Federal Court  Cour fédérale

Date: 20180925

Docket: IMM-229-18

Citation: 2018 FC 948

Ottawa, Ontario, September 25, 2018

PRESENT: The Honourable Madam Justice Walker

BETWEEN:

KONG QIU NI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Kong Qiu Ni, seeks judicial review of a decision of the Refugee Protection Division ("RPD") of the Immigration and Refugee Board of Canada dated December 22, 2017. The RPD found that the Applicant was neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97, respectively, of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("IRPA").

[2] For the reasons that follow, I find that the RPD's assessment of the evidence and conclusion that the Applicant would not face persecution in China were reasonable. As a result, the application will be dismissed.

I. Background

[3] The Applicant is a citizen of China. There is no issue as to his nationality or identity. The Applicant arrived in Canada on April 11, 2012 from Hong Kong and made a claim for refugee protection. The Applicant states that he was being sought for arrest by Chinese authorities due to his participation in a protest against the planned expropriation of a number of properties in his town by the government.

[4] The Applicant and other homeowners had been informed that their properties would be expropriated. The Applicant had no issue with the expropriation itself. Rather, the Applicant and the homeowners took issue with the amount of compensation to be paid for their properties. They approached a number of government agencies asking for increases in the amounts offered but were unsuccessful in their efforts. At the hearing before the RPD, the Applicant testified about a meeting with Chinese authorities on January 6, 2012 at which the issue of compensation was discussed. The Applicant stated that he took a leadership role in the discussion and shouted at the officials in attendance that they were corrupt.

[5] On April 7, 2012, the government attempted to demolish the homes in question and there was a confrontation in which the Applicant and other homeowners participated. The Applicant

stated that he also took a leadership role in this confrontation, climbed on a bulldozer and shouted anti-government slogans. The police arrived but the Applicant escaped arrest.

[6] The Applicant claimed that he went into hiding at his aunt's house. While there, he learned that he was being pursued for arrest by the Public Security Bureau ("PSB") and that a summons had been left at his home with his mother. As a result, the Applicant found a smuggler with the help of his family and left China.

II. Decision under Review

[7] The RPD heard the Applicant's claim on November 27, 2017 and rendered its oral decision dismissing the claim the same day. The RPD's written version of the oral decision is dated December 22, 2017 ("Decision").

[8] The RPD raised two issues with the Applicant's claim. The first issue was whether the Applicant was being pursued for arrest by the PSB. If so, the second issue was whether the jeopardy he faced in China was prosecution and not persecution.

[9] The panel first assessed the summons or "chuanpao" left at the Applicant's home. The Applicant tendered the chuanpao as evidence of the intention of the PSB to arrest him. However, the Applicant acknowledged that a warrant for his arrest had not been issued. The RPD found that the chuanpao was consistent in its effect with a subpoena and not a summons. It was a document requiring the named individual to attend at court as a witness. The RPD referenced the country documentation for China which indicated there were other court-ordered documents in

use, including a form of summons used to compel an individual charged with a crime to appear in court. The RPD also distinguished the chuanpao from a further type of summons used by the PSB to compel an individual to appear for interrogation and investigation.

[10] The RPD stated that the non-coercive nature of the chuanpao and the absence of an arrest warrant were inconsistent with the Applicant's claim that the PSB intended to arrest him. The panel found that, on a balance of probabilities, an arrest warrant would have been issued for the Applicant once he failed to respond to the chuanpao, particularly in light of the Applicant's claim that the PSB visited his mother's house multiple times in order to arrest him. The RPD concluded that the fact that a proper arrest warrant was not issued raised significant doubt as to whether the Applicant was being pursued by the PSB.

[11] With respect to the issue of prosecution as opposed to persecution, the RPD found that, if the Applicant were arrested by the PSB, he would face prosecution due to his resistance to the expropriation of his home. He would not face persecution. The panel stated that the fact the Applicant claimed to have shouted anti-government slogans and called the government corrupt during the protest of April 2012 did not reflect political opposition to the government's expropriation policy. The Applicant's resistance was based on monetary and not political factors.

[12] The RPD characterized the Chinese law of expropriation as a law of general application which should be presumed valid and neutral. The onus was on the Applicant to demonstrate that the law was persecutory and the panel found that the Applicant had failed to do so. At most, the

Applicant had established that he would be prosecuted for obstructing government officials and not for holding an adverse political opinion.

III. Issues

[13] The issues raised by the Applicant in this application are as follows:

1. Did the RPD err in its assessment of whether the Applicant was being pursued for arrest by the PSB, particularly in its consideration of the chuanpao?

2. Did the RPD err in concluding that the Applicant faced prosecution rather than persecution as a result of his participation in the January 2012 meeting and April 2012 protest?

IV. Standard of Review

[14] The issues raised by the Applicant question the assessment by the RPD of the evidence in the case and the Applicant's credibility. They attract review on the standard of reasonableness (*Qassim v Canada (Citizenship and Immigration)*, 2018 FC 226 at para 27; *Chehade v Canada (Citizenship and Immigration)*, 2017 FC 282 at para 13). Considerable deference is owed to factual determinations made by the RPD and to its assessments of the credibility of witnesses. The Court will only interfere if the decision under review lacks justification, transparency or intelligibility, and falls outside the range of possible, acceptable outcomes which are defensible on the particular facts of the case and in law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47)**.**

V. Analysis

1. Did the RPD err in its assessment of whether the Applicant was being pursued for arrest by the PSB, particularly in its consideration of the chuanpao?

[15] The Applicant submits that the RPD's reliance on the absence of an arrest warrant to cast doubt on his claim of pursuit by the PSB was not reasonable. He argues that there is nothing inconsistent with his claim that he was wanted by the PSB and the issuance of a summons to be a witness in court. The Applicant also argues that the issuance of an arrest warrant was not mandated in all circumstances and that the RPD erred in its review of the evidence in this regard.

[16] The Respondent submits that the RPD's conclusion that the Applicant had not established, on a balance of probabilities, that he was wanted in China by the PSB was reasonable. He states that the conclusion was based on three elements: the Applicant's inconsistent evidence regarding his role in the opposition to the proposed compensation plan for the expropriations; the issuance to him of a non-coercive summons; and, the absence of an arrest warrant. As these factors weighed against the credibility of the Applicant, a matter central to the role of the RPD, the panel's conclusion must be accorded significant deference.

[17] I agree with the Respondent's submissions on this issue and find that the RPD's conclusion that there was significant doubt as to whether the Applicant was being sought for arrest by the PSB was reasonable. The RPD supported the conclusion in its reasons with specific references to the evidence of the Applicant and relied on the country documentation before it.

[18] The RPD is clear in the Decision that its primary concern was the absence of an arrest warrant. The panel considered the nature of the chuanpao as a witness summons and distinguished the chuanpao from an arrest warrant. The panel also reviewed the other types of summons/warrants used by the PSB to interrogate and charge individuals. The Applicant does not dispute the RPD's conclusion that the chuanpao was a subpoena and not an arrest warrant.

[19] The RPD found that an arrest warrant would likely have been issued for the Applicant when he failed to respond to the chuanpao. The RPD noted also the Applicant's evidence that the PSB had visited his mother's house in China on many occasions attempting to locate the Applicant. The panel concluded that, after multiple attempts by the PSB to locate the Applicant, a warrant would have been issued for his arrest. The Applicant argues that the PSB does not always issue a warrant when pursuing someone for arrest. The RPD reached the same conclusion but found that a warrant would likely have been issued on the facts described by the Applicant. Justice Kane addressed the same issue in *Cao v Canada (Minister of Citizenship and Immigration)*, 2015 FC 790 at para 47 (*Cao*):

> [47] With respect to the Board's finding that an arrest warrant would have been expected if the PSB had visited the family home many times in pursuit of the applicant, the Board did acknowledge the mixed evidence and that the issuance of a warrant is not always implemented. The Board noted that in this case, a warrant would have been expected given the applicant's evidence that the PSB continued to look for him many times, including after he left and up to the Chinese New Year in 2014. The Board's negative credibility finding based on the absence of the arrest warrant is reasonable viewed in the overall context of the applicant's evidence and based on the Board's acknowledgement of the mixed evidence.

[20] The RPD considered whether the Applicant's actions themselves were sufficient to characterize his opposition to the proposed expropriation compensation as an expression of anti-government opinion. The RPD's factual findings regarding the Applicant's participation in the January 2012 meeting and the April 2012 protest are consistent with the Applicant's testimony at the hearing. The panel expressed concern about the Applicant's role in the two events. The Applicant stated that he played a leadership role in both events but his evidence consisted of generalities only: that he spoke out; that he shouted against the proposed compensation and the officials' actions; and, that he climbed on to a bulldozer. In the context of two events involving heightened emotions and anger among his fellow homeowners, generally, the Applicant's actions as described can reasonably be viewed as consistent with those of any participant and not necessarily as denoting leadership. The RPD's weighing of this evidence and of whether the Applicant's actions established him as a leader and a target for having expressed anti-government political opinion was reasonable.

[21] The absence of a warrant for the Applicant's arrest coupled with the fact that the leadership role of the Applicant in opposing the expropriations was not established led the RPD to conclude that there was significant doubt regarding the Applicant's claim he was being pursued by the PSB. I find no reason to interfere with the RPD's conclusion. The conclusion involved an assessment by the RPD of the credibility of the Applicant's evidence. It is well-established that credibility determinations made by the RPD are to be given significant deference as the RPD is best placed to make such determinations (*Cao* at paras 39-40; *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319 at para 42 (*Rahal*)). Justice Gleason (as she then was) stated in *Rahal* (at para 42):

> [42] First, and perhaps most importantly, the starting point in reviewing a credibility finding is the recognition that the role of this Court is a very limited one because the tribunal had the advantage of hearing the witnesses testify, observed their demeanor and is alive to all the factual nuances and contradictions in the evidence. Moreover, in many cases, the tribunal has expertise in the subject matter at issue that the reviewing court lacks. It is therefore much better placed to make credibility findings, including those related to implausibility. Also, the efficient administration of justice, which is at the heart of the notion of deference, requires that review of these sorts of issues be the exception as opposed to the general rule. As stated in *Aguebor* at para 4:
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> > There is no longer any doubt that the Refugee Division, which is a specialized tribunal, has complete jurisdiction to determine the plausibility of testimony: who is in a better position than the Refugee Division to gauge the credibility of an account and to draw the necessary inferences? As long as the inferences drawn by the tribunal are not so unreasonable as to warrant our intervention, its findings are not open to judicial review…
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> (see also *Singh* at para 3 and *He v Canada (Minister of Employment and Immigration)*, 49 ACWS (3d) 562, [1994] FCJ No 1107 at para 2).

2. Did the RPD err in concluding that the Applicant faced prosecution rather than persecution as a result of his participation in the January 2012 meeting and April 2012 protest?

[22] The Applicant submits that the heart of this application is the RPD's finding that the Applicant would face prosecution and not persecution in China as a result of his involvement in the expropriation opposition in January and April 2012. The Applicant notes that the RPD accepted that the April 2012 protest occurred. The Applicant states that he climbed on to a bulldozer during the protest and shouted in opposition to the government's failure to offer adequate compensation. He also states that his opposition was noticed by the government officials present. This was the Applicant's second public denunciation of the government. The

Applicant argues that the country documentation before the Board demonstrated the Chinese government's severe and persecutory treatment of citizens who oppose its expropriation policies.

[23] The Applicant relies on the Supreme Court of Canada decision in *Canada (Attorney General) v Ward*, [1993] SCR 689, in which the Court laid out a broad definition of political opinion as encompassing "any opinion on any matter in which the machinery of state, government, and policy may be engaged". The Applicant argues that his critical statements would be perceived as anti-government political opinion. The Applicant submits that the RPD misapplied the law in simply stating that the Chinese law of expropriation is a law of general application and is presumed to be neutral. The RPD failed to consider that the law, albeit a law of general application, could and would be applied against the Applicant in a persecutory manner.

[24] As the Applicant notes, the RPD found that the Chinese law of expropriation is a law of general application and that the Applicant bore the onus of establishing that it is inherently or otherwise persecutory (*Zolfagharkhani v Canada (Minister of Employment and Immigration)*, [1993] 3 FC 540 (FCA) (*Zolfagharkhani)*. The panel concluded that the Applicant had not done so and that, at most, he would be prosecuted for obstructing government officials and not for holding a particular political opinion. The panel stated that "merely shouting slogans against the government and calling the government corrupt in the heat of this confrontation does not reflect political opposition to the government's expropriation policy".

[25] I find that the RPD committed no reviewable error in reaching its conclusion. The RPD's reasons were clear and intelligible and the result justifiable. The RPD accepted that the Applicant

shouted slogans against the government and called the government corrupt but found that such actions would not lead to persecution. The panel's finding was premised on the Applicant's specific actions: his participation as one of many in the opposition, his lack of an established leadership role and the fact that his comments were made in the heat of the moment. His evidence did not demonstrate opposition to the Chinese government's expropriation law and policy generally. It was limited to the specific issue of compensation. Based on these findings, it was reasonable for the panel to conclude that, even if the Applicant were arrested in China, he would face prosecution for his actions. He had not discharged his onus of establishing either that the Chinese law regarding expropriation was inherently invalid and non-neutral or that the law would be applied against him in a persecutory manner.

[26] This Court has considered cases similar to that of the Applicant. In *Jiang v Canada (Minister of Citizenship and Immigration)*, 2015 FC 486 (*Jiang*), the basis of the claim by two applicants from China was that they were being sought by the PSB due to their opposition to the compensation offered to them for the expropriation of their property. The RPD had identified credibility concerns surrounding the factual basis of the claim. However, Justice Phelan stated that the determinative issue in the application for judicial review was that the applicants' claim was not founded on a Convention ground. He relied on the case of *Zolfagharkhani*, as did the RPD in the present case, for the proposition that the Chinese law of expropriation is presumptively valid and neutral. He stated (*Jiang* at paras 13-14):

> [13] The Board reasonably concluded that the Applicants had not rebutted the presumption of neutrality and validity of the Chinese expropriation law. Furthermore, the Board reasonably concluded that the Applicants had failed to provide evidence that the law would be used against them due to a perceived political dissent.

> [14] 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. This finding is consistent with the decision in *You v Canada (Citizenship and Immigration)*, 2013 FC 100:
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> > [20] The real dispute was over money not a grounds under the Convention. The monetary dispute cannot be dressed up as a political dispute just because it is against a government decision.
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> > [21] It was not unreasonable to conclude that there was no nexus to a Convention grounds given the nature of the dispute and protest activities.

[27] Justice Kane relied on the decision in *Jiang* in her decision in *Cao*. She concluded that if the applicant in the case before her was being sought by the Chinese authorities, he was being sought for his involvement in a protest to demand fair compensation and was not being sought due to a Convention ground. I find the case before me indistinguishable. Although the RPD acknowledged that the Applicant made anti-government statements during the April 2012 protest, it reasonably found that those statements alone were not sufficient to raise his fear of the PSB to a fear of persecution. His dispute with the government was a monetary dispute and not a political one. The RPD's finding was reasonable on the evidence and testimony before it.

VI. Conclusion

[28] The application is dismissed.

[29] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT in IMM-229-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Elizabeth Walker"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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