

Federal Court



Cour fédérale

Date: 20160812

Docket: IMM-5029-15

Citation: 2016 FC 927

Montréal, Quebec, August 12, 2016

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

JIANFEI YAO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] The applicant seeks to set aside a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada (the RPD), dated October 14, 2015, which found that he is neither a Convention refugee under section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] nor a person in need of protection under section 97 of the IRPA.

[2] For the reasons set out below, the application will be allowed and the impugned decision set aside.

II. Facts

[3] The applicant, Jianfei Yao, is a man in his early 30s and a citizen of the People's Republic of China (China). He alleges that in November 2012, he received a notice of expropriation for the dual-purpose property where he was residing with his family and running his shoe and clothing business. He was told that he would receive an alternative property once it was built.

[4] The applicant and his family vacated their property in February 2013. When the new property was ready in November 2014, the applicant discovered that it was not dual-purpose. He and others in the same situation refused to accept the new properties.

[5] The applicant alleges that, with four others, he became a representative of those refusing to accept the new properties. The local government accepted the group's petition outlining their concerns, but took no further steps. On December 15, 2014, the applicant and his associates demonstrated in front of the local government office. They stayed for four hours and then left.

[6] That night, the applicant alleges that he was away from home when he received a call from his wife saying that the Public Security Bureau (PSB) had been looking for him. He alleges that the PSB arrested the four other group representatives and later returned to his home with a summons. Fearing that the PSB would arrest him for having helped to organize a petition

criticizing government officials, the applicant alleges that he engaged a smuggler to get him a new passport. He travelled to Canada in April 2015.

III. RPD Decision

[7] The RPD found that the determinative issue in the case was credibility. The RPD acknowledged that the applicant's testimony benefitted from a presumption of validity, but found that on a balance of probabilities, the applicant's account was not credible.

[8] The RPD first considered the applicant's testimony that he had obtained a fraudulent passport from the smuggler so that he could leave China without being apprehended by the police. The RPD referred to the country documentation, which states that citizens must apply in person and provide fingerprints in order to obtain a biometric passport. All new passports issued in China since January 2012, are of this type. They contain many anti-forgery and security devices, which are examined by airport staff more than once prior to international travel. Preferring this evidence to that of the applicant, the RPD found on a balance of probabilities that the applicant obtained his own genuine passport in order to travel to Canada, and was able to exit China without being apprehended by the authorities because he was not in fact wanted by them.

[9] The RPD found that the applicant's ability to pass through the airport without difficulty supported the finding that his passport was genuine. The applicant submitted that this was possible because the smuggler made arrangements for him, but the RPD found the preponderance of documentary evidence stating that airport authorities conduct thorough screening of passengers to be more convincing. The RPD acknowledged that there is corruption

in China and that authorities do not always apply the regulations evenly, but preferred the unbiased country documentation to the applicant's testimony. The RPD found that on a balance of probabilities, the applicant was not wanted by the PSB.

[10] The RPD also considered the applicant's testimony with regard to the dual-purpose property that was allegedly expropriated. In examining the applicant's documentation, the RPD found that the applicant had operated a clothing business and that the land was expropriated. However, because the applicant's other identity documents (including his hukou) did not indicate that the disputed property was the applicant's residence, the RPD found that the applicant and his family had not resided at that address. This, combined with the applicant's testimony that he had never been political or broken any laws prior to the protest at issue, led the RPD to conclude that the applicant did not participate in a protest that came to the attention of the authorities as claimed.

[11] The RPD subsequently considered the summons that the applicant alleges was delivered to his home after he failed to turn himself in to the PSB. Having viewed the original document, and considered the conclusions previously drawn with respect to the applicant's credibility and ability to leave China without being apprehended, the RPD doubted the veracity of the summons. It did not contain any security features, and the RPD noted the documentary evidence stating that fraudulent documents are readily available in China.

[12] In finding that, on a balance of probabilities, the applicant was not wanted for anti-government activities in China, the RPD also noted that there was no police involvement in the

alleged demonstration, and that the applicant had testified that he did not think that he had broken any laws. The applicant additionally testified that he was offered compensation but did not take it as he felt it was insufficient, and that he did not pursue his claim after the initial demonstration. The RPD found that the applicant's testimony with regards to compensation did not have a ring of truth, and overall concluded that the applicant was not wanted by the police for organizing or participating in a protest.

[13] In conclusion, the RPD found that as there was no credible or trustworthy evidence on which the claim could have been accepted. The RPD accordingly found that there was no credible basis for the claim, as per s. 107(2) of the IRPA.

IV. Issues

[14] The applicant asserts that the RPD erred in some of its key factual findings and credibility findings.

V. Standard of Review

[15] The parties are agreed, and I concur, that the standard of review of the RPD's credibility and factual findings is reasonableness.

VI. Analysis

[16] Central to the RPD's decision is its finding that the passport obtained by the applicant in 2015 was genuine. This finding seems to be based on the implausibility that the applicant could

have passed through China's border security controls and left the country if the passport were not genuine. I am persuaded that the evidence did not permit the RPD to make such an implausibility finding. Firstly, as stated by Justice Yves de Montigny in *Sun v Canada (Citizenship and Immigration)*, 2015 FC 387 at para 26, it is well established that implausibility findings may only be made in the clearest of cases. Moreover, it is far from clear in the evidence that false Chinese passports cannot be used to clear border controls and leave China. In my view, it is plausible that the applicant's passport was false.

[17] The RPD also did not believe the applicant's testimony that he obtained the passport with the assistance of a smuggler. The RPD cited the requirement that passports be sought in person and that fingerprints be provided, whereas the applicant's testimony was that he had not provided fingerprints and had not appeared in person to obtain the passport. The RPD also cited a preference for "the unbiased country condition documentation". I find this statement problematic because it implies that the applicant's testimony is biased and therefore deserving of less credibility. I am not persuaded that the evidence supports a conclusion that smugglers are unable to obtain usable Chinese passports. I am also not persuaded that the RPD indicated a reasonable basis for not believing the applicant's sworn testimony concerning how he obtained his passport.

[18] I note here that the RPD even acknowledged systematic corruption in China and the fact that regulations are not always applied evenly. The RPD's findings seem to require a belief that smugglers cannot be of assistance to citizens who are wanted for arrest and who want to leave China. In my view, the evidence did not support such a belief.

[19] Subsequent findings by the RPD that (i) the summons from the PSB was not genuine, (ii) the applicant was not wanted for arrest in China, (iii) the applicant left China without the assistance of smugglers, and (iv) the applicant never organized or participated in a demonstration that was brought to the attention of authorities, were dependent on the reasonableness of the initial findings that the applicant's passport was genuine and that he lacked credibility as to how he obtained it. In light of my conclusions that these initial findings were unreasonable, I conclude that these subsequent findings should likewise not be given effect.

[20] I find that the RPD's conclusion that the applicant did not live at the address of the property in question was not directly relevant to the issues before the RPD. Though it is not necessary to my decision, I wish to point out that it is difficult to understand the RPD's logic in concluding that the applicant should be found lacking in credibility on the basis that he was a law abiding citizen.

[21] I also find the RPD's conclusion that the applicant's desire for compensation indicates that he would not have rejected an offer of compensation to be unintelligible and hence unreasonable. I see no reason that a person seeking compensation would not reject an inadequate offer. The applicant's failure to follow up on his claim after the PSB's attempt to arrest him is not significant.

VII. Conclusion

[22] The application will be granted and the impugned decision set aside. The parties are agreed that there is no serious question of general importance to certify.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The present application is granted and the October 14, 2015 decision of the RPD is set aside.
2. The applicant's claim for asylum shall be reconsidered by a differently-constituted panel of the RPD.
3. No serious question of general importance is certified.

"George R. Locke"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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