

Federal Court



Cour fédérale

Date: 20170619

Docket: IMM-4338-16

Citation: 2017 FC 607

Ottawa, Ontario, June 19, 2017

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

**YANG LIU,
PEI MI**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants seek judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada. The RPD determined, largely on the basis of negative credibility findings, that the Applicants were neither Convention refugees nor persons in need of protection under sections 96 and 97 of the *IRPA*.

[2] The two Applicants, who are common-law spouses, submitted their refugee claims based on different threats in China. The female Applicant alleged that she had been raped and forced into a relationship with the magistrate of her local county. After being fired, she brought attention to his behaviour on the internet, which caused her to be attacked and beaten and then later sought in a warrant by the Chinese Public Security Bureau [PSB].

[3] The male Applicant alleged that he uncovered a scam at the hospital where he worked to sell counterfeit medication. After being fired from the hospital, he attempted to bring attention to the fraud and was arrested by the PSB. After attempting to bring his grievance to two successive levels of petition office, he discovered that the PSB had issued a warrant for his arrest. Both Applicants obtained visitor visas to the United States and then made their way to Canada, before making a refugee claim at the Canadian border as an exception to the Safe Third Country Agreement.

[4] While the Applicants admitted to being common-law spouses in their interview with the Canada Border Services Agency, when they actually submitted their Basis of Claim forms, they did not mention each other either as family members on the form itself or in the narrative statements accompanying each form. They then amended their forms, and the RPD consolidated their two separate claims into one hearing. The female Applicant also amended her form to add two siblings in China that she had previously omitted.

[5] When the female Applicant was asked about why they submitted the forms separately and did not mention each other, she said that a snakehead had told them to submit independent claims to maximize their chances of obtaining refugee protection in Canada.

[6] For the reasons that follow this application is allowed and the matter is returned to a different panel for redetermination.

II. Decision under Review

[7] The RPD found that the Applicants lacked credibility and (for the purposes of the section 96 claim) demonstrated an absence of subjective fear. Particular emphasis was given to the omission of the relationship in the Basis of Claim forms and the involvement of the snakehead, which the RPD found indicated a willingness to mislead the RPD in order to obtain a successful result.

[8] The RPD also assessed the various pieces of documentary evidence submitted in support of the claim. Some were discounted because of irregularities on the face of the documents, while others appear to have been outweighed by the inconsistencies the RPD found with the Applicants' testimony. In a few cases (including with the summonses, discussed below), the RPD found that absences from the documents of features it believed should be present undermined the genuineness of those documents.

[9] An important part of the decision was also based on the Applicants' behaviour when they took a trip to Europe in October 2015. The RPD drew a negative inference from both the failure to claim refugee status in any of the European countries visited as well as the decision to re-avail to China even though, at that point, the Applicants had been subject to serious abuses that could ground a refugee claim. The Applicants' explanation for this conduct—that no decision had been made on the male Applicant's petitions and it was reasonable to seek state protection from China before seeking refugee status in Europe—was rejected by the RPD.

III. Issues and Standard of Review

[10] The standard of review for the RPD's assessment of credibility is reasonableness: *Cao v Canada (Citizenship and Immigration)*, 2015 FC 315 at para 15.

[11] The only issue for determination is whether the RPD's decision was reasonable.

IV. Analysis

[12] The RPD made several negative credibility findings. It concluded that while no single finding might be sufficient on its own to reject the claim, the cumulative effect of all of the findings was that there was not sufficient credible and trustworthy evidence to ground a finding that the Applicants were refugees or persons in need of protection.

[13] One of the critical documents the RPD found to be untrustworthy and to which it assigned little weight (if any), was the PSB summons. The question of whether there was a summons issued against each of the Applicants was significant. It was the foundation of their fear of persecution. The timing of when and whether the PSB summonsed the Applicants was also relevant to whether their failure to claim in Europe and reavilment to China indicated a lack of subjective fear.

[14] Unfortunately, the analysis of the summons by the RPD was unreasonable. In the absence of that finding, I cannot determine whether the RPD would have weighed the evidence and come to the same conclusion about the credibility of the Applicants' claims. Therefore the decision must be set aside.

[15] Each Applicant received a summons. Each summons was issued for different underlying reasons but in each case the individual Applicant was accused of slandering the government, a

serious offence. The RPD examined the summons and noted that it was similar to a sample summons. While each summons contained two seals and a date, the RPD found that the reliability of those features was undermined by two concerns: (1) there was no reporting address or contact information shown on the summons; and, (2) blank precedents of documents were widely available online. It is my view that neither of these concerns, nor others subsequently noted by the RPD, could reasonably be used to make negative findings about the genuineness of the summons or rebut the presumption that the summons was valid as it purported to be issued by a competent foreign government: *Chen v Canada (Citizenship and Immigration)*, 2015 FC 1133 at para 10 [*Chen*]; *Ramalingam v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 7241 at para 5 (FC).

A. *Lack of an address or contact information*

[16] The RPD questioned the female Applicant about the lack of a reporting address on the summons. Her answer was that there was only one police station in Xiezhuang and that anything that had to be done in the county was done there. The RPD rejected that explanation as being “highly speculative” saying that it was an attempt by the female Applicant to substitute her subjective view for objective PSB practices. The RPD found that the “functionality” of the summons was undermined by the absence of a reporting address.

[17] This finding by the RPD overlooks the fact that the summons requires the Applicant to surrender herself specifically “to Public Security Bureau of Zhao County, Xiezhuang Police Station”. That is clearly a specific location, and the female Applicant gave testimony that there was only one police station in the small village of Xiezhuang. Nonetheless, the RPD found the lack of contact information and absence of a reporting address undermined the reliability and

trustworthiness of the summons because a well-organized police force such as the PSB would not rely on the subjective knowledge of the accused person to attend at the station.

[18] That conclusion simply does not flow logically. It is not at all clear how the degree of organization of the PSB bears a relationship to the presence or absence of contact information on a summons. The conclusion also does not flow either from the evidence of the Applicant that there is only one police station in the small village or from the face of the summons which specifies the police station as being the one in Xiezhuang.

[19] In essence, the RPD made a negative plausibility finding about the genuineness of the summons. This Court has been clear that such findings must be made “only in the clearest of cases” and with special regard to the claimant’s specific culture and milieu: *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7.

[20] It may be implausible in Canada for a summons to be issued without the reporting location listed in a civic address format. But Canada does not require its citizens to register at a government office their locations and those with whom they reside. Canada does not issue *hukous* or require every person to obtain and present to police on request a national identity card. Canada has a uniform nation-wide system of postal addresses, and in Canada it can be reasonably expected that every police station and courthouse has a civic address that could be listed on an official document.

[21] However, to take all those facts about Canada and import the same presumptions to China—a country with an entirely different relationship between state and citizen, which is at a different stage in its economic development—is not reasonable. The RPD did not adequately

explain why it was “outside the realm of what could be reasonably expected” for the residents of a small municipality in China to know the location of their police station or for that station to not have a Canadian-style civic address. The fact that even rural police stations have access to a sophisticated computer database is wholly irrelevant to whether a police summons in such an area would maintain “functionality” in the absence of a street address.

B. *Sample documents online and the prevalence of fraudulent documents*

[22] Regarding the online availability of blank precedents of a summons, the RPD found the presence of the two seals and a date on the summons was undermined not only because blank templates were available online but also because the documentary evidence described the PSB as “a nationally networked police force that uses cutting-edge technology”. The RPD determined that the PSB was an interconnected and sophisticated police force and the Applicant’s “marginal summons undermines the genuineness of the summons”. It seems that the reference to a “marginal” summons, although not explained, is based on the lack of an address or contact information. Nothing else “marginal” was mentioned prior to that reference. Given my above analysis of the RPD’s plausibility finding, the basis for finding the summons to be marginal is unsupported.

[23] The RPD also found there was a lack of genuineness of the summons based on the “consistent reports” of document fraud in China. The RPD twice specifically referred to the prevalence of fraudulent identity documents and that generally there was fraud of all kinds. That section of the decision is found under the heading “Other considerations”. It concludes that little weight was assigned to the female Applicant’s summons “for all of these reasons”. In that

section of the decision, those reasons appear to be the online blank precedents and the prevalence of fraudulent documents.

[24] The juxtaposition of the comments by the RPD on the PSB's cutting-edge technology, blank precedents being available online and fraudulent documents being easily obtained results in two more findings, with no analysis, that the genuineness of the summons is undermined. Those findings cannot stand, as this Court has consistently observed that the RPD should exercise caution when considering whether the prevalence of fraudulent official documents in China is a reliable factor when considering whether a specific document is a forgery: *Chen* at paras 10 -13 and cases referred to therein. Here, the RPD gives no indication that it considered the presumption, and if it did, there is no reasoning to show how it was rebutted.

[25] In cases where the testimony given in support of a claim contains inconsistencies, contradictions and omissions, but is supported by documents purporting to be issued by an official authority, it is important to distinguish between authenticity and weight. In the absence of some evidence indicating that a document is not genuine, it is not open to the RPD to make negative authenticity findings. But it is open to the RPD to find that the documents do not have sufficient corroborative weight to prove the claim in spite of the problems with the claimant's testimony: *Jele v Canada (Immigration, Refugees, and Citizenship)*, 2017 FC 24 at paras 45-50.

[26] To put it another way, it is unlikely (though possible) that a false story will be supported by official documents that cannot be discounted as inauthentic. It is also unlikely (though possible) that a true story will be supported by testimony containing significant inconsistencies, contradictions and omissions. Where both of these factors are present, the RPD must weigh all

the evidence to determine whether the narrative told by the claimant is more likely than not the truth, and it is entitled to deference in that process.

[27] In this case, however, the RPD's findings on the summonses were not part of the overall weighing process. The RPD instead explicitly made findings about the genuineness of those summonses, which it imported into the overall weight to give those documents. Given official documents are presumed to be valid, those genuineness findings are unreasonable. The RPD concluded that its decision was based on a cumulative evaluation of all of the evidence, no piece of which would have been sufficient to negate the credibility of the claim on its own.

[28] The two summonses were highly probative to the claims of each Applicant. A valid summons from the PSB for the crime of slandering the government might support the claim of a fear of persecution. It might also overcome the allegation of reavailment. It is a critical piece of evidence which, if it had been properly considered in the absence of an improper finding on genuineness, could easily have affected the outcome of the proceeding. The RPD's decision with respect to both Applicants is unreasonable on this basis.

[29] For the foregoing reasons, the matter must be returned to a different panel of the RPD for redetermination.

[30] There is no serious question of general importance for consideration on these facts.

JUDGMENT IN IMM-4338-16

THIS COURT'S JUDGMENT is that:

1. The style of cause in this proceeding is amended to substitute "Pei Mi" for "Pei Me".
2. The application is allowed and the matter is returned for redetermination before another panel.
3. There is no serious question of general importance for certification.

"E. Susan Elliott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4338-16

STYLE OF CAUSE: YANG LIU, PEI MI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 13, 2017

JUDGMENT AND REASONS: ELLIOTT J.

DATED: JUNE 19, 2017

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