

Federal Court



Cour fédérale

**Date: 20180831**

**Docket: IMM-5548-17**

**Citation: 2018 FC 877**

**Ottawa, Ontario, August 31, 2018**

**PRESENT: The Honourable Madam Justice Gagné**

**BETWEEN:**

**MENGTING LI  
WEIQIU YANG  
HAOCHENG YANG**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Mrs. Mengting Li, along with her husband and 20-year-old son, are citizens of the People's Republic of China. They came to Canada in September 2014 and made a refugee claim based on Mrs. Li's involvement in the practice of Falun Gong and their alleged resulting persecution by the Chinese Public Security Bureau [PSB].

[2] The Refugee Appeal Division [RAD] of the Immigration and Refugee Board refused the Applicants' appeal given the credibility concerns raised by both the new evidence filed before it and the evidence presented to the Refugee Protection Board [RPD]. It also rejected the Applicants *sur place* claim, having found that the overall credibility concerns negatively tainted it and that there was insufficient evidence that the Chinese authorities had been informed of Mrs. Li's Falun Gong activities in Canada.

[3] On judicial review of the RAD's decision, the Applicants argued that the RAD erred in its credibility assessment and that it failed to properly consider the evidence specific to the *sur place* claim.

[4] The standard of review applicable to these issues is not in dispute. The standard of reasonableness applies to the RAD's analysis of the evidence in its determination of Convention refugee status (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at paras 30-35).

## II. Analysis

### A. *New evidence*

[5] The Applicants applied before the RAD to file a summons allegedly issued by the PSB on May 22, 2017. Some background is required to adequately review the RAD's assessment of this new evidence.

[6] Mrs. Li testified that she underwent surgery for a benign breast tumour in 2007. Her worries that it could subsequently turn into cancer led her to join the Falun Gong movement in late 2013. Her group practice was raided in March 2014 and she was able to escape and hide at a friend's house. The Chinese authorities went to the Applicants' house the following day looking for her. Since she was absent, they took away her husband and son and detained them overnight for questioning. Upon release, they were told to report to the PSB every two weeks.

[7] They nevertheless waited six months before fleeing China. During that period of time, Mrs. Li's husband and son allegedly reported eighteen times to the Chinese authorities who kept them overnight and tied their hands during interrogation (the fact that this information is missing from the Applicant's Basis of Claim form will be discussed later). The Applicants allege that the PSB has continued to search for Mrs. Li at their house and at their parents' home since their departure.

[8] One of the main credibility concerns expressed by the RPD is the absence of documentation issued by the PSB, in light of the fact that it had allegedly aggressively pursued Mrs. Li for over three years at the time the RPD decision was issued on May 4, 2017.

[9] Before the RAD, the Applicants made an application to file a non-coercive summons dated May 22, 2017, two weeks after the rejection of the Applicants' refugee claim.

[10] In my view, it was reasonable for the RAD to find this timing to be particularly egregious, as the document appears to have been submitted in response to the RPD's findings. In addition to this suspicious timing, the RAD considered the following:

- a. The structural inconsistency of the document when compared to the documentary evidence;
- b. The fact that the issuance of a non-coercive summons does not align with the Applicants' allegation of strenuous pursuit by the PSB, detention and mandatory reporting every two weeks. A coercive summons would have made more sense in these circumstances;
- c. The fact that fraudulent documents, even of some complexity, are readily available and widespread in China.

[11] The Applicants argue that the RAD misinterpreted a provision of the *Chinese Public Security and Administrative Punishment Law* and erred in stating that the summons filed by the Applicants had a twenty-four-hour duration. They also state that in any event, procedures surrounding summonses and subpoenas in China often stray from regulated and expected procedures. According to them, variability and arbitrariness in law enforcement procedures in China could explain the fact that the wrong summons was issued more than two years after Mrs. Li became a person of interest for the PSB.

[12] With respect, neither argument addresses the RAD's concerns with the timing and nature of the summons. The first argument is, in my view, beside the point whereas the second is speculative. In any event, I agree with the Respondent that the RAD understood the time period to refer to the duration of interrogation, not the duration of the summons. That, however, does not address the RAD's concerns as to the genuineness of the summons. As to variability and arbitrariness in law enforcement procedures, that argument is speculative in view of the objective

country evidence referred to by the RAD to the effect that the form of summons has not changed since 2003 and is meant to apply uniformly across China.

[13] In my view, it was reasonable for the RAD, in light of the evidence before it, to find that the summons was not a genuine document and to reject the application to submit new evidence.

B. *Other credibility issues*

(1) *Exiting China*

[14] First, both the RPD and RAD were troubled by the Applicants' allegation that they left China with their own genuine passports, since Mrs. Li was wanted by the Chinese authorities and her husband and son were expected to report to the PSB every two weeks until they could interrogate Mrs. Li.

[15] The RAD has considered the following objective documentary evidence to support its finding:

- a) The Chinese government has a national computer network known as the Golden Shield Project or Policenet and Advance Passenger Information system which would have recorded the Applicant's information in the databases available to the Chinese authorities; and
- b) A traveler's passport may be inspected on four occasions on departure from China with scanning occurring at two different points.

[16] This finding is also consistent with the recent Jurisprudential Guide issued by the Immigration and Refugee Board Chairperson. This Guide is based on an in-depth analysis of the

efficiency of the Chinese Golden Shield Project and other procedures in controlling exits from airports in China, made by the RAD in TB6-11632.

[17] I agree with the RAD that the present case can be distinguished from *Zhang v Canada (Citizenship and Immigration)*, 2008 FC 533 and *Ren v Canada (Citizenship and Immigration)*, 2015 FC 1402.

[18] First, in both cases, this Court reviewed decisions from the RPD issued prior to the issuance of the above-mentioned Jurisprudential Guide.

[19] Second, both decisions were based on much older documentary evidence suggesting that it was possible to exit China on one's own passport with the assistance of a smuggler who bribed the appropriate person. In *Zhang*, no reference was made to the Golden Shield Project, while in this case the program's existence and capabilities were detailed by the National Documentation Package. In *Ren*, the applicant had provided clear testimony that he had engaged a smuggler who told him to go to a specific exit. That is far from the evidence presented by Mrs. Li as to the circumstances in which the Applicants exited China.

[20] On that point, the RAD considered Mrs. Li's evidence to be vague and speculative. She stated that their smuggler must have made the arrangements and bribed one or more officer(s). She further stated that they went through "without problems". Her passport was not scanned at the first checkpoint but she is not sure whether it was scanned at the second one, just as she does not know whether her husband's and her son's passports were scanned.

[21] I find that the RAD considered all the evidence and that its conclusion is within the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

(2) Missing passports

[22] In my view, the RAD could also reasonably make a negative credibility finding against the Applicants based on their failure to disclose their passports to the RPD. Considering the documentary evidence establishing that the Applicants were required to apply to their local PSB office to obtain a passport, it was open to the RAD to find that passports are needed to compare the dates on which they were issued and the timing of the Applicants' alleged persecution. It was also critical to verify previous travel history and whether border control stamps were applied.

(3) Detention of husband and son

[23] Finally, I find that it was reasonable for the RAD to disbelieve Mrs. Li's allegation that her husband and son reported eighteen times for interrogation due to her Falun Gong activities, especially considering the fact that no documentation was ever issued.

[24] It was also significant that this important piece of information was missing from the Applicants' basis of claim narrative. Not only did they allegedly report eighteen times for interrogation, but they were allegedly locked in restraints every time and kept in a special chair with an iron bar to physically restrain their hands. It was reasonable for the RAD to expect that

such an abuse, at the heart of the Applicants' refugee claim, be included in the Applicants' basis of claim narrative.

[25] I therefore see no reason to interfere with the RAD's credibility findings.

C. *Sur place claim*

[26] The Applicants argue that the RAD misconstrued its role when it failed to conduct an assessment of Mrs. Li's Falun Gong practice in Canada, independently of the overall credibility of the claim regarding persecution in China. The Applicants state that the RAD disregarded the photographs and letters filed in support of the *sur place* claim simply because of its overall credibility findings.

[27] Alternatively, the Applicants argue that the RAD erred when it found that the photographs of Mrs. Li's practice in Canada did not provide persuasive evidence that her activities in Canada had come to the attention of the Chinese authorities or that she would be perceived as a genuine practitioner. The Applicants refer to the documentary evidence indicating that Falun Gong practitioners in Canada are monitored by Chinese authorities. Given that the Applicants attended public events in Toronto, they say there is a strong reason to believe that they would have come to the attention of Chinese authorities.

[28] With respect, I also find without merit the Applicants' argument that the RAD erred in its assessment of their *sur place* claim.



[29] First, I agree with the findings of this Court that it is “permissible for the RPD [or RAD] to assess an applicant’s genuineness and therefore *sur place* claim in light of credibility concerns relating to the original authenticity of a claim” (*Zhou v Canada (Citizenship and Immigration)*, 2015 FC 5 at para 23). In my view, it would be an error to ask the RPD and RAD to analyze each issue raised by an asylum claimant in isolation, without regards to the credibility of the evidence filed in support of a different issue. A credibility assessment generally requires considering the entirety of the evidence adduced and a negative credibility finding is likely to taint all aspects of the claim.

[30] As to the RAD’s alternative finding that the evidence does not show that Mrs. Li’s practice in Canada came to the attention of the Chinese authorities, I find that it is reasonable, as supported by the decision of this Court in *Zhang v Canada (Citizenship and Immigration)*, 2016 FC 765 at paras 27-30. In this case, Justice Alan Diner found that it was reasonable to reject a *sur place* claim in the absence of evidence that the refugee claim had come to the attention of the authorities in the claimant’s country of origin.

[31] The documentary evidence that the Chinese government monitors the practice of Falun Gong does not contradict the RAD’s finding that there is no evidence suggesting Mrs. Li’s practice has come to the attention of the Chinese authorities. To find differently would be to confirm that the minute a refugee claimant attended a Falun Gong practice in Canada, his or her *sur place* claim would be made. I do not support such a result.

III. Conclusion

[32] For the above reasons, I am of the view that the RAD's decision is reasonable and that the intervention of this Court is not warranted. The parties have not suggested any question of general importance for certification and none arise from this case.

**JUDGMENT in IMM-5548-17**

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

1. The application for judicial review is dismissed;
2. No question of general importance is certified.

“Jocelyne Gagné”

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Judge

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

**DOCKET:** IMM-5548-17

**STYLE OF CAUSE:** MENGTING LI ET AL v THE MINISTER OF  
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