

Federal Court



Cour fédérale

Date: 20190117

Docket: IMM-449-18

Citation: 2019 FC 67

Ottawa, Ontario, January 17, 2019

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

YE, LIPING

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Liping Ye (the “Applicant”) is a 41 year old citizen of China. After taking part in a protest over the Chinese government’s expropriation of homes, he came to Canada and made a refugee claim under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001 c 27 (the “IRPA”).

[2] On November 24, 2017, the Refugee Protection Division of the Immigration and Refugee Board (the “RPD”) dismissed his claim and found that there was no credible or trustworthy evidence to substantiate the claim. Because the RPD determined the Applicant’s claim has no credible basis, his right to appeal to the Refugee Appeal Division (“RAD”) was removed under section 110(2)(c) of the IRPA.

[3] The Notice of Decision is dated January 12, 2018. On January 31, 2018 the Applicant applied to this Court for judicial review. For the reasons that follow, I find the decision is unreasonable and I will set the decision aside.

II. **Facts**

[4] The Applicant, a citizen of China, lived in Fuqing City, Fujian Province, in an ancestral home that had been in his family for generations. In March 2016, the government advised him about plans to expropriate his property. Although he was offered compensation, an appraisal of the Applicant’s house determined that the compensation offered by the government was almost 1/5 of the home’s value. Unhappy with the amount, the Applicant and five other neighbours took a leadership role to negotiate higher compensation for affected households. The negotiations were to no avail.

[5] On May 20, 2016 the Applicant and 30 other homeowners from the neighbourhood began a protest in front of town government offices. They brought signs, blocked access to the parking lot, and shouted statements such as “the government is corrupt”, as well as “the government officers are bandits and robbers”. Even though the protest was peaceful, on the third day of the protest the police showed up and arrested some protestors. The Applicant escaped and went into

hiding. While in hiding, the Applicant was informed by his wife that the government demolished their home on June 16, 2016. The Applicant was also informed by his wife that the Public Safety Bureau (the “PSB”) attended their home to look for him and left a warrant for his arrest due to his leadership role in the anti-government action.

[6] The Applicant hired a smuggler and left China. The Applicant says he used his own genuine passport to leave China, and then used a fraudulent passport to travel from Europe to Brazil and then to Canada. He alleges that both passports were taken by the smuggler and could not be provided to the RPD.

A. *The RPD Hearing*

[7] On October 25, 2017, the Applicant’s refugee claim took place. In support of his claim, the Applicant submitted numerous documents including: a petition letter, a house ownership claim, an appraisal estimate, a notice of land expropriation, and a summons.

[8] The RPD determined that the Applicant provided no credible or trustworthy evidence to support his claim. It pointed to the documentary evidence stating that fraudulent documents are widely available. The RPD also believed it is unlikely the Applicant could exit China as a wanted person while using his own passport and cited to its Jurisprudential Guideline and Federal Court of Canada case law for support.

[9] In addition, the RPD discussed the Applicant’s failure to provide either of his passports upon arrival in Canada. Relying on *Elazi v Canada (Minister of Citizenship and Immigration)* (2000), 191 FTR 205 (FCTD), the RPD made a negative credibility finding against the

Applicant. The RPD also found the petition letter provided was partially illegible, and did not indicate that it had been delivered or received by any government official.

[10] Overall, the RPD determined that the Applicant did not establish a well-founded risk of persecution. The RPD refused the Applicant's refugee claim and determined that his claim had no credible basis.

[11] On January 31, 2018 the Applicant applied to this Court for judicial review.

III. **Issue and Standard of Review**

[12] The primary issue arising in this case is whether the RPD's treatment of the evidence is unreasonable. The reasonableness standard of review applies to the RPD's assessment of evidence (*Liu v Canada (Citizenship and Immigration)*, 2018 FC 1027 at para 16).

IV. **Analysis**

A. *Did the RPD make unreasonable evidentiary findings?*

[13] The Applicant submits the RPD failed to consider, weigh, analyze and provide reasons for rejecting the summons. The Applicant relies on *Lin v Canada (Minister of Citizenship and Immigration)*, 2012 FC 157 at paragraph 55 to say that just because fraudulent documents are widely available does not mean that all such documents are fraudulent.

[14] According to the Respondent, the RPD reasonably found that the summons is not genuine because the summons was compared against objective documentary evidence.

[15] I cannot agree with the Respondent. The general rule is that foreign government documents are presumptively valid (*Cai v Canada (Minister of Citizenship and Immigration)*, 2015 FC 577 at paras 16-17). The presumption is not rebutted by the widespread availability of fraudulent documents (*Lin* at para 55). And while the RPD says it relied on the documentary evidence in making this determination, a review of the record shows the documentary evidence relied on was the National Documentation Package stating fraudulent identity documents are widely available. The RPD's analysis about the summons is at paragraph 27 of the decision:

The [Applicant] produced a summons as evidence that he is being sought by the PSB. The document is a single page with black print and red-ink stamp as the only, rather rudimentary, security feature, and thus easily forged. In light of the above credibility concerns and the finding that proceeding unimpeded through Chinese exit controls is inconsistent with being wanted by Chinese authorities, the panel refers to documentary evidence that indicates the widespread availability of fraudulent documents in China. The panel finds that the [Applicant] produced a fraudulent document as the summons and draws a further negative credibility inference.

The document referred to in footnote 23, Exhibit 3, is titled “National Documentation Package, China, 20 July 2017, tab 3.22: Fraudulent documents, including the manufacturing, procurement distribution and use of passports, hukou, and resident identity cards (RICs), particularly in Guangdong and Fujian; instances of officials issuing fraudulent RICs to citizens and ... Immigration and Refugee Board of Canada. 21 October 2013. CHN104579.E.” In other words, the document is about the widespread availability of fraudulent documents. And although the RPD makes a general statement that rudimentary stamps are easily forged, it did not independently analyse the stamp on this particular summons. Therefore, in reaching its conclusion, the RPD does not rebut the presumption that the summons is valid. This is an especially serious error as it led to the RPD's finding that the Applicant had no credible basis. As

a result, the Applicant's right of appeal to the RAD was statutorily removed under section 110(2)(c) of the IRPA. Therefore, I am setting the decision aside because it is unreasonable.

V. **Certified Question**

[16] Counsel for both parties were asked if there were questions requiring certification, they each stated that there were no questions arising for certification and I concur.

VI. **Conclusion**

The RPD determined that the Applicant's summons is not genuine based on evidence that fraudulent summons are widespread in China. This finding is not from a range of possible, acceptable outcomes defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47). As the decision is unreasonable I will set it aside.

JUDGMENT in IMM-449-18

THIS COURT'S JUDGMENT is that

1. The decision under review is set aside and the matter referred back for redetermination by a differently constituted panel.
2. No question is certified.

"Shirzad A."

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-449-18

STYLE OF CAUSE: YE, LIPING v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 6, 2018

JUDGMENT AND REASONS: AHMED J.

DATED: JANUARY 17, 2019

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