

Federal Court



Cour fédérale

Date: 20181130

Docket: IMM-126-18

Citation: 2018 FC 1204

Ottawa, Ontario, November 30, 2018

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

CHANG YOU KAO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Defendant

JUDGMENT AND REASONS

I. Overview

[1] Chang You Kao seeks judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board [IRB]. The RAD dismissed Mr. Kao's appeal of a ruling by the Refugee Protection Division [RPD] of the IRB that he is neither a Convention

refugee nor a person in need of protection pursuant to ss 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] Despite my misgivings about the RAD's reasons for rejecting the authenticity of some of Mr. Kao's documents, I am satisfied that its decision to refuse his refugee claim was reasonable. The RAD's determination that Mr. Kao was not a genuine adherent of the Mentu Hui faith falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law. The application for judicial review is therefore dismissed.

II. Background

[3] Mr. Kao is a citizen of China. He claims to fear persecution due to his Mentu Hui faith. Mentu Hui is a Christian sect that is outlawed in China.

[4] Mr. Kao says he witnessed the death of a co-worker in October 2015, and subsequently experienced mental health problems. He sought treatment in hospitals and from practitioners of traditional Chinese medicine, but to no avail. A friend then suggested that he try Mentu Hui.

Mr. Kao attended his first Mentu Hui service on May 29, 2016.

[5] Mr. Kao's connection with Mentu Hui was brief. He attended only four church services, and then disassociated himself from the faith.

[6] According to Mr. Kao, on July 3, 2016, he and other worshippers were arrested by the Chinese Public Security Bureau [PSB] at a Mentu Hui service. Mr. Kao says he was interrogated and assaulted while in custody. The PSB released him with an administrative punishment decision and instructions to report every two weeks. Mr. Kao says he reported to the PSB every two weeks beginning on July 18, 2016, and was assaulted and interrogated each time.

[7] Mr. Kao left China on November 19, 2016 with a fraudulent travel visa, arriving in Canada the next day. He subsequently learned from his wife that the PSB had come to his house, questioned her about his whereabouts, and left a summons. He was also fired from his job.

III. Decision under Review

[8] The RAD dismissed Mr. Kao's appeal of the RPD's decision on December 20, 2017. The RAD upheld the RPD's finding that Mr. Kao's faith in Mentu Hui was not sincere. The RAD acknowledged the jurisprudence of this Court that cautions against assessing the sincerity of religious faith based on knowledge alone, but also cited the decision of Justice Peter Annis in *Shen v Canada (Citizenship and Immigration)*, 2015 FC 903 at paragraph 22:

[i]n cases of religious persecution, the RPD is required to assess whether the person is actually an adherent of the named religion and in doing so, the member is entitled to ask questions about the basic tenets of that religion [citations omitted].

[9] Although Mr. Kao's association with Mentu Hui was brief, the RAD concluded that his knowledge was not commensurate with what one would expect of an adherent of comparable experience and sophistication. When asked about his religion, Mr. Kao said he believed in the

“three times Jesus”. However, when asked about each incarnation of Jesus, he was unable to provide details. He could recall only that the first Jesus was connected in some way to Noah’s Ark. The RAD held that the “three times Jesus” is a basic tenet of the Mentu Hui faith, and Mr. Kao’s inability to answer simple questions about this tenet demonstrated that his religious belief was not genuine.

[10] The RAD confirmed the RPD’s finding that Mr. Kao’s account of his conversion was not credible. When asked why he converted, Mr. Kao recited the narrative from his Basis of Claim [BOC] form. The RPD interjected a number of times, urging him to answer the question asked. The RPD found that Mr. Kao’s behavior, combined with his inability to readily answer other questions, suggested he had memorized and was simply reiterating his BOC narrative.

[11] The RAD concluded that the administrative punishment decision, the non-coercive summons and the dismissal notice were fraudulent documents. The RAD noted that it would be easy to forge the administrative punishment decision due to its simple design and hand-written annotations. The RAD noted the widespread availability of fraudulent documents in China (citing the China National Document Package, CHN104579.E), and Mr. Kao’s previous reliance on fraudulent travel documents. The RAD held that it was unlikely the PSB would have refrained from issuing a coercive summons, given its allegedly vigorous pursuit of Mr. Kao. The RAD found the dismissal notice to be fraudulent due to its simplicity, the lack of contact information for Mr. Kao’s employer, and the absence of authentic examples of Chinese dismissal notices for comparison.

IV. Issue

[12] The sole issue raised by this application for judicial review is whether the decision of the RAD was reasonable.

V. Analysis

[13] The RAD's findings of fact and credibility assessments are subject to review by this Court against the standard of reasonableness (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59). The Court will intervene only if the decision falls outside 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).

[14] Mr. Kao notes that the RAD's rejection of his credibility was based on numerous factors, and states that none of these was determinative. The RAD said the following at paragraph 41 of its decision:

When considering in totality the cumulative adverse credibility findings noted above, the RAD finds, on a balance of probabilities, that the Appellant's evidence with regard to central allegations in China are neither credible nor trustworthy.

[15] Mr. Kao's primary criticism of the RAD's decision concerns the manner in which it assessed the authenticity of the documents he submitted to corroborate his claim. In *Huang v Canada (Citizenship and Immigration)*, 2017 FC 762 at paragraph 69, Justice James Russell

faulted the RAD for finding that the “lack of a summons or arrest warrant, when one should reasonably been issued, damages the credibility of the [applicant].” Mr. Kao says that Chinese law requires a coercive summons to be served personally. Since Mr. Kao had left China before the PSB served the non-coercive summons, the PSB did not serve a coercive summons.

[16] A further concern is the RAD’s reliance on Mr. Kao’s use of fraudulent travel documents to support its conclusion that other documents were likely forged. As Justice Luc Martineau remarked in *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at paragraph 11:

[...] where a claimant travels on false documents, destroys travel documents or lies about them upon arrival following an agent's instructions, it has been held to be peripheral and of very limited value to a determination of general credibility [citations omitted].

[17] Mr. Kao’s criticisms of the RAD’s assessment of his documentary evidence have merit. I am nevertheless satisfied that its refusal of Mr. Kao’s refugee claim was reasonable. The RAD’s conclusion that Mr. Kao was not a genuine adherent of the Mentu Hui faith was supported by its assessment of his testimony, independently of the documentary evidence. It was therefore open to the RAD to refuse his refugee claim on this basis alone.

[18] The jurisprudence of this Court establishes a low bar for religious knowledge, which should be assessed only to determine the sincerity of a refugee claimant’s beliefs (*Huang v Canada (Citizenship and Immigration)*, 2012 FC 1002 at paras 9-17 [*Huang*]; *Lin v Canada (Citizenship and Immigration)*, 2012 FC 288 at para 59 [*Lin*]). Mr. Kao failed to demonstrate an understanding of even the most basic tenets of the Mentu Hui faith. His circumstances may

therefore be distinguished from those in *Huang* and *Lin*, where the applicants demonstrated significant religious knowledge but nevertheless failed to meet the RPD's unreasonably high expectations (at para 14 and para 58, respectively).

[19] Here, the RAD's expectations were modest. Mr. Kao identified the concept of the "three times Jesus" as central to both the Mentu Hui faith and his personal beliefs, but when asked about each of the three incarnations of Jesus, he was unable to provide specific or cogent answers. His case resembles *Jia v Canada (Citizenship and Immigration)*, 2016 FC 33, in which I wrote the following at paragraph 18:

In this case, the questions put to Mr. Jia were not particularly difficult. Contrary to *Huang*, I do not believe that the RPD held Mr. Jia to a "better than average working knowledge" of the principles of Falun Gong. Rather, the RPD assessed whether Mr. Jia had "a reasonable working knowledge of the contents of the text and some of its applications to his chosen lifestyle, even if he did not understand all of its substance." The RPD's factual determinations are entitled to deference by this Court, and this Court will intervene only if the RPD unreasonably expects more than a particular claimant can offer [citations omitted].

[20] As Justice Denis Gascon observed in *Soorasingam v Canada (Citizenship and Immigration)*, 2016 FC 691 at paragraph 16, credibility assessments lie at the "heartland" of the RPD's jurisdiction:

The RPD is thus better placed to assess the credibility of a refugee claimant as the panel member can see the witness at the hearing, observe the witness' demeanour and hear his or her testimony. The RPD has the opportunity and ability to assess the witness in respect of frankness, readiness to answer, coherence and consistency of oral testimony before it (*Navaratnam v Canada (Minister of Citizenship and Immigration)*, 2011 FC 856 at para 23). In addition, the RPD benefits from the specialized knowledge of its

members to assess evidence relating to facts stemming from their field of expertise (*El-Khatib v Canada (Citizenship and Immigration)*, 2016 FC 471 at para 6).

[21] The RAD's determination that Mr. Kao was not a genuine adherent of the Mentu Hui faith falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law. Despite the able submissions of counsel for Mr. Kao, the application for judicial review must be dismissed.

JUDGMENT

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

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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