

Federal Court



Cour fédérale

**Date: 20151105**

**Docket: IMM-3967-14**

**Citation: 2015 FC 1254**

**Ottawa, Ontario, November 5, 2015**

**PRESENT: The Honourable Mr. Justice O'Keefe**

**BETWEEN:**

**SEN CAO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The applicant's claim for refugee protection was denied by the Refugee Protection Division of the Immigration and Refugee Board of Canada [the Board]. The applicant now applies for judicial review of that decision pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

[2] The applicant seeks an order setting aside the negative decision and returning the matter to a different member of the Board for redetermination.

I. Background

[3] The applicant is a citizen of the People's Republic of China. He was 50 years old at the time of the refugee hearing. He had 12 years of education and worked as a manager in a bookstore before coming to Canada.

[4] In May 2012, the applicant started practicing Falun Gong to obtain relief from a sleeping disorder.

[5] On March 17, 2013, the applicant's practice group was raided. Subsequently, he learned two practitioners were arrested.

[6] The applicant then found a smuggler and fled China. On March 25, 2013, he travelled to the United States and subsequently made his way to Canada and claimed refugee protection. Since leaving China, the Public Security Bureau [PSB] has been searching for the applicant and left a summons with his wife. The PSB accused him of being involved in Falun Gong, recruiting members for an illegal organization and sabotaging the social order.

II. Decision Under Review

[7] In a decision dated April 26, 2014, the Board refused the applicant's claim and found the claim does not have a credible basis. The Minister intervened in this case on the issue of credibility by submitting documentary evidence.

[8] First, the Board drew a negative inference with respect to the *bona fides* of the applicant's travel to Canada in 2013 to make a refugee claim given his efforts on seven prior occasions to leave China.

[9] Second, the Board found the publicly displayed information on the envelopes, in which the applicant's documents had been sent, undermines the likelihood that the applicant was sought by the PSB in China. It undermines his allegation of being a Falun Gong practitioner in China. Further, it also undermines the reliability and trustworthiness of the documents sent in these envelopes.

[10] Third, the Board found the summons is fraudulent because the black ink was visible on top of the red seal, indicating the document was prepared after the red seal had been affixed. The Board noted according to the response to information request (RIR), fraudulent documents are a serious and widespread problem in China. It concluded this also undermined the reliability and trustworthiness of the other documents submitted by the applicant in support of his claim.

[11] Fourth, the Board assigned no weight to the letter from the applicant's father, because the signature of the letter was "Your parents". The letter lacked security measures and personal documents in China are typically not to be trusted in accordance with the RIR.

[12] Fifth, the Board assigned no weight to the document of the criminal sentence verdict of a co-practitioner, Mr. Wang. It noted it was unreasonable that the applicant did not have some knowledge about how this document was obtained by his cousin from Mr. Wang's wife and why she gave it to him.

[13] Sixth, the Board found the applicant's omission on the basis of claim (BOC) form about his wife being harassed by the PSB is material. It found on a balance of probabilities, the applicant's wife was not harassed by the PSB and the applicant fabricated this evidence.

[14] Seventh, the Board found although the applicant had some familiarity with the Zhuan Falun, he was unable to demonstrate that he had a basic understanding of Falun Gong. The Board further found the applicant was unable to provide reasons why a person might join Falun Gong, other than being related to health. It determined this indicates he is not likely a genuine and sincere Falun Gong practitioner.

[15] Therefore, in light of the above credibility findings, the Board found the applicant failed to establish his claim under sections 96 and 97 of the Act.

III. Issues

[16] The applicant raises the following issues:

1. Did the Board make unreasonable and unwarranted credibility findings that were based on impermissible speculation and plausibility conclusions?
2. The Board failed to carry out any assessment of the risks facing Falun Gong practitioners in China.

[17] The respondent raises one issue: the applicant has not established an arguable issue upon which this application for judicial review might succeed.

[18] I would rephrase the issues as follows:

- A. What is the standard of review?
- B. Were the Board's credibility findings reasonable?
- C. Did the Board fail to assess the applicant's risks under section 97?

IV. Applicant's Written Submissions

[19] The applicant submits given the Board failed to carry out assessment of the risks facing Falun Gong practitioners in China, this issue constitutes an arguable issue of law.

[20] The applicant submits the Board's decision was unreasonable because it made unreasonable adverse credibility findings based on impermissible speculation and plausibility conclusions.

[21] First, the applicant argues the Board unreasonably speculated that it was not credible the sender of the applicant's documents would include identifying information such as sender's return address, a telephone number and the applicant's address in Canada. This concerned another individual's actions and the Board improperly made findings based on its own unreasonable speculation. This plausibility finding was not among the "clearest of cases" to overcome the presumption of truth (*Mahmood v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1526 at paragraphs 15 to 18, [2005] FCJ No 1883).

[22] Second, the applicant argues the Board's determination about the summons was speculative and therefore unreasonable. Here, the Board relied on no evidence to support its conclusions that the seal is affixed on the document after it has been completely prepared. He argues in the absence of any evidence concerning the practices of Chinese authorities in affixing seals to documents, this was an unreasonable speculation on the part of the Board. Also, he argues this determination was not supported by common sense and experience.

[23] Third, the applicant argues the Board was unreasonable to make a negative inference on the genuineness and sincerity of his Falun Gong practice because he was unable to speculate on why others might join the practice. He argues the Board's reasoning was irrational and illogical.

#### V. Respondent's Written Submissions

[24] The respondent submits the standard of review applicable to the review of credibility findings is the standard of reasonableness.

[25] The respondent submits the determination of an applicant's credibility is at the heartland of the Board's jurisdiction (*RKL v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at paragraphs 7 and 8 [*RKL*]). It argues the applicant is asking this Court to re-weigh the evidence.

[26] Here, the Board made several credibility findings and observed the issues about the applicant's evidence. The applicant was not a forthcoming witness and he frequently gave vague, inconsistent and implausible answers.

[27] With respect to the applicant's disagreement with the Board's finding regarding the identifying information on the envelopes, the respondent cites *Negash v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1164 at paragraph 12, [2012] FCJ No 1230, where Mr. Justice David Near found there is no error in similar circumstances.

[28] With respect to the summons, the respondent argues the applicant failed to establish that paradigms, or North American logic and experience, are different such that the decision is unreasonable. This Court has long recognized that Board members can draw negative inferences for irregularities apparent on the face of a document while likewise noting the prevalence of fraudulent documents in China (*Zhuo v Canada (Minister of Citizenship and Immigration)*, 2012 FC 790 at paragraph 9, [2012] FCJ No 814 [*Zhuo*]).

[29] With respect to the reasons of practicing Falun Gong, the respondent argues the Board did not question the applicant's personal motives, but rather about his inability to discuss any of

the motives and reasons generally promoting Falun Gong. Here, the applicant failed to discuss Falun Gong beyond a simple general answer.

[30] The respondent submits the applicant's arguments all deal with the weighing of evidence.

## VI. Analysis and Decision

### A. *Issue 1 - What is the standard of review?*

[31] Insofar as the assessment of the Board's credibility findings is concerned, this involves questions of fact. Both credibility findings and the treatment of evidence are areas within the Board's specialized expertise. This attracts the standard of reasonableness. The standard of reasonableness means that I should not intervene if the Board's decision is transparent, justifiable, intelligible and within the range of acceptable outcomes (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 47, [2008] 1 SCR 190 [*Dunsmuir*]). Here, I will set aside the Board's decision only if I cannot understand why it reached its conclusions or how the facts and applicable law support the outcome (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paragraph 16, [2011] 3 SCR 708). As the Supreme Court held in *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraphs 59 and 61, [2009] 1 SCR 339, a court reviewing for reasonableness cannot substitute its own view of a preferable outcome, nor can it reweigh the evidence.

[32] Insofar as the assessment of risks under section 97 of the Act is concerned, I agree with the applicant that it should be reviewable on a standard of correctness. Under *Varga v Canada*



(*Minister of Citizenship and Immigration*), 2013 FC 494, [2013] FCJ No 531, the assessment of evidence for a ground of persecution is a procedural issue and the standard of correctness applies to a judicial review of a procedural issue (*Dunsmuir*).

B. *Issue 2 - Were the Board's credibility findings reasonable?*

[33] It is trite law that the determination of an applicant's credibility is at the heartland of the Board's jurisdiction (*RKL* at paragraphs 7 and 8).

[34] Here, the applicant is at issue with the Board's credibility findings and he argues these findings were unclear and speculative. The respondent submits the applicant's disagreements are unfounded and refer to the weighing of evidence. In my opinion, the Board's credibility findings were reasonable.

[35] With respect to the Board's findings on the identifying information on the envelopes, I find these findings are reasonable. As the trier of fact, the Board is entitled to weigh the evidence and to assess its reliability and probative value. Here, although the applicant disagrees with the Board's credibility concerns arising from the identifying information on the envelopes, this does not indicate these adverse inferences were unreasonable.

[36] With respect to the Board's determination about the summons, I find it was reasonable. A Board member has the power to draw negative inferences for irregularities apparent on the face of a document (*Zhuo* at paragraph 9). An examination of the document shows the Board was reasonable to question the overlap between the ink of the official seal and the ink of the text of

the document. The applicant has not explained why the Board's determination here was not supported by common sense and experience.

[37] With respect to the Board's negative inference on the genuineness of the applicant's Falun Gong practice, I find the Board was not unreasonable to question the knowledge of the applicant on the motives and reasons generally promoting Falun Gong.

[38] Therefore, I find the Board's credibility findings were reasonable.

C. *Issue 3 - Did the Board fail to assess the applicant's risks under section 97?*

[39] In my opinion, given the negative credibility findings, the Board was not required to conduct a separate assessment of the applicant's risk as a Falun Gong practitioner under section 97 of the Act.

[40] In *Lopez v Canada (Minister of Citizenship and Immigration)*, 2014 FC 102, [2014] FCJ No 123 [*Lopez*], Madam Justice Catherine Kane clearly found at paragraph 46 that "negative credibility findings are sufficient to foreclose the section 97 analysis unless there is independent objective evidence to support that the particular applicants would face a personalized risk." She explained in paragraph 42 that documentary evidence provides support for generalized risk, but not personalized risk which is required under subparagraph 97(1)(b)(ii) of the Act:

The applicants rely on documentary evidence which indicates that young Salvadorian males in Maras-controlled neighbourhoods are at risk of gang violence. These documents seek to demonstrate a generalized risk experienced by all young Salvadorian males in neighbourhoods controlled by the Maras. However, personalized

risk, as opposed to generalized risk, is required under subparagraph 97(1)(b)(ii) of the Act.

[41] I find the present case is analogous to *Lopez*. Although the applicants provided country evidence pertaining to the risks faced by a Falun Gong practitioner, this evidence established generalized risk. The applicants failed to establish personalized risk in light of the negative credibility concerns.

[42] Therefore, the Board was not required to conduct a separate section 97 analysis.

[43] Based on the foregoing findings, the application for judicial review must be dismissed.

[44] Neither party wished to submit a proposed serious question of general importance for my consideration for certification.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

"John A. O'Keefe"

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Judge

ANNEXRelevant Statutory Provisions*Immigration and Refugee Protection Act, SC 2001, c 27*

<p>72. (1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is commenced by making an application for leave to the Court.</p> <p>...</p> <p>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,</p> <p>(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; or</p> <p>(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.</p> <p>97. (1) A person in need of protection is a person in Canada whose removal to their</p>	<p>72. (1) Le contrôle judiciaire par la Cour fédérale de toute mesure — décision, ordonnance, question ou affaire — prise dans le cadre de la présente loi est subordonné au dépôt d'une demande d'autorisation.</p> <p>...</p> <p>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 :</p> <p>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;</p> <p>b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.</p> <p>97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait</p>
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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

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, and

(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,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3967-14

**STYLE OF CAUSE:** SEN CAO v  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MAY 6, 2015

**REASONS FOR JUDGMENT  
AND JUDGMENT:** O'KEEFE J.

**DATED:** NOVEMBER 5, 2015

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