

Federal Court



Cour fédérale

Date: 20180725

Docket: IMM-3-18

Citation: 2018 FC 781

Ottawa, Ontario, July 25, 2018

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

GUIYING YAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] On July 23, 2012, the Refugee Protection Division of the Immigration and Refugee Board (RPD) received a refugee claim from the Guiying Yan (the Applicant), a Chinese citizen who claimed she had a fear of persecution for because of her political opinion. The Applicant said she is wanted for arrest by the Public Safety Bureau (PSB) because of what she describes as

anti-government statements made during a protest over the expropriation of her home in Guangzhou City.

[2] In an oral decision on November 21, 2017, the RPD found that the Applicant did not establish a nexus to a Convention ground, and decided she is not a Convention refugee or a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27. Accordingly, the RPD rejected her refugee claim.

[3] On December 18, 2017, the Applicant applied to this Court for judicial review. She largely submits that the decision was contrary to the evidence before the RPD.

[4] I find that the RPD's decision is supported by the evidence, and for the reasons below, I will dismiss this application.

II. Background

[5] The Applicant is a citizen of China where she previously owned a home in Guangzhou City, Guangdong Province, China. In March of 2012, she received a letter explaining the government was expropriating her property due to plans to reconstruct the city. In return, each expropriated household would be compensated by an amount the Applicant says was well below her property's value.

[6] Five residents were designated to negotiate for more compensation, but were unsuccessful. When the demolition began on April 10, 2012, the Applicant and the other

residents protested. They confronted the workers, formed a human fence around their homes, and shouted slogans such as “the government is corrupt”, “compensation is unfair”, “stop taking our homes”, and “respect human rights.”

[7] Many people came to watch. As police officers attended the scene, they got out of their patrol cars and made their way through the crowd to the protesters. The Applicant saw the officers attacking other residents and she ran away to hide along with another resident.

[8] During the RPD hearing, the Applicant stated that a neighbour later informed her that the PSB had attended her home to arrest her. Though she has no evidence that they actually were going to arrest her, she says the allegations against her included “assembling people illegally to disturbing social order, contempt against the government, and obstructing the demolition.”

[9] Her evidence is that the PSB continued to approach her relatives looking for her. She hired a Snakehead who helped her obtain an American Visa using fraudulent information and she was able to exit China by using her own passport. She then entered Canada illegally through the United States, and made a refugee claim received by the RPD on July 23, 2012. The RPD hearing took place on November 21, 2017. In an oral decision, the RPD rejected her refugee application.

III. Issues

[10] The issues are:

- A. Did the RPD err by finding that the Applicant did not have a nexus to a Convention ground?
- B. Did the RPD err by finding that the Applicant was not wanted by the PSB?

IV. Standard of Review

[11] The RPD's decision is reviewed for reasonableness. This includes the RPD's decision about whether there is a nexus to a Convention ground as this is a question of mixed fact and law (*Jacobo v Canada (Minister of Citizenship and Immigration)*, 2012 FC 345 at para 50).

Plausibility findings are also reviewed for reasonableness, but are reviewed closely by the Court (*Jiang v Canada (Minister of Citizenship and Immigration)*, 2015 FC 486 at paras 8-9 [*Jiang*]).

V. Analysis

- A. *Did the RPD err by finding that the Applicant did not have a nexus to a Convention ground?*

[12] The Applicant submits that the jurisprudence of this Court shows she did establish a nexus to a Convention ground. Namely, the Applicant relies on the situation in *Zhou v Canada (Citizenship and Immigration)*, 2013 FC 619 at paragraph 34 [*Zhou*], where Justice O'Keefe found that during an expropriation that an applicant shouting the slogan "The government is unfair" on those facts he determined that the slogan "sounds to be an anti-government protest."

[13] The Applicant acknowledged that other cases, such as Justice Phelan's decision in *Jiang* at paragraphs 14-16, have said that protests over compensation related to expropriated property do not establish a nexus to a Convention ground. Specifically, in *Jiang* at paragraph 14, Justice Phelan explained: "There is no question that the Applicants' issue with the Chinese authorities was the amount of compensation due upon expropriation. Absent anything else, this could hardly fall within the type of matters covered by the Convention".

[14] However, the Applicant says her anti-government statements during the protest are a key distinguishing difference between her and *Jiang*. In particular, the Applicant said she shouted "the government is corrupt", "compensation is unfair", "stop taking our homes", and "respect human rights."

[15] The Applicant also points to the evidentiary record before the RPD. The record included her Personal Information Form stating that one of the offences she is wanted for is "contempt against the government." The Applicant submits that, contrary to the RPD decision, this is evidence she is wanted for arrest because of her political opinion, and therefore she has a nexus to a Convention ground.

[16] When the transcript is examined, it is clear that the RPD asked about the slogans she shouted:

MEMBER: In what way did you violate the law?

CLAIMANT: To demonstrate, to protest with residents shouting out slogans, government corruption, protest with the residents saying government is corrupt, compensation unfair.

[17] Even when directed by her counsel, she gave the same evidence:

COUNSEL: ...So, I wanted to go back to the incident that that took place on April 10, 2012 and you had indicated to us earlier that you were shouting slogans; can you tell us what slogans you were shouting?

CLAIMANT: Government corrupt, compensation unfair, destroy our homes, respect human rights, also shout out loud police assaulting people.”

[18] When asked later in the exchange what she did that was illegal, she said she gathered residents:

COUNSEL: ...but did you actually gather residents or is that what you have been accused of?

CLAIMANT: I was involved in gathering, yes. My home is my only thing left, the home to me is very important.

[19] Based on the Applicant’s evidence the RPD determined this was all about the amount of compensation. The RPD explained that the government can legally compensate expropriated property and it followed that the slogans made during the protest were directed to the government’s compensation of the expropriated property:

in this regard that the basis for the complaint was not political opposition to the government’s expropriation policy, but the insufficient amount of money the claimant would receive. The panel further finds that the alleged shouted slogans are in insufficient [sic] evidence to support allegation that it reflected political opposition or opinion.

[20] Further, the Applicant asserted that she is wanted for “assembling people illegally to disturbing social order, contempt against the government, and obstructing the demolition” and

submits the charge “contempt against the government” is evidence the PSB is pursuing her for political opinion.

[21] However, she did not point to any evidence before the RPD connecting that charge to political opinion. The RPD said later in its reasons, the Applicant, if she is a wanted person, broke a law but not in regards to interfering with the government’s legal right to expropriate her property. The RPD’s finding on the lack of a nexus to a Convention ground is not, as the Applicant alleged, contrary to the evidence. The RPD’s decision recognized the Applicant’s statements during the protest, but found no persuasive evidence to establish a nexus to a Convention ground existed.

[22] Regarding the Applicant’s arguments about contrary case law, each case will turn on its facts. The decision in *Zhou* does not stand for the proposition that a nexus is always established when certain statements are made during a protest. In this case, there are other facts referred to by the RPD in its decision that included the fact the Applicant did not play a leadership role, and she ran from the scene without any confrontation with the police.

[23] It must be remembered that on judicial review the reasonableness standard does not allow the Court to revisit the evidence, weigh it, and make findings of fact. Simply put, the Court cannot substitute the decision with its own preferred outcome, and it cannot reweigh the evidence (*Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59, 61). On the facts of this case, with the evidence before this RPD, the decision is justified, transparent, and intelligible.

B. *Did the RPD Member err by finding that the Applicant was not wanted by the PSB?*

[29] The Applicant submits that the RPD's decision about the summons and the Golden Shield Project is contrary to the evidentiary record. For example, although the RPD found that a summons would have been issued there was evidence from the National Documentation Package [NDP] published in October 2012 stating: "Statutes on arrest warrants and summonses specific to Guangdong, Fujian and Liaoning could not be found among the sources consulted by the Research Directorate".

[30] The Applicant argued that the document discussed by the RPD about the Golden Shield Project never refers to Hong Kong. The Applicant submits the RPD is speculative to assume that the Golden Shield Project was present in Hong Kong when the evidence does not contain information about its use. Further, the Applicant says the evidence from the time she left China is of a decentralized system and of problems with PSB offices sharing information. She submits there was no evidence to support the RPD's finding that she could not have been able to exit China in 2012 using her own passport if she was wanted by the PSB

[31] The Applicant supported her position with Justice Russell's decision in *Huang v Canada (Citizenship and Immigration)*, 2017 FC 762 [*Huang*], where the RAD decision was unreasonable because it failed to explain why bribery could not have been possible in that case. The Applicant also submits that the documentary evidence showed corruption exists and the corruption corroborates her exit story.

[32] But unlike *Huang*, the Applicant never alleged that officials were bribed to circumvent the system. She never provided this in her material nor when questioned at the hearing. The evidence she did give is that, though she used fraudulent documents, she was able to obtain an American Visa which was then placed in her own passport. Her further evidence is that she passed through checkpoints in her travel to Hong Kong, and then again when she flew to San Francisco from Hong Kong. She did not give evidence that her passport was not scanned or of bribing officials. She gave no specifics at all even when questioned. This is different than the factual basis in the jurisprudence relied on by the Applicant.

[33] The Applicant provided to the Court a Response to Information Request (RIR) dated July 2, 2009, from the NDP to support the argument that the Golden Shield Project was not in place in Hong Kong. But although the RIR does not mention Hong Kong, it certainly supports the RPD in that it says that the Golden Shield Project is a national computer network :

Now all police departments at county level and above (namely police departments at provincial, city and county levels) and most police stations and other grass-roots units (namely police under the county level) can connect to the system. Some small police stations and grass-roots units in remote areas can not connect to the system.

[34] The documentary evidence goes on to say that this is the same system used by the PSB in Beijing and in 2006 it passed a quality examination stating that grassroots-level police stations and squads have a 90 percent connection rate to the main network. This article then notes that the Golden Shield Project has surveillance cameras as well as facial recognition technology and internet monitoring systems.

[35] The Respondent pointed to a more recent RIR regarding the Golden Shield Project that is also in the NDP. This evidence is dated March 7, 2014. And though 2014 is two years after the Applicant's departure from China, the evidence it refers to is from 2010, 2011, and 2013 which is around her departure date. This update says that by the year 2011, the coverage was near complete: "The rate of network coverage for local police stations stands at 99%".

[36] All this is evidence that the RPD acknowledged the mixed country documents, but did not have evidence to support its finding that the Applicant's exit story was not credible. I do not see that specific mention in the documentary evidence of Hong Kong was necessary. Because the RPD gave an oral decision, the RPD's reasons are short and concise and it did not quote lengthy passages from the NDP. This cannot be seen as a fault.

[37] Finally I do not agree with the Applicant's argument regarding the finding about the summons being not supported by evidence. Although the documentary evidence does say that a summons is not always issued, the Applicant gave evidence that the PSB was relentlessly pursuing her.

[38] Based on the Applicant's evidence of the many times the PSB attended her and her relatives homes looking for her, the RPD's decision that a summons would have been issued, or at the minimum the pursuit would have been documented, is based on the evidence and is a reasonable decision. The RPD's decision is justified, transparent, and intelligible.

[39] Having dealt with the determinative issues, I will not deal with the other issues presented to the Court.

[40] No certified question was presented and none arose.

JUDGMENT in IMM-3-18

THIS COURT'S JUDGMENT is that:

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

"Glennys L. McVeigh"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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