Federal Court  Cour fédérale

Date: 20190201

Docket: IMM-2772-18

Citation: 2019 FC 138

Toronto, Ontario, February 1, 2019

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

**HUIXIAN YANG, LIAN HUI YANG,
QING YANG, CRYSTAL JIAQING YANG
ZHIQING YANG, TIAN EN YANG**

Applicants

and

**MINISTER OF IMMIGRATION, REFUGEES
AND CITIZENSHIP**

Respondent

JUDGMENT AND REASONS

Overview

[1] This is an application for judicial review of the decision [Decision] of the Refugee Appeal Division [RAD], dated May 2, 2018, confirming the June 23, 2017 decision [RPD Decision] of the Refugee Protection Division [RPD], which denied the Applicants' claims for refugee protection.

[2] As explained in more detail below, this application is dismissed, because the Applicants' arguments do not demonstrates a basis for finding the Decision to be unreasonable.

Background

[3] The Applicants are a family of Guyanese citizens of Chinese ethnicity, consisting of the Principal Applicant, Huixian Yang, her husband, and their four children.

[4] The Applicants fled Guyana on September 10, 2015, and arrived in Canada on September 13, 2015, claiming refugee protection on September 29, 2015. They fled Guyana after their restaurant business in Georgetown, Guyana, was robbed by armed gang members three times in July, August, and September 2015. According to the Applicants, during the last robbery, three gang members demanded $5,000 USD from them, to be paid within 10 days, failing which the gang members threatened to kill them.

[5] The Applicants also allege that, during one of the robberies, the gang members said they hate Chinese people, who should go back to their own country. They also said that they were friends of the police and that their gang covers the entire country. The Applicants believe that they were targeted because of their ethnicity and because people in Guyana think they are wealthy as a result. The Applicants filed police reports for the first two robberies, but say that the police did not follow up on the crimes.

[6] The RPD heard the Applicants' refugee claim on June 9, 2017, and, in its June 23, 2017 decision, found the Applicants not to be Convention refuges under s 96 of the *Immigration and*

Refugee Protection Act, SC 2001, c 27 [IRPA] or persons in need of protection under s 97 of IRPA. The RPD found that their claim had no nexus with a Convention ground and that there was insufficient credible or trustworthy evidence to conclude that the Applicants or people of Chinese descent in general were targeted because of their race. The RPD also made a negative credibility finding because of an omission in the Applicants' Basis of Claim regarding a follow-up call to the police.

[7] The RPD did not find that there was an Internal Flight Alternative [IFA], but did find that the Applicants did not establish that their robbers were more than local petty criminals or that they were looking for the Applicants. It was also held that the Applicants had not rebutted the presumption of state protection.

Decision under Review

[8] The Applicants appealed the negative RPD Decision to the RAD. In the Decision now under judicial review, the RAD confirmed the RPD Decision, but for different reasons, finding that the Applicants had a viable IFA in either Bartica or Mabaruma, Guyana.

[9] In the appeal from the RPD Decision, the RAD requested submissions from the Applicants on the proposed IFA and considered the admissibility of six newly-submitted pieces of evidence pursuant to s 110(4) of IRPA. It found that three news articles pre-dating the RPD Decision and a Wikipedia page were inadmissible, but held that two other news articles post-dated the RPD Decision and contained information that arose after the rejection. These two documents were admitted.

[10] The RAD found that the RPD erred in finding that the Applicants' claim had no nexus with a Convention ground, concluding that the racist statements made by the robbers indicated that there were mixed motives for the crimes. As the crimes were in part racially motivated, the required nexus had been established. However, despite finding this error, the RAD held that the Applicants' claim failed because there is a viable IFA in Guyana.

[11] The RAD considered the two-part IFA test from *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (Fed CA) [*Rasaratnam*]. The RAD concluded that there was no evidence of gangs in Georgetown having a nationwide presence or the means or motivation to track down the Applicants anywhere in Guyana. The RAD also found no evidence of widespread systemic targeting of individuals with the Applicants' profile. The RAD therefore found, on a balance of probabilities, that there is no risk to life or of cruel and unusual treatment or punishment if the Applicants relocate to one of the proposed IFAs.

[12] The RAD also concluded that the Applicants failed to establish that relocating to one of the proposed IFAs would be unduly harsh or unreasonable. The RAD observed that the evidence did not demonstrate that crime in Bartica or Mabaruma rises to such a level that relocation would be unduly harsh or unreasonable. It also found that language barriers or barriers to state protection would not pose a sufficient risk so as to render relocation to the proposed IFAs unduly harsh or unreasonable.

[13] Concluding that the Applicants have viable IFAs in Guyana, the RAD confirmed the RPD Decision that the Applicants are neither Convention refugees nor persons in need of protection.

Issues and Standard of Review

[14] The Applicants submit the following issues for consideration by the Court:

A. Did the RAD err by failing to give proper weight to the Applicants' personal testimony and overemphasizing the lack of third-party evidence available?

B. Did the RAD err by finding that there was no serious possibility of persecution of the Applicants in Bartica and Mabaruma?

C. Did the RAD err in finding that it was not unreasonable or unduly harsh for the Applicants to move to Bartica or Mabaruma?

[15] The parties agree, and I concur, that the standard of review applicable to these issues is reasonableness.

Analysis

Did the RAD err by failing to give proper weight to the Applicants' personal testimony and overemphasizing the lack of third-party evidence available?

[16] The Applicants submit that it was an error for the RAD to rely on a lack of objective evidence in support of their claim, thereby failing to give proper weight to the Applicants' own

testimony. At the hearing of this application for judicial review, the Applicants' counsel referred the Court in particular to the RAD's agreement with the RPD that there is no objective basis for linking the Applicants' fear of persecution by Guyanese gangs or authorities at large to their race or ethnicity.

[17] In support of this finding, RAD noted that there is widespread crime in Guyana that affects all Guyanese citizens, irrespective of their race or ethnicity, referring to newspaper articles describing Chinese business owners being victimized by crime, but not indicating that these crimes were motivated by race. The RAD also agreed with the RPD that letters submitted by the Applicants from individuals who described being victims of crime in Georgetown were insufficient to demonstrate that there is systemic persecution of Chinese residents in all of Guyana or that the crimes against them are different in nature or frequency compared to the rest of the population.

[18] I find no error in connection with this aspect of the RAD's analysis. It will be recalled that the RAD did accept the Applicants' personal testimony, to the effect that racist statements were made during one of the robberies, to support its conclusion that the robberies themselves were in part racially motivated. However, when it came to the analysis of the viability of the proposed IFA, which was the determinative issue in the Decision, the RAD reasonably focused upon the objective evidence. As noted by in the Federal Court of Appeal in *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (Fed CA) at para 12 [*Thirunavukkarasu*], the test for considering whether it is reasonable for claimants to seek an IFA is an objective one.

[19] Whether the RAD erred in its consideration of the objective evidence, in assessing whether there was a serious possibility that the Applicants would face persecution in the IFA, is analysed under the next issue raised by the Applicants.

Did the RAD err by finding that there was no serious possibility of persecution of the Applicants in Bartica and Mabaruma?

[20] In considering the first part of the IFA test prescribed by *Rasaratnam*, i.e. whether there is a serious possibility of the Applicants being persecuted in the proposed IFA, the RAD reviewed the documentary evidence and concluded that, while there is evidence of neighbourhood criminal gangs being a problem in Guyana, there is no evidence of any gangs in Georgetown having a nationwide presence or the means to track individuals anywhere in the country. The Applicants take issue with this finding, arguing that there are portions of the country condition evidence that speak to the presence of nationwide gangs, including those gangs being affiliated with national political parties and police corruption.

[21] The Applicants refer first to a February 2012 publication which refers to "large scale criminal networks" operating in Guyana, arguably posing the most serious challenge to the country's security, and involving drug and arms trafficking that is accomplished due to the gangs' political connections and weak law enforcement capacity. The Applicants point out that this article refers to a particular gang leader named Khan having considerable timber holdings in the Guyanese hinterlands, which they submit demonstrates the presence of this gang in rural areas such as Bartica or Mabaruma.

[22] The Respondent notes that Khan was arrested in 2006 and extradited to the United States, where he pled guilty to drug trafficking charges. The Respondent therefore argues that this evidence is of little assistance in establishing the current reach of criminal gangs in Guyana. I note that Khan's organization is described as "emblematic" of large criminal networks in Guyana which, as the Applicants argue, means that the article's description of such networks is not limited to that one example. However, while this article refers to the drug and arms trafficking networks as "large-scale", there is nothing in the article which suggests that these networks have a national scope, extending to areas such as Bartica or Mabaruma. I find nothing in this evidence which contradicts the RAD's conclusions such that the Court could infer that it was overlooked or misunderstood by the RAD.

[23] The Applicants also refer to a description in this article of an incident in February 2008, in which a heavily armed gang assaulted the village of Bartica, murdering 12 people. The Applicants rely on this article in support of their argument that that there is gang violence in Bartica and that, even if the Applicants may not be at risk from the particular gang that robbed them in Georgetown, there are other gangs from which they would face persecution in the proposed IFA. The Applicants submit that the RAD failed to appreciate that any gang in Guyana would have the same kind of mixed motives as the gang which robbed them in Georgetown, including racist motivations, which would engage a nexus to the Convention.

[24] However, the RAD expressly considered this issue. It acknowledged that crime is widespread in Guyana but concluded that the objective evidence was insufficient to demonstrate widespread targeting based on ethnicity. The Applicants have not referred the Court to evidence

which contradicts this conclusion, and I find no reviewable error in this aspect of the RAD's analysis.

[25] Other components of the country condition documentation referenced by the Applicants also refer to organized criminal activity in Guyana, particularly in the context of drug trafficking, as well as weakness and corruption on the part of the country's authorities. However, again, I find nothing in this evidence which contradicts the conclusions of the RAD.

[26] Finally, I have considered the Applicants' argument that Guyana is a small country, with the Chinese population constituting a minority therein, and that it is therefore not surprising that there was no objective country condition documentation speaking to persecution of this population based on their ethnicity. I find little merit to this argument. As explained in *Thirunavukkarasu,* it is the Applicants who bear the burden of proving that they would face persecution in the proposed IFA.

Did the RAD err in finding that it was not unreasonable or unduly harsh for the Applicants to move to Bartica or Mabaruma?

[27] This argument engages the second part of the *Rasaratnam* test, whether in all the circumstances, including circumstances particular to the Applicants, conditions in the IFA are such that it would be unreasonable for them to seek refuge there. The Applicants argue that the RAD failed to appreciate that, because Bartica and Mabaruma are rural locations, the Applicants' ethnicity will be more of a challenge for them than in the urban environment in Georgetown. They submit that they will stand out in those communities, exposing them to increased risk of

ethnic based persecution (which engages the first part of the *Rasaratnam* test) and making it very difficult for them to integrate economically and otherwise.

[28] Again, these arguments were considered and rejected by the RAD, and the Applicants have identified no basis for the Court to find that the RAD's analysis or conclusions are unreasonable.

[29] The Applicants also emphasize that they do not speak English and argue that they therefore would not be able to survive economically in the rural environment of Bartica and Mabaruma as they did in Georgetown. However, the RAD considered the issue of the language barrier, both in terms of the Applicant's economic prospects and their ability to access state protection. Under the first part of the IFA test, the RAD rejected the Applicants' arguments, as the language barrier did not prevent them from filing complaints with the police in Georgetown. Under the second part of the test, the RAD considered the high threshold to demonstrate that an IFA is unreasonable and concluded that the Applicants' concerns about being unable to find employment did not meet this threshold. The RAD's conclusions are within the range of possible, acceptable outcomes, based on the facts and applicable law, which characterize a reasonable analysis, and there is therefore no basis for the Court to intervene.

[30] Having considered the Applicants' arguments and having found that the Decision is reasonable, this application for judicial review must be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-2772-18

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

No question is certified for appeal.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2772-18
STYLE OF CAUSE:	HUIXIAN YANG ET AL v MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JANUARY 30, 2019
JUDGMENT AND REASONS	SOUTHCOTT, J.
DATED:	FEBRUARY 1, 2019

APPEARANCES:

Aleksei Grachev	FOR THE APPLICANTS
Teresa Ramnarine	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Aleksei Grachev Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada	FOR THE RESPONDENT