

Federal Court



Cour fédérale

**Date: 20180727**

**Docket: IMM-5433-17**

**Citation: 2018 FC 794**

**Ottawa, Ontario, July 27, 2018**

**PRESENT: The Honourable Madam Justice McVeigh**

**BETWEEN:**

**MEILAN YE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] The Applicant, Meilan Ye, is a citizen of China. She made a refugee claim under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c27 [IRPA], but the Refugee Protection Division (RPD) of the Immigration and Refugee Board found that she is

neither a Convention refugee nor a person in need of protection under the IRPA, and that her claim was manifestly unfounded.

[2] On December 19, 2017, the Applicant applied to the Federal Court for judicial review and argued that the RPD decision is both procedurally unfair and unreasonable.

[3] For the reasons below, I am dismissing the application.

## II. Background

[4] The Applicant's RPD hearing took place on October 31, 2017. Briefly, her evidence was that on July 12, 2015, while she was acting as the lookout during her friend's Shouter Christian house church service, the Public Safety Bureau (PSB) raided the church. Her claim is that now she is wanted for arrest for taking part in an illegal religion. She says when the PSB came she went into hiding, hired a smuggler to help her leave China to come to Canada. The Applicant alleges that she has continued to practice her Shouter religion while living in Canada.

[5] The RPD found that the Applicant's personal identity was established but not her identity as a Shouter. The RPD also said the Applicant "was caught in many different lies through the hearing" and it found that her claim is manifestly unfounded. In its decision dated November 9, 2017, the RPD rejected the refugee claim.

### III. Issues

[6] The issues are:

- A. Did the RPD breach procedural fairness by not questioning the Applicant about her inconsistent evidence at the hearing?
- B. Was the RPD decision unreasonable?

### IV. Standard of Review

[7] Issues of procedural fairness are reviewed for correctness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43 [*Khosa*]). While the reasonableness standard of review applies to the RPD's negative credibility findings (*Thevarajah v Canada (Minister of Citizenship and Immigration)*, 2018 FC 458 at para 7) and to findings of fact (*Mohamud v Canada (Minister of Citizenship and Immigration)*, 2018 FC 170 at para 2).

### V. Analysis

- A. *Did the RPD breach procedural fairness by not questioning the Applicant about her inconsistent evidence at the hearing?*

[8] The Applicant submits the RPD has a duty to point out inconsistent submissions (*Vorobieva v Canada (Solicitor General)* (1994), 84 FTR 93 (TD); *Guo v Canada (Minister of Citizenship and Immigration)*, A-928-92 (FCTD)), but she was only briefly questioned about her own inconsistencies. Although the RPD relied on *Osei v Canada (Minister of Citizenship and Immigration)*, T-2992-92 (FCTD), the Applicant says that it interpreted that case incorrectly.

And as a result, she argues she had no opportunity to explain herself or to explain how she exited China using her own passport.

[9] The Applicant also argues that the RPD has a duty to tell her about its concerns related to her exit story. The Applicant did not think it is correct for the RPD to follow the Jurisprudential Guideline and not to question her exit story and then have concerns about it. Her counsel had to ask her about the exit from China. The Applicant submits the RPD “made express efforts to obscure the issues which were of concern to it,” and says these arguments, if successful, indicate that the RPD hearing was procedurally unfair. In addition, the Applicant characterized the hearing as “a riddle”. She says the RPD went to great lengths to avoid transparency and it just left everything on the table without narrowing the issues.

[10] I disagree with the Applicant’s arguments that the RPD was procedurally unfair, though after reviewing the transcript, I do agree that the member and her counsel had prickly dialogues regarding these issues during the hearing. But contrary to the argument presented by the Applicant, the RPD does point out the inconsistencies, and I find there are numerous examples of the RPD doing so. The decision itself discusses the Applicant’s problematic answers to questions it asked about her inconsistent statements. On more than one occasion, the RPD found her explanations were unacceptable because they were themselves further contradictions.

[11] I do not find the conduct of the RPD rose to the point of any procedural unfairness. Their exchanges are unnecessary, but the style of the RPD member and the Applicant’s counsel is their

own and, as I said, did not cause any procedural unfairness. It was confirmed at the hearing that reasonable apprehension of bias was not being argued by the Applicant.

[12] An error must change the outcome of the decision for it to be unreasonable (*Castillo Mendoza v Canada (Citizenship and Immigration)*, 2010 FC 648 at para 24). In this case, the RPD's findings about her exit from China and the Jurisprudential Guideline at paragraphs 85 and 86 of its reasons are not made until after the RPD made its determinative findings. In particular, the RPD already found that: the Applicant is not a reliable witness, she is not a Shouter in Canada, she was not a Shouter in China, she is not wanted for arrest by the PSB, the raid never happened, she never went into hiding, and it had already rejected her *sur place* claim. Whether or not the RPD erred on this issue does not change the outcome of this decision, and accordingly, cannot be the basis to say the decision is unreasonable.

B. *Was the RPD decision unreasonable?*

(1) Erroneous findings of fact

[13] The Applicant argues that the RPD's findings are not connected to the evidence. As a result, the Applicant submits that the RPD's finding that she was never a Shouter is an erroneous finding of fact. In addition, she says the RPD's decision deconstructed her faith into component parts which, on their own, are legal in China. The Applicant argues her evidence needed to be considered as a whole to determine if she would be perceived as a Shouter in China.

[14] As the RPD had evidence to support its decision on each of the points raised by the Applicant, again I must disagree with her argument. For instance, the RPD's decision is based on documentary evidence that said shouting in church on its own is not what causes the Chinese officials to see someone as a member of a Shouter Church. In addition, the decision is based on the evidence as a whole which includes her inconsistent answers (such as her answers about how long she remained in hiding and how many times the PSB looked for her), and it is based on the finding that the subpoena she submitted is not genuine. Also, the fact she did not have travel documents was critical for the purposes of the Applicant's claim as there was no evidence of her departure from China, or of her previous travel.

[15] The Applicant disagrees with the RPD's conclusions and the weight given to the evidence, but when the transcript, basis of claim, and supporting evidence is read, the decision is within the range of reasonableness.

(2) Sur place

[16] The Applicant submits the RPD's *sur place* analysis is too narrow and failed to consider whether the Applicant became a Shouter Christian in Canada. The Applicant submits that *sur place* claims are not limited to those activities that have come to the attention of the Chinese authorities, but is also applicable to whether she can practice her religion open and freely upon return to China (*Ejtehadian v Canada (Minister of Citizenship and Immigration)*, 2007 FC 158).

[17] After the RPD hearing, the Applicant submitted a letter to the RPD to set out the law in *sur place* claims. In the letter, the Applicant's counsel inadvertently described her as a member

of the Falun Gong instead of as a Shouter. The Applicant argued the RPD should have recognized this was an inadvertent error, and that by failing to consider counsel's legal submissions (the RPD considered this as a fundamentally different claim based on Falun Gong practice) it made a reviewable error.

[18] I agree that the RPD should have recognized that counsel had made a regrettable error by mischaracterizing his client's basis for persecution. But the fact is the RPD did a complete analysis of the *sur place* claim based on the Shouter Christian allegation, and so it is not a reviewable error for the RPD to have said that this fundamentally different submission was of limited utility.

[19] Although the Applicant says the RPD failed to consider whether she can practice her religion freely in China, the RPD did consider this, but found that the Applicant is not a Shouter. The RPD's conclusion about the Applicant's religious beliefs in China is based on her inconsistent evidence which led to a negative credibility finding. The conclusion about her religious beliefs in Canada is supported by evidence such as a letter from the Church in Toronto that states it is not affiliated with the Shouters Church sect of China. The issue at paragraphs 13 and 14, above, overlaps with this issue. Based on this evidence, the RPD said: "The church letter provided by the claimant makes it clear beyond doubt, that the Toronto church she attends is not associated with the Shouters in China."

[20] Reasonableness requires that the decision must exhibit justification, transparency and intelligibility within the decision making process and also the decision must be within the range

of possible, acceptable outcomes, defensible in fact and law (*Dunsmuir v New Brunswick*, 2008 SCC 9; *Khosa*). This decision is within the range of acceptable outcomes and I will dismiss this application.

[21] The parties presented no certified questions and none arose.



**JUDGMENT in IMM-5433-17**

**THIS COURT'S JUDGMENT is that:**

1. The application is dismissed;
2. No question is certified.

"Glennys L. McVeigh"

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Judge

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

**DOCKET:** IMM-5433-17

**STYLE OF CAUSE:** MEILAN YE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JULY 5, 2018

**JUDGMENT AND REASONS:** MCVEIGH J.

**DATED:** JULY 27, 2018

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