gao's family, but had just heard rumours.

[28] Based on the sum of the above negative credibility findings, the RPD concluded that the Applicant is not wanted by the PSB in China. The Applicant had not satisfied his burden of demonstrating that he would be personally subjected to a risk to his life or a risk of cruel and unusual treatment or punishment or a risk of torture by any authority in China. As such, the RPD rejected his claim.

ISSUES

[29] The Applicant raises the following issues in this application:

- a. Whether the RPD erred in its general credibility finding;
- b. Whether the RPD erred by drawing a negative inference as to the Applicant's credibility from a lack of summons or arrest warrant.

STANDARD OF REVIEW

[30] The Supreme Court of Canada, in *Dunsmuir v New Brunswick* 2008 SCC 9, held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[31] In *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (FCA) the Federal Court of Appeal held that the standard of review on a credibility finding is reasonableness. Further, in *Elmi v Canada (Minister of Citizenship and Immigration)*, 2008 FC 773, at paragraph 21, Justice Max Teitelbaum held that findings of credibility are central to the RPD's finding of fact and are therefore to be evaluated on a standard of review of reasonableness. Finally, in *Aguilar Zacarias v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1155, Justice Mary Gleason held at paragraph 9 that the standard of review on a credibility determination is reasonableness. The standard of review on the first issue is reasonableness.

[32] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with “the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.” See *Dunsmuir*, above, at paragraph 47, and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraph 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the “range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

STATUTORY PROVISIONS

[33] The following provisions of the Act are applicable in this proceeding

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries;

[...]

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d’être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques:

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

[...]

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n’a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

[...]

[...]

ARGUMENTS

The Applicant

[34] The Applicant submits that the RPD engaged in an overly minute examination of the evidence he submitted, and that its expectations about the documents he should have provided were unreasonable. The Applicant submits that there was no basis for the RPD's findings as to what documents should have been available in regards to his parents' land.

[35] The RPD took issue with the fact that the renewal of the lease submitted by the Applicant does not reference the original lease. This was unreasonable. The Applicant provided adequate evidence that his parents owned the land in question during the relevant period by providing the lease, and it was not reasonable of the RPD to expect more. The RPD does not have specialized knowledge about the form of leases in China, and there is no basis for an assumption that a renewal would reference a previous lease.

[36] The RPD also expected the Applicant to produce receipts for money paid to his parents, but there is no evidence that receipts are given for all financial transactions in China. The Applicant says that even if there were receipts, it is unreasonable to expect his parents would have been able to produce them.

[37] The Applicant is from rural China, and there was no evidence before the RPD to suggest that keeping documents is the normal practice there. The Applicant is educated, but this does not necessarily mean that his parents would be conscientious in obtaining receipts and keeping financial records. The Applicant gave his parents general advice and assisted in advertising, but he was not directly involved in the business. Considering the cultural context, without evidence that cash transactions always gives rise to receipts in rural China, it was unreasonable for the RPD to have expected more.

[38] The Applicant also submits that it was unreasonable for the RPD to draw a negative inference from the fact that the Applicant was unable to provide the notice of expropriation. The Applicant explained that it took his parents longer to find this document, and so they sent it separately and it got lost in the mail. The Applicant submits that there is nothing implausible about this explanation, yet the RPD simply rejected it. The RPD found that it did not think it credible that

the Applicant's parents would not have stored the document in a safe place, but did not provide any reasonable basis for this finding.

[39] Further, the RPD's statement that the Applicant's parents should have known the Applicant would require the document to establish his refugee claim is completely speculative. The idea that the Applicant's parents would know that documents would be required for a Canadian refugee hearing is placing an undue burden on the level of legal knowledge expected of the Applicant and his family.

[40] The RPD's assertion that "As fraudulent documents of all sorts are readily available in China, I find on a balance of probabilities, that this simple document cannot be relied upon as being genuine" is an error because the RPD cannot conclude that, because fraudulent documents are available in China, that all documents from China can be presumed to be fraudulent (see *Lin v Canada (Minister of Citizenship and Immigration)*, 2012 FC 175).

[41] The RPD was also unreasonable in attributing a negative inference to the fact that the Applicant may have been slightly off with his dates as to when the incidents in question occurred. The Applicant was adamant in his oral testimony that he went to the municipal office on January 17, and stated in his PIF that he went at the end of January. This is not even necessarily a discrepancy, and even if it were it is not so serious as to justify a negative inference.

[42] The RPD also engaged in an extremely minute analysis of the date of the incident that caused the Applicant to go into hiding. The Applicant testified that it was two weeks between the time he went to the municipal office and the altercation on February 13, but the period appears to

have been slightly longer. It was unreasonable for the RPD to focus on these details of testimony and to draw a strong negative inference from slight discrepancies.

[43] The RPD was also unreasonable in its treatment of the lack of summons. The RPD concluded that the PSB must not be interested in the Applicant as no arrest warrant or summons was left with the Applicant's family. In coming to this conclusion, however, the RPD ignored evidence that stated otherwise. An IRB document states that there are substantial regional variances in the practices of law enforcement, and that there is "wide administrative discretion throughout the country." The same document also says that "arrest procedures differ from locale to locale, having to conform to local customs reflecting indigenous circumstances." Not only that, the documentary evidence also suggests that arrest warrants are only used in extreme cases in China.

[44] Recent decisions of the Federal Court have found that requiring an arrest warrant or summons is a reviewable error. In *Liang v Canada (Minister of Citizenship and Immigration)*, 2011 FC 65, Justice Michel Shore said at paragraphs 12-14:

According to the documentary evidence, the Applicant's testimony that no warrant/summons was left at her home, could have very well occurred. Negative findings of credibility could very well lack reasonableness where documentary evidence clearly indicates that which an applicant says occurred, could in fact have occurred.

The documentary evidence indicated that it is not usual procedure to leave a summons/warrant with any other person other than the person to whom it is issued. Thus, the PSB in this case appears to have followed usual procedure.

The documentary evidence also stated the procedures followed by the PSB vary from region to region; and, in most instances, routine procedures or rules give way to norms of the region. Therefore, if the norm in the Applicant's region is for the PSB not to leave a summons/warrant for anyone other than the person who is named, then presumably that norm is followed regardless of how many times

the PSB visits the Applicant's home or how many people in the Applicant's house church would have been arrested and sentenced.

[45] The RPD provided no reason as to why it expected a summons to have been left with the Applicant's family, and its conclusions were unreasonable in this regard. The case law demonstrates that this is an erroneous assumption and a reviewable error.

[46] The Applicant submits that there was nothing to contradict the overall credibility of his testimony, and that the sum of the errors discussed above warrant the granting of this application. The Applicant requests that the Decision be quashed and sent back for re-determination.

The Respondent

[47] The Respondents points out that the RPD found the Applicant's story to be entirely non-credible, disbelieving the very basis of his claim that his parents operated an orchard as alleged, and that the orchard had been expropriated. The RPD specifically found that significant documents were missing, one document was not believable, and that the Applicant's evidence regarding the timing of the alleged incidents was inconsistent. The RPD's findings were not overzealous or peripheral, but were wide-ranging and went to the heart of the Applicant's claim.

[48] The RPD found that the whole of the Applicant's story was not credible. It conducted a thorough and expansive credibility determination, discussing all material aspects of his claim. In particular, the RPD found that:

- i. The Applicant provided insufficient documents to demonstrate that his parents operated an orchard on leased land;

- ii. It was implausible that the highly significant notice of expropriation got lost in the mail;
- iii. There were no corroborative documents presented to show the alleged business loans;
- iv. There were reasons to suspect that the document showing compensation for the expropriated land was not genuine, which reasons went beyond the fact that fraudulent documents are widely available in China;
- v. There was no documentation presented of the Applicant's parents having been paid the compensation money;
- vi. The photos of the alleged orchard did not corroborate the Applicant's story;
- vii. The Applicant's testimony regarding the timing of events was inconsistent;
- viii. The Applicant's testimony about how often the PSB comes looking for him was inconsistent;
- ix. It is implausible that the PSB would so diligently pursue the Applicant when all he allegedly did was yell at a municipal building one time, and that in pursuing the Applicant so diligently they would not leave a summons;
- x. It is implausible that the Applicant's parents would be employed by the municipality when, according to the Applicant's testimony, the PSB threatened his parents that they would be penalized if they did not disclose his whereabouts.

[49] The foundation of the Applicant's arguments is that the RPD erred by engaging in a microscopic analysis of the Applicant's evidence. The Applicant says that he provided adequate evidence to support his claim, and argues that there is no evidence that receipts are given for financial transactions in China, and the fact that he assisted his parents with some aspects of their

business in China does not mean that they would keep financial records. The Respondent says these are unlikely arguments, and points out that the RPD's Decision was based on the culmination of an extensive list of credibility concerns.

[50] The Respondent also points out that, with respect to the RPD's finding that the Applicant's parents would have known the importance of the expropriation notice to his refugee claim, the finding was, in fact, that the Applicant and his legal counsel themselves would have known its importance, and would have advised his parents accordingly. It was reasonable for the RPD to assume that the Applicant's parents would have treated this document carefully.

[51] The RPD also provided specific reasons for doubting the validity of the notice of compensation that went far beyond the simple fact that fraudulent documents are available in China. The RPD's comment that fraudulent documents are available in China was made in the context of its other reasons for doubting the document's validity.

[52] The Respondent submits that, although the Applicant has paid much attention to the RPD's finding that the PSB would likely have left a summons with the Applicant's family, this is only one of more than ten significant credibility findings, and is in no way central to the determination. The Respondent points out that this finding was made specifically in the context of the Applicant's testimony that the PSB have sent people to look for him every two to three weeks for the past two years. It was in this context that the RPD stated that at some point the PSB would likely have left a summons. Though this procedure is not absolutely correct, it is quite common. In any event, the Respondent submits that this is a minor finding that it is not determinative, and the RPD cited many other extensive and wide-ranging credibility concerns.

[53] In sum, the Respondent submits that the Applicant was found to be not credible on several significant grounds, and reasonably so. The Respondent requests that this application be dismissed.

ANALYSIS

[54] The Applicant attacks what he believes is an overzealous and microscopic analysis of his narrative and evidence. However, there were some significant problems with the Applicant's claim and the RPD merely assessed what he brought forward, as well as what was missing. The Applicant's corroborative documents were suspect; and without a reasonable explanation, he failed to provide other corroborative documents in a situation where they would be expected. In addition, some of his timing was inconsistent, and there were some significant implausibilities.

[55] The RPD's assessment was cumulative. It is possible to take issue with some aspects of this Decision. For example, the Applicant complains that it was an unfounded supposition for the RPD to expect that the renewed lease would refer to a previous lease. This may be so, but the Applicant is taking this finding out of context. As a reading of paragraph 16 of the Decision shows, the RPD was concerned that the Applicant had produced "no evidence of any lease before the renewal, or any evidence that his parents were running an orchard before 2007." So I do not really think the RPD is imposing Canadian standards about legalities here, as the Applicant argues. The RPD is pointing to the total lack of evidence that his parents were running an orchard before 2007.

[56] Indeed, the points raised by the Applicant are often out of context. For example, as regards the important matter of the summons, the Applicant testified that the PSB came looking for him every two or three weeks (thus contradicting his PIF which said every two or three months), which would mean a significant number of visits during the material period. It did not make sense that the

PSB would expend so much time re-visiting his home merely because he shouted at a municipal official in public, instead of leaving “some form of summons.”

[57] Although it is possible to argue with individual findings and suggest that other conclusions might have been reasonable, this does not mean that the RPD’s findings fall outside of the *Dunsmuir* range. And I certainly cannot say that, cumulatively, the Decision is unreasonable. If I did, I would merely be re-weighing the evidence and substituting the opinion of the Court for that of the RPD. See *Smith v Canada (Minister of citizenship and Immigration)*, 2012 FC 1283 at paragraph 32.

[58] As the Respondent points out, the problems with the claim were many:

- a. There were insufficient documents to show that his parents’ operated an orchard on leased land - the RPD noted that the Applicant did not produce any rent receipts, or any other business receipts from running the orchard (with the exception of two fertilizer receipts), despite his testimony that his parents had invested 80,000 RMB in the business. The RPD found that it was not reasonable that there would not at least be some proper records from this business;
- b. It was implausible that the highly significant notice of expropriation would get lost in the mail;
- c. There were no corroborative documents to show the alleged business loans;
- d. The documents submitted to confirm compensation for land were suspect;
- e. There was no documentation of the compensation money being paid;
- f. The photographs of the orchard itself were suspect. On the day of the hearing, the Applicant provided two photographs of a field of trees, some of which have their

branches cut off. The adjacent trees, however, still have long branches. The panel found that these photos did not corroborate that this is the Applicant's parents' orchard, or that the orchard was being prepared for the removal of trees;

- g. There was inconsistent testimony regarding timing of events;
- h. The Applicant's testimony about how often the PSB come looking for him was inconsistent;
- i. It was implausible that the PSB would show such diligence pursuing the Applicant and not leave a summons;
- j. It was implausible that his parents would be living peacefully and be employed by the municipality if the Applicant was wanted by those authorities. Although the Applicant testified that his parents were threatened by the PSB that they would be penalized if they did not divulge the Applicant's whereabouts, he also admitted that they have been given employment by the village itself and that the village is paying them.

[59] Some matters were not explained at all by the Applicant. For example, when he was asked for an explanation as to why, after shouting at the official, the police did not apprehend him immediately, and he was allowed to leave the building, he had nothing to offer.

[60] It is possible to argue with some of the RPD's findings, but I cannot say that either individually or cumulatively they do not fall within the *Dunsmuir* range.

[61] Counsel agree that there is no question for certification and the Court concurs.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is dismissed.
2. There is no question for certification.

“James Russell”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-1977-12

STYLE OF CAUSE: JIAN BING LIU

- and -

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 13, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** HON. MR. JUSTICE RUSSELL

DATED: November 26, 2012

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