

Federal Court



Cour fédérale

Date: 20170511

Docket: IMM-4407-16

Citation: 2017 FC 491

Ottawa, Ontario, May 11, 2017

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

BING ZHANG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for leave and judicial review of the decision of the Refugee Appeal Division [RAD] dated September 30, 2016, refusing the Applicant's refugee claim and finding that the Applicant is neither a Convention refugee nor a person in need of protection.

II. Background

[2] The Applicant is a citizen of the People's Republic of China. He owned and operated two adult stores for many years prior to an incident with the police on August 15, 2014. On that date, two of his staff were arrested for selling illegal drugs to police officers while at work. The Applicant's stores were closed as a result.

[3] On October 8, 2014, the Applicant was arrested, detained, and interrogated about the sale of illegal drugs at his stores. While detained he was beaten. The Applicant's mother secretly bribed the police in an effort to secure her son's release. Nevertheless, the Applicant was sentenced to five months in detention.

[4] After his release, the Applicant complained to a government official that the police had extorted money from his mother. The police told the Applicant to stop complaining, and threatened to have him arrested and given a longer sentence. Additionally, in October of 2015, the police allegedly began visiting the Applicant's home regularly. In December 2015, the Applicant acquired a genuine Chinese passport under his own name, and subsequently obtained a Canadian visa and fled to Canada. He arrived in Canada on March 11, 2016, and made his refugee claim on March 24, 2016.

[5] The Applicant's refugee claim was rejected by the Refugee Protection Division [RPD] on June 15, 2016. The RPD found that the Applicant had failed to establish his claim on a basis of

credible and trustworthy evidence, and that he had not established he is wanted by the authorities in China.

[6] The Applicant appealed the refusal of his refugee claim to the RAD. The RAD reviewed the Applicant's arguments and found the RPD did not err in finding that the Applicant had failed to establish his claim. The RAD concluded the Applicant had failed to provide probative evidence to support his claim. The RAD held that:

- a) The Appellant's allegation that he was hiding in Beijing out of fear of being arrested was not credible;
- b) The allegation that only a few corrupt police officers were looking for the Applicant had no basis in fact;
- c) The Applicant was not wanted by the authorities as he alleged; and
- d) The Applicant would not have been able to obtain a biometric passport and to leave China, if he was subject to being arrested.

[7] The RAD noted that the Applicant provided neither documentation about his alleged police complaint, nor documentation supporting his alleged hiding in Beijing prior to fleeing to Canada. The Applicant also failed to submit any documentation demonstrating that the Chinese authorities were searching for him. In reviewing the Applicant's alleged arrest notice [Arrest Notice], the RAD took note of several inconsistencies between the Arrest Notice and a sample document in the National Documentation Package [NDP]. In particular, they observed that the Arrest Notice did not name the Applicant and had different lettering configurations from the sample. On a balance of probabilities, the RAD found the Arrest Notice to be fraudulent and held that the Applicant's allegations about corrupt police looking for him or being wanted by the authorities were not credible.

[8] The RAD concluded that there was insufficient documentation to support the Applicant's allegations of persecution. The appeal was dismissed.

III. Issues

[9] The issues in this application are:

- A. Was the RAD's decision reasonable?
- B. Did the RAD breach procedural fairness?

IV. Standard of Review

[10] The standard of review for the RAD's decision is reasonableness. Reasonableness requires that the decision must exhibit justification, transparency, and intelligibility within the decision making process; also, the decision must be within the range of possible, acceptable outcomes (*Dunsmuir v New Brunswick*, 2008 SCC 9). The issue of procedural fairness is reviewed on the standard of correctness.

V. Analysis

A. *Was the RAD's decision reasonable?*

[11] The Applicant argues that the RAD:

- a) Provided "irrational reasons" for disbelieving the Applicant, which were not based on the oral or documentary evidence;
- b) Made unfounded and irrational findings with respect to the Applicant's credibility and the plausibility of his explanations;

- c) Relied solely on dated, generalized NDP documents, and failed to take into account the Applicant's evidence that multiple levels of police surveillance exist in China and evidence of police corruption;
- d) Erred in finding that the Applicant would not have been able to obtain a valid passport and would not have been able to leave China on his passport and visa as alleged; and
- e) Erred in its assessment of the evidence, by not considering certain documents, which resulted in procedural unfairness.

[12] The Respondent raises a legitimate initial concern with the Applicant's failure to provide an affidavit, and reliance on an affidavit from a legal assistant, who works for counsel representing him in this matter. This affidavit merely confirms that the legal assistant reviewed the file and the documentary evidence, and submitted an appeal to the RAD.

[13] As stated in a number of cases in this Court, the affidavit supporting an application for judicial review in an immigration matter is one of the primary sources of information from which the Court gains an understanding of the Applicant's concerns and perceptions of the decision-making processes of both the RPD and RAD. As such, it is important that the affidavit be sworn by the person with personal knowledge of the decision-making process—typically the Applicant (*Dhillon v Canada (Minister of Citizenship and Immigration)*, 2009 FC 614 at paras 4 to 10; *Canada (Minister of Citizenship and Immigration) v Huntley*, 2010 FC 1175 at paras 264 to 274).

[14] That the Applicant did not file an affidavit in support of his application for judicial review goes to the matter of weight, which I must consider in assessing the Applicant's evidence.

[15] Turning to the RAD decision, I find that the RAD properly conducted its own analysis of the record before deciding whether the RPD erred in its credibility findings and analysis of the

documentary record (*Huruglica v Canada (Minister of Citizenship and Immigration)*, 2016 FCA 93 at para 103). The RAD reviewed the RPD's decision in detail and provided cogent reasons for its negative credibility findings throughout the RAD decision.

[16] In considering both the documentation and testimony of the Applicant, I find that, contrary to the Applicant's submissions, there was no implausibility finding governing the RAD's conclusion—it was based solely on a lack of credibility. Further, the RAD did not approach the evidence on the record irrationally. The lack of probative documentary evidence and the preponderance of NDP documents, notwithstanding systematic corruption in China, support the RAD's reasonable finding that the Applicant not would have been able to leave China, if he was wanted for arrest, nor would he have been able to obtain a passport and not be arrested.

[17] Documentary evidence before the RPD indicated that criminal suspects are required to surrender their travel documents to the enforcement authority. As a criminal suspect, the Applicant would have had to surrender his travel documents and would have been identified at the passport office during the application process. Therefore, it was reasonable for both the RPD and the RAD, in assessing this evidence, to conclude that a new travel document would not have been issued to the Applicant if there was an outstanding warrant for his arrest, notwithstanding possible corruption in the police force. Further, while some of the NDP documents are dated and of limited value, there was no contrary evidence to support a finding of recently changed circumstances.

[18] Moreover, the RAD explicitly considered the Applicant's explanation that he was only wanted by a few corrupt members of the police force. However, in the Basis of Claim narrative, the Applicant failed to mention this fact, making it reasonable for the RAD to find that his claim had no basis in fact and failed to explain how he was able to obtain a passport without being arrested.

[19] Finally, the RAD reviewed the documents referenced by the RPD in its decision, and found them to be compelling. Testimony provided by the Applicant that he bribed airport officials was discredited by documentary evidence suggesting that there is widespread sharing of information between state authorities and security officials at China's international airports, and there exist multiple security checks at the international airports, through which the Applicant would have had to pass. The Applicant failed to provide any evidence to suggest that Golden Shield had no record of his arrest warrant, or that his information in the PSB database was not shared with the airport. As such, the RAD reasonably upheld the RPD's finding that the Applicant was not wanted by the authorities as he alleged.

B. *Did the RAD breach procedural fairness?*

[20] I also agree with the Respondent that the RAD correctly decided that the RPD did not err in its assessment of the evidence. The documents that the RPD did not consider were not relevant to the basis for the Applicant's claim—and consideration of those documents would not have made a difference in the outcome of this application—as the Applicant based his claim in being threatened after lodging a complaint against the authorities after his detention, not on his alleged

arrest and conviction. In any event, the RAD did assess the Arrest Notice and reasonably found it to be fraudulent.

[21] Moreover, the RAD did consider the Applicant's mother's letter, contrary to the Applicant's argument; however, given the fact that the letter was neither notarized nor did it identify the author, the RAD properly found that it had no probative value.

[22] Based on the above, I conclude that there was no procedural unfairness in the RAD's evaluation of the RPD decision or its own assessment of the evidence on the record.

JUDGMENT in IMM-4407-16

THIS COURT'S JUDGMENT is that:

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

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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