

Federal Court



Cour fédérale

Date: 20151009

Docket: IMM-7920-14

Citation: 2015 FC 1140

Ottawa, Ontario, October 9, 2015

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

YAN HUI LIU

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board [the Board] dated November 3, 2014, wherein it was determined that the Applicant is not a Convention Refugee pursuant to section 96 of the *Immigration and Refugee Protection Act 2001 c 27* [IRPA] and is not a person in need of protection under section 97 of the IRPA.

[2] For the reasons that follow, this application is allowed.

I. Background

[3] The Applicant, a 40 year old citizen of China, alleges that he has been a Falun Gong practitioner since September 2013. He joined to deal with his stress and a herniated disk, which had caused his health to suffer. His Falun Gong group was raided by the Public Security Bureau [PSB] on February 2, 2014. He was not there at that time and went into hiding after the raid.

[4] The Applicant states that the PSB went to his house to look for him while he was hiding and that they accused him of engaging in illegal Falun Gong activities, demanding that he surrender himself to them immediately. He made arrangements to flee China and traveled to Canada to seek refugee protection.

II. Impugned Decision

[5] The Board was satisfied that the Applicant had established his personal identity but rejected his claim, the determinative issue being credibility.

A. Falun Gong Profile

[6] The Applicant testified to his Falun Gong practise in China and Toronto, providing details of his reading of the Zhuan Falun, a core publication of Falun Gong, and involvement in group practice.

[7] The Applicant testified that Falun Gong cannot cure diseases but it can cleanse the body and make it healthier. The Board noted to the Applicant that he was wrong in this belief. It noted that Master Li indicates in the Zhuan Falun that a practitioner can work through the wrong-doing committed in past lives, repay his karmic debt and cure his illness. When asked why he did not know this, the Applicant replied that in China he did not have a copy of the Zhuan Falun. He would listen to the instructor talk about it. It was only in Canada that he got the book and read the theory. He also stated that the book is very deep in various places and that he did not understand it all clearly.

[8] The Board rejected the Applicant's explanations and found that a genuine Falun Gong practitioner, who sought out the practise of Falun Gong to improve his health, would be familiar with the teachings as they pertain to illness. Overall, a negative inference was drawn and the Applicant's credibility as a Falun Gong practitioner was undermined.

B. How the Applicant's Health Improved

[9] The Applicant stated it took two months for his health to improve after he began practising Falun Gong. The Board noted that his description was not consistent with the teachings in the Zhuan Falun, as Master Li indicates that one must make amends for past wrong-doings and the Applicant had made no mention of this.

[10] After being advised of the Board's concerns, the Applicant stated that he practises Falun Gong to get rid of karma and that karma was there because of things that were not good. The Board gave no weight to this answer, stating that it had given the answer to the Applicant.

[11] The Board acknowledged that the Applicant possessed some knowledge of Falun Gong practise. However, it found that the Applicant was unable to explain how he applied the general principles. The Board found that the Applicant's account of how his health improved was inconsistent with the principles of the Zhuan Falun and, if the Applicant's health improved, it was for other reasons.

C. Hukou

[12] The Applicant submitted a hukou in support of his claim. The hukou is a document which sets out the family composition of its holder and the place where the holder lives. The Board noted that the condition of his hukou was poor and rejected the Applicant's explanation for the condition of the document. The Board also noted evidence in the National Documentation Package for China that referred to fraudulent documents being easily obtained. Overall, it assigned no weight to the hukou.

D. Summons

[13] The Applicant also submitted in support of his claim a summons purportedly issued by the PSB. The Board expressed concern about a lack of address in the summons. Acknowledging that police procedure in China lacked uniformity, the Board dismissed the Applicant's explanation that everyone knows where the PSB is and how to get there. The Board also based this conclusion on country reports indicating there are specialized offices dealing with Falun Gong matters.

E. Photos and Confirmation Certificate

[14] The Applicant submitted several photos and a “Confirmation Certificate” in support of his claim. The Board was unable to conclude on the basis of the photos themselves, or the Applicant’s description of the activity depicted therein, that the Applicant was a genuine practitioner. Little weight was assigned to these documents.

[15] Overall, the Board assessed the Applicant’s credibility on the cumulative effect of the evidence, finding that he is not a genuine Falun Gong practitioner.

III. Issues and Standard of Review

[16] In my view, the Applicant’s arguments (canvassed below) amount to a consideration of whether the Board’s decision was reasonable. The parties agree, and I concur, that the standard of review applicable to issues of credibility and the weighing, interpretation and assessment of evidence is reasonableness (*Shatirishvili v Canada (MCI)*, 2014 FC 407).

IV. Submission of the Parties

A. Applicant’s Position

[17] First, the Applicant argues that the Board rejected the Applicant’s claim based on misconstruction of the Zhuan Falun text. The Applicant submits that he was entirely correct about Master Li’s views about Falun Gong as a cure for illness, as the Master states it is not a cure for illness but rather can improve a person’s health and help to rid the body of karma.

[18] The Applicant refers to relevant paragraphs in the text and submits that it is clear from the passages excerpted that he was correct in his answer to the Board's inquiry.

[19] Second, the Applicant submits that the Board erred in the balance of its assessment of his Falun Gong knowledge. By the time the Board considered the Applicant's remaining testimony about the practise and philosophy of Falun Gong, it had already determined that he is not a practitioner, which tainted all its subsequent findings.

[20] The Applicant submits that even if his health benefits were not actually the result of his Falun Gong practise, this does not mean that he is not a genuine practitioner. The jurisprudence cautions against inquiring into the validity of an applicant's religious practice rather than the sincerity of one's religious beliefs (*Huang v Canada (MCI)*, 2012 FC 1002 [*Huang*] at para 13). The RPD also failed to appreciate that simply practising Falun Gong exercises in China was enough to put him at risk of arrest and detention (*Wang v Canada (MCI)*, 2012 FC 346 [*Wang*] at para 9).

[21] Third, the Applicant submits that the RPD rejected credible documents. With respect to the hukou, the Applicant notes that the RPD is generally considered not to have any special expertise in relation to the validity of foreign identity documents. This finding of the Board was also inconsistent with its conclusion that the Applicant had established his identity, as there was no reason why a citizen of China would not have an authentic hukou (*Lin v Canada (MCI)*, 2012 FC 288 at para 49 [*Lin*]).

[22] Regarding the summons, the Applicant states the Board's finding was speculative. It cited no evidence to support its conjecture as to what information should have been included in the summons. There was no reference in the country documents to any requirement that a summons contain the information that the Board considered to be missing (*Lin* at paras 51-53).

B. Respondent's Position

[23] The Respondent argues that if the Board misunderstood the evidence, the Applicant ought to have told the Board so during the hearing. Rather, the Applicant gave explanations that the Board found unreasonable.

[24] The Respondent maintains that, in assessing the *bona fides* of the Applicant's Falun Gong adherence, the Board is entitled to question his understanding of its principles and his practise of its tenets. It was reasonable for the Board in assessing the Applicant's claim to focus on the teaching of Falun Gong surrounding the curing of illness, because the Applicant joined Falun Gong for the purpose of curing medical issues, which he claimed had in fact occurred.

[25] The Respondent also submits that the Applicant's suggestion that the Board had already determined that he was not a genuine Falun Gong practitioner, following its consideration of his evidence on the teachings of Falun Gong surrounding illness, is not supported by the record. The Board simply drew a negative credibility inference as a result of this evidence.

[26] With respect to the hukou, the Respondent argues that the Board has expertise in assessing the credibility of a claimant's statements and that this particular Board member had received training in relation to documents from China.

[27] The Respondent states that the Board's negative inference regarding the summons is not undermined by the absence of any evidence that a summons should contain the information the Board considered to be missing. The Respondent notes that jurisprudence from this Court has held that the Board may consider whether fraudulent documents are readily available in a given place.

V. Analysis

[28] While the Board made findings rejecting the Applicant's hukou and assigned little weight to the summons and the photos and confirmation certificate he submitted in support of his claim, it is clear that the Board's decision turns principally on its findings that the claimant lacked basic knowledge of Falun Gong principles and teachings. Based on those findings, the Board concluded that the Applicant is not a genuine Falun Gong practitioner and would not be perceived as such in China or Canada. The success of this judicial review application therefore turns on the reasonableness of those findings as to the genuineness of the Applicant's belief.

[29] This Court has expressed the concerns that can arise in connection with assessing the genuineness of religious belief based on questioning as to religious knowledge (see *Zhang v Canada (Minister of Citizenship and Immigration)*, 2012 FC 503, at para 12). However, it has

also acknowledged the deference due to the Board and difficult task assigned to the Board in such claims (*Hou v Canada (Minister of Citizenship and Immigration)*, 2012 FC 993).

[30] As I stated in (*Gao v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1139 at paragraph 26):

[26] My reading of the jurisprudence is that it is not improper for the Board to engage in religious questioning in an effort to gauge the genuineness of a claimant's beliefs, but that such questioning and resulting analysis must indeed focus on the genuineness of those beliefs and not whether they are theologically correct. This can be a difficult task for the Board, as it is entitled to consider whether the claimant holds a level of religious knowledge that would be expected of someone in the claimant's position but should not reach an adverse conclusion based on minutiae or holding the claimant to an unreasonably high standard of religious knowledge.

[31] In the case at hand, my conclusion is that the Board's reasoning demonstrates that it did not perform this task in a reasonable manner. Its principal basis for its finding that the Applicant was not a genuine Falun Gong practitioner was what it considered to be an incorrect answer to its question whether Falun Gong can cure diseases. The Applicant stated that Master Li teaches that Falun Gong cannot cure diseases but that it can cleanse the body and make it healthier. He said it helps a person get rid of bad things in one's body, to get rid of karma, and then health would improve naturally. The Board considered this answer to be incorrect, noting that the Zhuan Falun states that a practitioner can work through the wrong-doing committed in past lives, repay his karmic debt, and by doing so, cure illness.

[32] In his written submissions on this application, the Applicant quotes excerpts of the Zhuan Falun to support his position that his interpretation of the teachings of Master Li was correct and

that the Board had misinterpreted the text. The Respondent in turn relies on the same excerpts to support an argument that the Board was correct and argues that, in any event, the Board's interpretation of the text need only be reasonable and within the range of acceptable outcomes. However, with respect, the fact that the Respondent must rely on this latter argument supports the Applicant's position that the Board has held the Applicant to too high a standard in assessing the correctness of his understanding of religious principles.

[33] It is not the Court's role to engage in a theological analysis as to which of the parties has offered the most compelling interpretation of the Zhuan Falun text. The fact that the Respondent relies on the argument that the Board's interpretation is a reasonable one, within the range of acceptable interpretations, supports the conclusion that there are more than one possible and reasonable interpretations. It accordingly follows that it cannot be reasonable for the Board to conclude that, because the Applicant did not express an interpretation consistent with that of the Board, he did not understand basic Falun Gong principles and therefore is not a genuine practitioner. While expressed as a finding of the genuineness of his belief, the Board's analysis really goes to the soundness of the Applicant's theology, in an area in which the argument before this Court suggests there is room for divergence of theological thought or at least the manner in which such thought is expressed.

[34] The Board's reasoning can accordingly be compared to that which was rejected by Justice Mandamin in *Huang* at para 17:

[17] In result, I conclude the RPD held the Applicant to an unrealistically high standard of knowledge of Falun Gong and imposed its own understanding of Falun Gong upon the Applicant. I find the RPD's conclusion that the Applicant was not a genuine

practitioner of Falun Gong is unreasonable. Since this finding underpins other findings of the RPD that the Applicant was not sought by the PSB in China, the RPD decision cannot be sustained.

[35] I would contrast this case with the decision in *Hou* upon which the Respondent relies, in which the Court upheld the Board's finding that the claimant's knowledge was insufficient to prove he was a sincere practitioner, based on the perfunctory nature of his responses to questions posed and his inability to answer other questions. In the case at hand, the Applicant did not fail to answer the Board's questions. As pointed out by the Applicant in argument, he in fact answered it several times and with consistency. The Board simply disagreed with his answer.

[36] The Board also based its adverse credibility finding on the Applicant's answer to its question what he did which caused his health to improve. The sequence of the dialogue with the Board is important in considering this aspect of the Board's decision. The transcript of the hearing demonstrates that, after the Applicant testified that it took a little over two months for him to feel better after he started practising Falun Gong, the Board asked him what he did in those two months. He responded with an explanation of following his friend and subsequently teaching himself and said that this was everything he did that made him feel better. Later in his testimony, the Board confronts him about the fact he didn't mention making amends for his wrongdoing, and he points out that he had earlier referred to the need to get rid of karma and cleanse his body.

[37] I agree with the Applicant's submissions that it was not reasonable for the Board to reach the conclusion it did based on this testimony. The Applicant gave a factual answer to what he did in the relevant two months. It was not obvious from the Board's question that it was looking for

an explanation of the theory behind how the practice of Falun Gong can lead to health improvements. His previous answers as to getting rid of karma and cleansing the body demonstrate an understanding of that theory, and I do not consider it reasonable for the Board to have found the Applicant's credibility to be undermined based on the way he answered this question.

[38] The Board then goes on to conclude that any improvement in the Applicant's health was for reasons other than Faun Gong. However, whether the Applicant has actually achieved a health benefit from his religious practice cannot logically be part of an analysis as to whether his beliefs are genuinely held. In that respect, the Board has erred in the same manner identified in paragraph 7 of *Wang*:

[7] The Board focused heavily on the applicant's testimony that he was initially motivated to join and practice Falun Gong as a result of his insomnia. The Board rejected the claim that his practice yielded positive results in this regard because the teachings of Falun Gong prohibit practicing out of pure self-interest. The respondent has characterized this as a finding of fact and therefore deserving of deference. If it is a finding of fact, it is undoubtedly a perverse one. It is not permissible for the Board to speculate on the plausibility of a claimant obtaining personal benefits from a religious or spiritual practice, much less base a negative credibility finding on such speculation.

[39] I therefore conclude that the Board's decision is unreasonable and must be remitted for redetermination by a different member of the Board.

[40] The parties were canvassed and did not propose any question of general importance for certification for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is allowed and the matter is referred to the Board for re-determination by a different panel member. No question is certified for appeal.

“Richard F. Southcott”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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