

Federal Court



Cour fédérale

Date: 20190116

Docket: IMM-2163-18

Citation: 2019 FC 57

Ottawa, Ontario, January 16, 2019

PRESENT: The Honourable Madam Justice McDonald

BETWEEN:

TONG JIANG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of a negative decision of the Refugee Protection Division [RPD], denying her claim for refugee protection based on a fear of persecution in China as she is a Falun Gong practitioner. For the reasons that follow, this judicial review is granted. The RPD's findings with respect to the summons and the Applicant's ability to leave China are not reasonable.

Background

[2] The Applicant claims that she started to practice Falun Gong in 2011 to deal with medical and emotional issues. She states that in March 2012, her Falun Gong group was raided by the Public Security Bureau [PSB] but she managed to escape through a back door.

[3] Following this, the Applicant claims that the PSB went to her home on several occasions and on March 21, 2012 the PSB issued an arrest summons. She then left China with the assistance of a smuggler.

[4] Upon arrival in Canada, the Applicant made a refugee claim.

RPD Decision

[5] In the April 16, 2018 decision, the RPD determined that the Applicant was neither a Convention refugee nor a person in need of protection. The RPD concluded that, on a balance of probabilities, she did not practice Falun Gong in China, has never been wanted by the Chinese authorities, and only joined a Falun Gong group in Canada to support a fraudulent claim.

[6] The RPD found that the Applicant is not a genuine practitioner of Falun Gong because she demonstrated limited knowledge of Falun Gong. The RPD rejected the Applicant's explanation that she could not name the first exercise because she was nervous, as she claimed to have practiced Falun Gong for seven years; therefore, she should know the name of each movement. The RPD noted a number of instances where she incorrectly responded to the

panel's questions about the principles of Falun Gong and the teachings of Master Li. The RPD stated that these questions were basic and fundamental to the practice of Falun Gong and a person who practised for seven years would know the answers.

[7] The RPD found that the description of the PSB raid was neither credible nor plausible, noting that as the PSB are professionals, they would have surrounded the house rather than allowing practitioners to run out the back door.

[8] The RPD found that the two summonses filed by the Applicant were not genuine, noting that the summonses did not state a time and place for the Applicant to appear. The RPD also noted the prevalence of fraudulent documents in China. The RPD concluded that because the Applicant was found not to be a Falun Gong practitioner in China, the documents were not genuine.

[9] The RPD found that the Applicant's description of her flight from China was vague and not consistent with the national documentation evidence describing multiple security checks and instances where passports are screened. When asked as to how she avoided the Golden Shield system, she indicated that she relied on the smuggler. The RPD concluded that the Applicant could not have successfully left the country showing her passport once or twice as she described, without being detected.

[10] The RPD found the Applicant's submissions that the security system could be overcome to be unconvincing, as she was not credible with respect to her travel through the airport. The

RPD considered the Jurisprudential Guide TB6-11632 and case law, including *Huang v Canada (Citizenship and Immigration)*, 2017 FC 762 [*Huang*], in assessing her ability to leave China without detection.

[11] The RPD found that the Golden Shield was effective at the time the Applicant left China and noted that while being smuggled out of China is possible, it was not probable. The RPD found that, given the claimant's lack of credibility about being a Falun Gong practitioner, it was unlikely that she was smuggled out of the country. The RPD found that, on a balance of probabilities, the Applicant did not leave China as she described and, therefore, was never wanted by Chinese authorities.

[12] The RPD considered letters of support and photographs of the Applicant's Falun Gong practice in Canada but gave this evidence little weight because the authors were not present to be questioned and the photographs were taken in a public place. The RPD found that they do not overcome credibility concerns or establish a genuine practice on a balance of probabilities.

[13] The RPD concluded, on a balance of probabilities, that the Applicant is not a genuine Falun Gong practitioner because she was not a genuine practitioner in China and there is no evidence of conversion. The RPD concluded that she joined a Falun Gong group in Canada solely to support her fraudulent refugee claim.

Issues

[14] The following issues are dispositive of this judicial review:

- I. Was the assessment of the summons reasonable?
- II. Was the finding on the departure from China reasonable?

Standard of review

[15] The standard of review for the RPD's findings and assessment of evidence is reasonableness (*Liu v Canada (Citizenship and Immigration)*, 2018 FC 933 at para 9 [*Liu*]).

[16] A reasonable decision is one that demonstrates justification, transparency, and intelligibility and falls within the range of possible, acceptable outcomes defensible in fact and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190).

Analysis

- I. Was the assessment of the summons reasonable?

[17] The Applicant argues that the RPD erred by making a negative inference because the summons lacked an address. According to the Applicant, the national documentation evidence states that address information is not consistently included on summonses, and that the name of the PSB may be included instead.

[18] Although the summons tendered into evidence did not contain an address at which the Applicant had to appear, it was stamped and issued by the Su Jia Tun branch office of the Shen Yang City PSB, which is consistent with the national documentation evidence. The RPD did not consider this, despite the requirement to analyze important evidence contradicting their findings

(*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35 at para 17). The RPD did not explain why a date, place, or time to appear would necessarily be included on a summons, when at least one of these assumptions is directly contradicted by the documentary evidence.

[19] The RPD also notes the prevalence of fraudulent documents in China. However, this alone is not a sufficient basis upon which to dismiss the summons. Documents purporting to be issued by a foreign jurisdiction are entitled to the presumption of the truth of their contents (*Cao v Canada (Citizenship and Immigration)*, 2012 FC 694 at para 15).

[20] Overall, the RPD was required to examine and weigh the documents in front of it, even if inauthentic documents are widely available (*Lin v Canada (Minister of Citizenship and Immigration)*, 2012 FC 157 at para 54-55; *Liu v Canada (Citizenship and Immigration)*, 2018 FC 933 at para 13). It did not do so in this case.

[21] The Respondent submits that where an applicant lacks credibility, the RPD is entitled to accord their corroborative documentary evidence little or no probative value. However, the RPD here appears to have misunderstood the role of corroborative evidence.

[22] Corroborative evidence may only be required of refugee claimants when the RPD already has existing credibility or plausibility concerns with respect to a claimant's evidence (*Ismaili v Canada (Citizenship and Immigration)*, 2014 FC 84 at para 36; *Ndjavera v Canada (Minister of Citizenship and Immigration)*, 2013 FC 452 at para 6). The fact that the RPD has such concerns,

therefore, cannot be a freestanding reason to conclude that corroborative evidence is not genuine. Corroborative evidence may not be sufficiently probative to overcome a panel's concerns, or may be discounted for other reasons. However, a conclusion that the documents in this case are not genuine cannot be supported alone by the RPD's doubt that the Applicant practiced Falun Gong in China.

[23] The RPD failed to give proper consideration to the summons as corroborative evidence of the Applicant being wanted in China. Therefore, its conclusion lacks justification and is not reasonable.

II. Was the finding on the departure from China reasonable?

[24] The Applicant argues that it was unreasonable for the RPD to conclude that it would have been impossible for her to leave China on her own passport because of passport controls, in the face of objective evidence of imperfect passport controls at various airports.

[25] The RAD drew a negative inference based upon her claim that she was able to leave China on her own passport. This, in turn, led the RPD to conclude that she was not wanted by authorities for practicing Falun Gong.

[26] In support of its conclusion, the RPD referenced the decision in *Huang*, saying that issues of bribery, smuggling, and corruption, are to be considered when assessing a claimant's ability to leave China using their genuine passport. In *Huang*, Justice Russell did indicate at para 68 that

where there is evidence of corruption and a bribery scheme, a reasonable decision must explain why these factors could not have reasonably overcome the Golden Shield in a given case.

[27] In this case, though the RPD considered the evidence about the strengths of the Golden Shield security system, it also recognized that smuggling a fugitive out of China was possible. However, the RPD did not explain why, in this case, the smuggler could not have reasonably overcome the Golden Shield and assisted the Applicant out of the country. Instead, the RPD stated that it found that arguments relating to bribery and corruption “make little difference” in the case at hand.

[28] The RPD said the Applicant was “vague” with respect to how many times she showed her passport in the airport. However, a review of the evidence shows that the Applicant explained that she could not remember the precise number. Further, there is no clear inconsistency between the RPD’s conclusion that there are “multiple” instances where passports are screened and the Applicant’s guess that she showed her passport on two occasions.

[29] The RPD also found that the Applicant’s description of leaving China was not consistent with the information in the documentary evidence. The RPD found that the national documentation package indicates that she could not have successfully left China by showing her passport once or twice in the airport. However, this completely disregards the Applicant’s evidence that she relied on a smuggler, the purpose of which would be to bypass security measures which she would not have been able to overcome on her own. The RPD did not state that it disbelieved this account of her exit from China, therefore the RPD’s conclusion that a

person could not overcome the security system, without considering their explanation as to how they did so, lacks justification.

[30] However, the RPD ultimately determined that it was unlikely that the Applicant could have left China on her own passport if she was wanted by authorities, and it was unlikely that she used a smuggler, because the RPD doubted the genuineness of her Falun Gong practice. In taking this approach, the RPD engaged in circular reasoning; its credibility finding on the Applicant's Falun Gong practice is based in part on the fact that she was able to leave China with her own passport.

[31] In order to be reasonable, the decision must be transparent and intelligible. This conclusion of the RPD does not meet that standard.

JUDGMENT IN IMM-2163-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted. The decision of Refugee Protection Division is set aside and the matter is remitted for redetermination by a different officer; and
2. No question of general importance is proposed by the parties and none arises.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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