

Federal Court



Cour fédérale

Date: 20181108

Docket: IMM-4505-17

Citation: 2018 FC 1124

Ottawa, Ontario, November 8, 2018

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

GUANGQUAN WANG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Guangquan Wang, is a Chinese citizen. Mr. Wang deposes that he lived with his family in a house owned by his father in Dongxia town, Qingzhou City, China. This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee*

Protection Act, SC 2001, c 27 of a decision by the Refugee Appeal Division [RAD] dated September 29, 2017, upholding a decision of the Refugee Protection Division [RPD] denying the Applicant's claim for protection. For the reasons that follow, the application for judicial review is allowed.

II. Background

[2] The Applicant deposed that in April of 2016, the Dongxia Village Committee announced plans to expropriate his father's home and the surrounding land for the construction of a fox breeding farm. The local government offered compensation for the expropriation, but it was far below market value.

[3] The Applicant took on the role of organizing the 28 households affected by the land expropriation. He and another villager, Hongtao Wang, drafted a petition letter which was signed and fingerprinted by all the homeowners. They submitted the petition to the village head who forwarded it to the local government.

[4] On July 27, 2016, the village head called a meeting and announced that the original compensation offer would stand. In response, the Applicant suggested that the affected families protest the decision at the local government office. With the help of Hongtao Wang, the Applicant wrote a petition contesting the minimal compensation.

[5] On August 10, 2016, the Applicant claims that the homeowners protested at the local government building. At the demonstration, an official from the mayor's office accepted their

petition and asked for the phone numbers of Hongtao Wang and the Applicant. On August 22, 2016, the official called them and reiterated that the compensation decision was final.

[6] On August 30, 2016, Hongtao Wang and the Applicant organized a protest of about 50 villagers at Qingzhou City Hall. This time, officials refused to accept their petition and security officers drove the protestors away with batons. The Applicant deposes that Hongtao Wang was struck on the head and that he was hit on the arm. The organizers then made plans to take their protest to the provincial government on September 9, 2016.

[7] Meanwhile, the Applicant deposes that Hongtao Wang took pictures of his injuries and posted them online. Shortly thereafter, Hongtao Wang was arrested by the People's Security Bureau ["PSB"] and charged with incitement and undermining social stability and economic development.

[8] After Hongtao Wang's arrest, the Applicant deposes that he went into hiding, and then contacted a smuggler to make arrangements to leave China.

[9] After leaving China, the Applicant claims that the PSB officers have questioned his family about his whereabouts and have made clear that they intend to arrest him. Specifically, that the PSB has visited his family on three occasions since his departure (on December 30, 2016, January 19, 2017, and on March 10, 2017).

[10] The Applicant states that his wife told him that on December 20, 2016, PSB officers visited their house and told his wife that they wanted to arrest him and asked about his whereabouts. He claims that his wife told him that the PSB officers said that the Applicant should report to the Qingzhou City PSB and accused him of organizing opposition to government, undermining social stability and disrupting economic development.

[11] The Applicant also claims that in February of 2017, his father went to the Dongxia local government office to seek compensation for the expropriation. The expropriation was scheduled for April 2017, after which time the Applicant's family would not have a home. The government replied that his father would only receive compensation once the Applicant reported to the Qingzhou City PSB.

A. *RPD Decision*

[12] In a relatively brief decision dated April 18, 2017, the RPD found that the Applicant was neither a Convention refugee nor a person in need of protection.

[13] The RPD accepted the claimant's identity as a citizen of China but found that his lack of credibility was determinative.

[14] The RPD made several adverse determinations of credibility, including:

- The RPD stated that considering the level of education of the claimant, he was not a credible witness. The panel stated that he "was very hesitant, vague, evasive and inconsistent".

- The Panel concluded that, on a balance of probabilities, the claimant's testimony and evidence were "fabrications and/or embellishments" to strengthen his refugee claim.
- The RPD found that his answers to questions about the PSB visiting his family's home on December 30, 2016, were not reasonable as they were not consistent with his Basis of Claim narrative. When asked about the PSB's visit on December 30, 2016, he simply replied that the PSB had pressured his wife to disclose her husband's whereabouts. However, in his Basis of Claim, he had stated that the PSB had visited his family and announced that he was accused of "organizing opposition to the government, undermining social stability and disrupting economic development" (RPD at paras 14-16). The Panel concluded that this was a material omission from his testimony and drew a negative credibility finding.
- The RPD also found his evidence inconsistent regarding when his problems in China began. In his Basis of Claim narrative, he stated that security officers hit him with batons on August 30, 2016. In his oral testimony, he stated that his problems and fear began in September 2016. The Panel reached a negative credibility finding based on this small discrepancy.
- The RPD also took issue with his explanation of why his father would demand compensation from the government after it was clear that the family felt threatened. He replied that the family needed the money to move and purchase a house. The RPD found that it was "nonsensical that the claimant's father would assume the risk of making further demands of the government on an

issue that is directly connected to his son's problem with the PSB" and that Mr. Wang's explanation was "wholly illogical". As a result, the RPD drew a negative credibility finding.

- The RPD also questioned the authenticity of his documentary evidence. The Panel found that it was unreasonable that Mr. Wang's wife mailed him copies of the petitions but did not send a letter attesting to truth of Mr. Wang's allegations. Further, the RPD commented that the petitions were "easily produced", indirectly finding that the documents were not genuine.
- In the absence of a summons or warrant from the PSB, the RPD concluded that there was insufficient evidence that Mr. Wang was indeed wanted or being pursued by authorities in China. In regards to the remaining documents, the RPD again found that they could be "easily produced", indirectly concluding that they were not genuine.
- The Panel concluded that the evidence did not establish that the PSB were interested in Mr. Wang nor would they be should he return to China.

III. Decision under Review

[15] In a decision dated September 29, 2017, the RAD confirmed the decision of the RPD and dismissed the appeal. In arriving at its decision, the RAD reviewed the record and assessed the evidence and findings of the RPD. The RAD disagreed with some findings of the RPD and agreed with other findings.

A. *Recollection of PSB Visit*

[16] The RAD confirmed the RPD finding that it was unreasonable that the Applicant could not remember what officials had said to his family when they visited the family's home on December 30, 2016. In the RAD's estimation, these findings were crucial because they go to the heart of the Applicant's claim that his wife told him that the PSB had accused him of "organizing opposition to the government, undermining social stability and disrupting social development" and intended to arrest him.

[17] During the hearing, the Applicant was asked six times what had happened during the PSB's visit to his family's home on December 30, 2016, details which he had provided in his updated Basis of Claim narrative only one week before the hearing. Despite being asked six times, the Applicant at no point recollected the PSB's accusation of organizing opposition to government. Considering the nature of the Applicant's claim, the RAD found that his evidence of this event was central to establishing his fear of persecution upon return to China.

B. *Letter from Spouse*

[18] The RAD agreed that the Applicant's explanation for why he did not have a letter from his wife attesting to the allegations was not reasonable. The RAD concluded that the Applicant's fear of arrest by the PSB was "at the heart of his claim" and yet his evidence of this threat was "anecdotal and second-hand". The RAD noted that in the absence of documentary evidence, RPD Rule 11 states that the claimant should explain why they do not have documents and what steps were taken to obtain them. The RAD did not accept the Applicant's explanation that he did

not want to cause trouble for his wife, finding that he could have asked her to send the letter through intermediaries or asked for a letter from other family members, like his father. The RAD found that it did not make sense that the Applicant's family would have no trouble mailing petitions with names and finger prints yet was unable to send personal letters attesting to the claims as described by the Applicant.

C. *Lack of Supporting Documentation*

[19] The RAD concluded that the RPD did not err in finding that the Applicant's explanations for the lack of supporting documentation regarding PSB interest was unreasonable.

[20] The RAD agreed with the RPD that the lack of summons or warrant was a consideration in assessing whether the Applicant was pursued by Chinese authorities and that the lack thereof damaged his credibility. The RAD accepted that issuance of summons is not mandatory or uniformly carried out across China, but that on the particular facts of this case it was "highly likely that a summons or warrant would have been issued" in light of the PSB's sustained interest in the Applicant. As a result, the RAD concluded that the lack of summons damaged the Applicant's credibility.

[21] The RAD noted inconsistencies in the home ownership certificate and therefore assigned it little weight. The RAD further found that the remaining documentary evidence did not establish the Applicant's claim that he is wanted by authorities in China.

D. *The RAD's Disagreement with the RPD Panel*

[22] The RAD disagreed with two of the RPD's negative credibility findings.

[23] First, the RAD concluded that the Applicant's explanation for saying that his problems began in September rather than when he was beaten on August 30, 2016 was reasonable. On this point, the RAD concluded that the RPD's negative credibility was an error.

[24] Second, the RAD found that the RPD's conclusion that the Applicant's father would not have sought compensation from the government in February 2017 was an error, as it was a plausibility finding which should only be made in the clearest of cases. The RAD determined that the RPD erred in this regard.

E. *The RAD's Conclusion*

[25] The RAD concluded that the RPD did not err in finding that the Applicant had not established the core aspect of his claim, on a balance of probabilities, that he is wanted by the PSB because he was a leader in protesting the expropriation and insufficient compensation of his father's and other villagers' properties. The RAD found that the Applicant provided insufficient credible evidence that he is wanted by authorities in China and had not offered reasonable explanations for the lack thereof.

IV. Issues

[26] Based on the submissions and argument of counsel, this Court is being asked to address the following issues:

- a) What is the standard of review?
- b) Did the RAD fail to provide adequate reasons?
- c) Were the RAD's conclusions regarding lack of corroborating evidence reasonable?

V. Arguments and Analysis

A. *What is the standard of review?*

[27] When reviewing a decision of the RAD, reasonableness applies to findings of fact and mixed fact and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, 53, 55, 62; *Huruglica v Canada (Citizenship and Immigration)*, 2016 FCA 93 at para 35).

B. *Did the RAD fail to provide adequate reasons?*

(1) Applicant Argument

[28] The Applicant submits the RAD decision fails to address how the RPD's two credibility errors affected the RAD's analysis. The Applicant suggests that had the RPD not made these two credibility errors, the RPD may have reached a different result. The Applicant asserts that in the absence of such an analysis, "Mr. Wang is left to wonder how his decision on his claim for

refugee protection could be left to stand when the Board evidently committed two errors in its reasoning”.

(2) Respondent Argument

[29] The Respondent submits that adequacy of reasons is not a stand-alone basis for quashing a decision citing *Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 14, 16, 18). The Respondent asserts that the reasoning process followed by the decision-maker was set out and reflects the fact that the RAD gave consideration to the relevant factors (*VIA Rail Canada Inc v National Transportation Agency (CA)*, [2001] 2 FC 25 at paras 21- 22).

[30] Further, the RAD considered the RPD’s decision, found two errors, and independently analyzed and agreed with the rest of the RPD’s findings before dismissing the appeal. The Respondent submits that when the RAD finds an error in the RPD’s decision it does not mean it has to go back to the RPD for determination.

[31] The Respondent also comments that the Applicant is essentially taking issue with the weight given to Mr. Wang’s evidence and testimony, issues that are not grounds for judicial review citing (*He v Canada (Minister of Citizenship and Immigration)*, 2010 FC 525; *Brar v Canada (Minister of Employment and Immigration)*, (FCA) 1986 FCJ No 346).

(3) Analysis

[32] In this Court's view the Applicant's argument that the RAD decision does not adequately explain how the RPD's credibility errors affected its final determination is not persuasive. After reviewing each of the individual findings in the case, the RAD concluded that it agreed with the RPD's core finding: Mr. Wang had failed to establish on a balance of probabilities that he is wanted by the PSB because he was a leader in protesting the expropriation and insufficient compensation of his father's and other villagers' properties.

[33] The RAD found that the RPD had reached two unreasonable credibility determinations, however these errors did not unseat the central problem in Mr. Wang's application namely, that his account of PSB persecution relied exclusively on his family members' account that authorities were looking for him and yet he provided no evidence from his family members. Further, there was significant variance on this point between his written narrative and oral testimony.

C. *Were the RAD's conclusions regarding lack of corroborating evidence reasonable?*

(1) Applicant Argument

[34] The Applicant submits that in upholding the Board's credibility determination the RAD was obligated to indicate why Mr. Wang's very reasonable and understandable explanation of why he did not obtain a letter from his spouse was rejected.

[35] The Applicant also asserts that the RAD's determination that a lack of summons from the PSB rendered him not credible was an error. The Applicant argues that this was another plausibility finding and constituted an error.

(2) Respondent Argument

[36] The Respondent submits that the Applicant has failed to identify any reviewable error in the RAD's decision. The Respondent asserts that the RAD rightly found that the lack of corroborating evidence from the Applicant's wife or other family member, the lack of summons, or any document establishing that the Applicant is being pursued by the PSB was a major omission.

[37] The Respondent submits that it was open to the RAD to draw a negative inference from this fact, particularly given the Applicant was clearly aware of the necessity of providing documentation given the other types of documents he submitted (See *Dundar v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1026 at paras 19, 22; *Amarapala v Canada (Minister of Citizenship and Immigration)*, 2004 FC 12 at para 10 [*Amarapala*]; *Yang v Canada (Minister of Citizenship and Immigration)*, 2009 FC 681 at para 8). I note that in *Amarapala* the Court stated that:

[10] It is well established that a panel cannot make negative inferences solely from the fact that a refugee claimant failed to produce any extrinsic documents to corroborate a claim. But where there are valid reasons to doubt a claimant's credibility, a failure to provide corroborating documentation is a proper consideration for a panel if the Board does not accept the applicant's explanation for failing to produce that evidence. See *Singh v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. 755 per O'Reilly J. at paragraph 9.

[38] The Respondent asserts that the RAD's conclusions regarding the summons were also reasonable (*Liu v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1362 at para 52; *He v Canada (Citizenship and Immigration)*, 2013 FC 362 at para 23). The Respondent submits that in *Liu* at para 56, the Court found that "it did not make sense that the PSB would expend so much time re-visiting his home merely because he shouted at a municipal officer in public, instead of leaving "some form of summons".

(3) Analysis

[39] This Court has cautioned decision-makers against "drawing adverse credibility inferences on the basis of expectations about what Chinese authorities are likely to do, or an assumption that law enforcement practices will be consistently uniform" (*Xu v Canada (Minister of Citizenship and Immigration)*, 2013 FC 924 at para 14, citing *Weng v Canada (MCI)*, (25 October 2012), Ottawa IMM-1536-12 (FC), at para 6).

[40] Most recently, this Court has held that the RPD disregarding country information about the PSB's likelihood of leaving a summons in China is a reviewable error (*Zhang v Canada (Minister of Immigration, Refugees and Citizenship)*, 2018 FC 444 at para 16) [*Zhang*]:

[16] The RPD again disregarded the country condition evidence when it dealt with this topic. The evidence said that a summons "may" be left and the Applicant testified that it had been shown to but not left with his mother. However, the RPD concluded that a summons "would" have been left given the high level of PSB interest in the Applicant. This was speculative and not justified by the country condition documents. It was therefore unreasonable.

[Emphasis added.]

[41] In the present case, the RAD member reviewed the documentary evidence regarding summons or arrests in China, highlighting Article 81 of the *Criminal Procedure Law* and the *2012 MPS Regulations Concerning the Handling of Administrative Cases by Public Security Authorities* [“*MPS Regulations*”]. Similar to the evidence in *Zhang*, Article 81 states that summons, notices and other court documents “may” be received by a family member if he or she is absent. The *MPS Regulations* also state that where a person needs to be investigated, they “may” be served with a summons.

[42] After reviewing this country evidence, the RAD member noted that documentary evidence shows that the issuance of the summons is not mandatory or uniformly carried out throughout the country, but that according to the Applicant the PSB made repeated attempts to find him. The RAD concluded that although the summons policy is “not always implemented, it is highly likely a summons or warrant would have been issued in respect of the Appellant given the consistent PSB searches for him, indicating that the PSB had more than a casual interest in the Appellant”. The RAD member then stated that within this context, the lack of a summons or arrest warrant, when “one should reasonably have been issued”, damaged the Applicant’s credibility.

[43] This finding is analogous to this Court’s determination in *Zhang* that in light of the country evidence, the RAD’s conclusion was speculative and not supported by the country conditions. When evidence provides that a summons “may” be issued, it is not reasonable to determine that a failure to present a summons is *so unlikely* as to damage an Applicant’s credibility.

[44] This Court therefore finds that the RAD's decision on this point was unreasonable.

VI. Conclusion

[45] For the above reasons, the application for judicial review is allowed. The matter is referred back to be considered by a differently constituted panel.

[46] The Applicant sought to certify a question of general importance respecting the RAD's duty to explain the impact of RPD's errors on the RAD's determination and why a decision is permitted to stand despite the error. The Applicant suggests that guidance is required from the Court.

[47] The Respondent opposes certification of the question on the basis that it does not meet the test for certification.

[48] I am persuaded by the argument of the Respondent that the proposed question does not satisfy the requirements for certifying a question. There will be no question to certify.

JUDGMENT in IMM-4505-17

THIS COURT'S JUDGMENT is that the application for judicial review is allowed.

There is no question of general importance to be certified. There is no order for costs.

“Paul Favel”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4505-17

STYLE OF CAUSE: GUANGQUAN WANG v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 31, 2018

JUDGMENT AND REASONS: FAVEL J.

DATED: NOVEMBER 8, 2018

APPEARANCES:

Christina M. Gural FOR THE APPLICANT

Aleksandra Lipska FOR THE RESPONDENT

SOLICITORS OF RECORD:

Christina M. Gural FOR THE APPLICANT
Barrister and Solicitor
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario