Federal Court  Cour fédérale

Date: 20190304

Docket: IMM-2631-18

Citation: 2019 FC 263

Ottawa, Ontario, March 4, 2019

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

XIAOWEI ZHUANG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada dated May 10, 2018, which upheld the decision of the Refugee Protection Division [RPD] finding that the Applicant is not a Convention Refugee or person in need of protection pursuant to s 96 and s 97, respectively, of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

Background

[2] The Applicant, Xiaowei Zhuang, is a citizen of China. He claims that he is a Christian and that in December 2015 he began to attend a house church in Zhejiang province, where he was attending school. Two members of that church were arrested on January 8, 2017 while distributing religious pamphlets and his church leader advised the Applicant to go into hiding. On January 9, 2017, the Public Security Bureau [PSB] went to his rented accommodations in Zhejiang, and to his parent's home in Fujian, looking for the Applicant. On January 11, 2017, a summons was left for him at his parent's home. With the help of a human smuggler, the Applicant left China on February 7, 2017. He arrived in Canada on that date and made a claim for refugee protection approximately three months later.

[3] The RPD denied his claim in a decision dated July 13, 2017. The RPD found that the Applicant was not credible and had not established that he is wanted by the PSB. Further, should he wish to continue his religious activities upon return to China, he could do so. The RPD concluded that, on a balance of probabilities, the Applicant had not established his claim on the basis of credible and trustworthy evidence and had not established the central element of his claim, being that he is wanted by the PSB for house church activities.

[4] The Applicant appealed the negative RPD decision to the RAD. The RAD confirmed the RPD's determination that the Applicant is neither a Convention refugee nor a person in need of protection and dismissed the appeal. The RAD's decision is the subject of this application for judicial review.

Decision Under Review

[5] Before the RAD, the Applicant submitted that the RPD had erred in its assessment of his credibility. The RAD rejected the Applicant's argument that the RPD erred in drawing a negative credibility inference from his three month delay in claiming refugee protection in Canada. The RAD instead agreed with the RPD that the Applicant's explanation for the delay in making a refugee claim in Canada was not reasonable. The RAD also reviewed the Applicant's submissions and the country condition documents concerning China's exit and entry laws and controls. The RAD agreed with the RPD that the Applicant's assertion that, because he was assisted by a smuggler he was able to leave China without incident using his genuine passport, despite all of the security measures in place, was not credible. The RAD also agreed with the RPD that this negatively impacted the credibility of the Applicant's allegations that he was wanted by the authorities in China.

[6] The Applicant also argued that the RPD erred in finding his documentary evidence, being a summons and a notice of dismissal from employment, to be fraudulent. The RAD accepted that the summons and termination letter submitted by the Applicant went to the heart of his claim and that the RPD had failed to independently assess each document. However, upon conducting its own review of these documents, the RAD found that that the summons was non-coercive and, given the Applicant's allegation that the PSB continues to look for him, it was reasonable to expect that a coercive summons would have been issued when the Applicant did not attend for interrogation. Further, the structure and format of the summons was not consistent with the sample contained in the National Documentation Package [NDP] and fraudulent documents were

readily available in China. Given this, and the Applicant's ability to leave China despite allegedly having had a summons issued against him, the RAD found that the summons was not a genuine document. The RAD therefore also found the employment termination letter to be fraudulent.

[7] The RAD concluded that the RPD did not err in finding that the Applicant had not established on a balance of probabilities the central element of his claim – that he was wanted by the authorities for house church activities.

[8] It then considered the Applicant's argument that the RPD erred in its assessment of the Applicant's freedom of religion in China. The RAD stated that it had reviewed the record and agreed with the RPD that the Applicant would be able to practice his faith in a congregation of his choosing should he return to China. It found that he had not established that he had any sort of elevated Christian profile, nor was there any credible evidence that the Applicant had engaged in proselytizing in China. Having reviewed the conditions for Christians in China, and particularly in Fujian province, there was no serious possibility that the Applicant would be persecuted if he returned to China and chose to practice his faith in an unregistered church.

[9] The RAD concluded that there was not a serious possibility of persecution, nor would the Applicant be subjected personally, on a balance of probabilities, to a risk to life, a risk of cruel and unusual treatment or punishment, or a danger of torture, should he return to China. Accordingly, he was neither a Convention refugee nor a person in need of protection. Pursuant to

subsection 111(1)(a) of the IRPA, the RAD confirmed the decision of the RPD and dismissed the appeal.

Issues and Standard of Review

[10] Having reviewed the issues as identified by the Applicant, I find that they are all encompassed by the question of whether the RAD's decision was reasonable. A standard of reasonableness applies to this Court's review of the RAD's credibility findings (*Huang v Canada (Citizenship and Immigration)*, 2017 FC 762 at para 23) and its assessment of the evidence (*Denbel v Canada (Citizenship and Immigration)*, 2015 FC 629 at para 29; *Kindu Lukombo v Canada (Citizenship and Immigration)*, 2019 FC 126 at para 5). In judicial review, reasonableness is concerned with the existence of justification, transparency and intelligibility within the decision-making process and whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at para 47; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59 [*Khosa*]).

Analysis

Summons and Dismissal Letter

[11] The Applicant submits that that the RAD committed an error of fact as it confused the consequences for non-compliance with a public security summons. The Applicant references the Immigration and Refugee Board of Canada Response to Information Request dated November 30, 2012, CHN104188.E, in which a visiting scholar reported that there are three

types of summons in China: public security summons, criminal summons, and coercive summons. Public security summons are issued by public security organs to persons who violate the Security Administration Punishment Law of the People's Republic of China or any other law or regulations pertaining to the administration of public security. Criminal summons are served by the people's courts, people's procuracies, public security or states security organs to criminal suspects or defendants who need not be placed under pre-trial detention, and have to appear before courts or undergo interrogation by the procuracy, the police or states security organs. Coercive summons are served by the people's courts, people's procuracies, public security or states security organs to those who do not comply with criminal summons. Failure to comply with a public security summons results in the suspect being restrained and coerced into compliance, while failure to comply with a criminal summons automatically induces the use of coercive summons.

[12] In this matter, the summons issued states on its face that, according to Article No. 82 of the Public Security Administrative Punishment Law of the People's Republic of China, the Applicant is summonsed to appear for interrogation by the Public Security Team of Fuqing City regarding his illegal underground religious activities. A copy of the Public Security Administrative Punishment Law of the People's Republic of China is found as item 9.14 of the NDP and states:

> **Article 82** Where it is necessary to summon a violator of public security administration to accept investigation, upon approval the person-in-charge of the case-handling department of the public security organ, a summon certificate shall be used for summoning him (her). With regard to a violator of public security administration found on the spot, the people's policeman may, after presenting his work certificate, orally summon him (her), but shall give explanatory notes in the interrogatory transcripts.

> Public security organs shall inform the summoned of the reasons and grounds for summoning. Anyone who refuses to accept the summons without sufficient reasons or evades the summons may be summoned by force.

[13] However, in its reasons, the RAD states that Article 82 specifically states that anyone who evades a summons can receive a compulsory summons. I note that the RAD went on to find that the Applicant had not been issued a coercive summons even though he failed to report as required. Further, given the Applicant's allegation that the PSB is continuing to look for him, the RAD found that it was reasonable to expect that a coercive summons would have issued and, if so, that his family would have informed him of this. The RAD found that the absence of a compulsory summons undermined the genuineness of the summons that the Applicant did tender.

[14] The Respondent submits that the RAD did not err in its analysis of the summons. It submits that the RAD misstated the reference to support its finding when it cited item 9.14 of the NDP. In support of this view, the Respondent filed the August 1, 2018 affidavit of Dana Salmon, legal assistant with the Department of Justice, who attached as Exhibit "A" of that affidavit an excerpt from the Public Security Administrative Punishment Law of the People's Republic of China retrieved on December 2, 2016 from the website of the National People's Congress [Salmon Affidavit]. In that document, Article 82 includes the statement that a person who refuses to accept a summons without justifiable reasons or evades a summons may compulsorily be summoned.

[15] It is possible that the RAD relied on the document that the Respondent now provides to the Court by way of the Salmon Affidavit. However, the Salmon Affidavit version of Article 82 is not contained in the record that was before the RAD, including the NDP. Nor did the RAD advise the Applicant that it intended to rely on extrinsic evidence. When appearing before me, the Respondent acknowledged this concern and advised that it no longer sought to rely on the Salmon Affidavit. Given this, I need not consider whether the RAD relied on this document and if so, whether it should have been disclosed to the Applicant (*Mancia v Canada (Minister of Citizenship and Immigration)*, [1998] 3 FC 461 (FCA); *Ahmed v Canada (Public Safety and Emergency Preparedness*), 2018 FC 471 at para 27; *Bradshaw v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 632 at paras 62–70). Rather, in the absence of the Salmon Affidavit, the result is that the RAD's conclusion that a coercive summons should have been issued under Article 82 is not supported by the version of that Article that was before it, and, in the absence of any other evidence in the record to support the RAD's finding, it was unreasonable.

[16] The RAD also found that the summons is not a genuine document based on NDP item 9.10, being a Response to Information Request dated October 18, 2013, which concerns samples of summons and subpoenas from China. Therein a source reported that there has been no variation in the format of summons and subpoenas since 2003 and that the forms are supposed to be used throughout the country and that regional variations are not meant to exist. The RAD compared the summons submitted by the Applicant to the sample summons appended to the Response to Information Request and found the structure and format not to be consistent. Specifically, that an "identifier" prior to the name of the person concerned is missing, that the

"caricature" before the number 30 is on the second, rather than the third line of the summons; and, the spacing of the bottom three lines is inconsistent.

[17] Inconsistencies on the face of a document provided by an applicant, identified by comparison to sample documents contained in the NDP, may provide grounds, in whole or in part, to conclude that a submitted document is not genuine (see *Wang v Canada (Citizenship and Immigration)*, 2018 FC 668 at paras 44-47 [*Wang*]) and the RAD is owed deference in its assessment of such documents (*Liu v Canada (Citizenship and Immigration)*, 2017 FC 736 at para 20(c) [*Liu*]). I note that in both *Wang* and *Liu* the RAD expressed similar concerns in assessing the genuineness of a summons as compared to a sample found in the NDP and its assessments were found to be reasonable. Here, in assessing the genuineness of the summons, the RAD also considered that the Applicant was able to leave China using his own passport and despite allegedly having a summons issued against him. Further, the RAD noted that fraudulent documents are widespread in China. The RAD was entitled to consider the prevalence of fraudulent documents as a factor in arriving at its conclusion (see *Tan v Canada (Citizenship and Immigration)*, 2018 FC 1151 at para 23 [*Tan*]).

[18] Because it had found the summons to be fraudulent, the RAD also afforded no weight to the Applicant's employment dismissal letter as it refers to having received a notice from the PSB accusing the Applicant of violating the law by being involved in underground religious activities. As the summons was found to be a fraudulent document, the RAD also found the letter to be fraudulent.

[19] In my view, the RAD's finding that the summons and dismissal letter were fraudulent was reasonably open to it. And, although it unreasonably found that a coercive summons should have been issued, as acknowledged by the Applicant, the determinative issue was his ability to exit from China.

Exit from China

[20] The RAD noted the Applicant's evidence that he was being pursued by the PSB, that two members of his church had been arrested, and that a summons had been issued against him. It found that in those circumstances, if the Applicant was wanted by the Chinese authorities, then even if a bribe had been paid by his smuggler as the Applicant claimed, given the security measures in place, it was not credible that the Applicant was able to leave China without difficulty using his own genuine passport. In reaching this conclusion, the RAD considered the documentary evidence, including Article 10 of the Exit and Entry Administration Law, which requires Chinese citizens travelling between Mainland China and Hong Kong to apply for exit/entry visas; documentary evidence concerning the Golden Shield, which incorporates extensive tracking and control mechanisms; the use of *Policenet*; and that facial recognition is being used at Chinese airports. The RAD also considered that there was evidence in the record that established that there is corruption in China but found that there was insufficient objective evidence that this extended to the airport security apparatus. The RAD stated that while it may be possible for a smuggler to bypass some of the security controls, based on the evidence in the record, it was unlikely that all of the controls could have been bypassed. It concluded that the Applicant's evidence that he could leave China using his own passport was inconsistent with the

documentary evidence and that the RPD did not err in finding that the Applicant was able to leave because he was not wanted by the authorities.

[21] The Applicant submits that the jurisprudence of this Court is divided but has consistently held that each exit from China case will rest on its own facts and evidence. In my view, that is precisely what the RAD did in this case. The Applicant does not challenge the RAD's findings by suggesting that they are not supported by the facts and the country conditions documents, but instead references an analysis conducted in *Hunag v Canada (Citizenship and Immigration)*, 2017 FC 762 at para 68. However, an analysis found in another case which is not tied to the facts and reasons of the RAD in this case, does not establish that the RAD's findings were unreasonable. And, while not determinative in all cases, this Court has held that proceeding unimpeded through Chinese exit controls may be inconsistent with being wanted by the Chinese authorities, as well as being reasonably associated with reasonable credibility findings (*Tan* at para 21). Nor do I agree with the Applicant's submission that the RAD was making an implausibility finding because the highest concentration of government officials to be bribed work in departments other than airport security. The RAD based its finding on the lack of sufficient objective evidence that corruption extends to the airport security apparatus. The Applicant did not point to any evidence to the contrary that was overlooked by the RAD.

[22] In my view, the RAD's finding that the Applicant was able to leave China using his genuine passport because he was not wanted by the authorities and that this negatively impacted the credibility of his allegations, was reasonably open to it. The Applicant simply seeks to reweigh the evidence, which is not the role of this Court (*Khosa* at para 51).

[23] I also do not agree with Applicant's argument that it was unreasonable for the RAD to fail to accept his explanation for his three-month delay in claiming refugee protection and in drawing a negative credibility inference from the delay. In support of his position, the Applicant references *Gurung v Canada (Citizenship and Immigration)*, 2010 FC 1097 at para 21, as standing for the principle that a minor delay in claiming refugee status cannot be determinative of a refugee claim. However, as the Respondent points out, *Gurung* actually found that delay in claiming protection may be a valid factor to consider as the basis for concluding that an applicant does not possess the requisite subjective fear, however, such a delay does not automatically result in such a finding. Rather, the circumstances and potential explanations for the delay must be considered. In my view, the RAD did this and, although the Applicant does not agree with the RAD's conclusion, its findings were reasonable.

Freedom to Practice Christianity in China

[24] The RAD found that the Applicant was not at risk of persecution if he returned to China and that he would be able to practice his faith in a congregation of his choosing should he return there. This was because the Applicant had not established on the balance of probabilities that he had any sort of elevated Christian profile, other than that of a regular congregant as evidenced by his activities in Canada. There was no credible evidence that he had engaged in proselytizing. As to whether there was a serious possibility that the Applicant would be persecuted if he returns to China and chooses to practice his faith in an unregistered church, the RAD focused its analysis on Fujian province as the Applicant's household registration document confirmed that he is a permanent resident of that province. The RAD extensively reviewed the documentary evidence, noting that there are approximately 50 to 90 million Protestants in China, more of whom worship

at unregistered churches than official churches and that most of the tens of thousands of unregistered churches function with little or no trouble from the local authorities. Further, the UK Home Office reports that, in general, treatment faced by Christians in China, including those who worship in unregistered churches, is unlikely to amount to persecution.

[25] The Applicant argues that the RAD's findings were inexorably tied to its earlier credibility findings; that it erred in concluding that there was a requirement for the Applicant to have proselytized in China; and, in failing to consider whether past persecution in Zhejian province, where the Applicant went to school, could form the basis for the Applicant's refugee claim.

[26] There is no merit to the Applicant's argument that the RAD unreasonably found that he was required to engage in proselytizing in order to suffer persecution at the hands of the Chinese authorities. As the Respondent notes, this argument mischaracterizes the RAD's findings. The RAD concluded that there was no credible evidence that the Applicant had engaged in proselytizing and therefore that he did not have any sort of elevated Christian profile other than that of a regular congregant. It then went on to conclude that as a Christian without an elevated risk profile, the Applicant would not suffer persecution if he returned to China.

[27] The Applicant also submits that the RAD erred by limiting its assessment of risk to Fujian province. Because he had temporarily lived in Zhejiang province, practiced Christianity there, and the PSB arrested two of his fellow practitioners there, he submits that it was a relevant location to be assessed by the RAD. I note that the assessment of whether an individual has a

well-founded fear of persecution is forward looking. Past persecution is relevant to determining whether future persecution may exist (*Fernandopulle v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 91 at paras 21–25). Here, as the RAD found, the evidence in the record before it suggested that the Applicant would return to Fujian province. Therefore, the RAD reasonably focused its analysis on that province. In doing so, it considered past instances of discrimination against Christians, but found that they did not amount to a forward-looking risk of persecution. The Applicant has pointed to nothing in the evidence that suggests that that the RAD's finding in this regard was unreasonable.

[28] In conclusion, I find that the RAD decision falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir* at para 47) and there is no basis for the intervention of this Court.

JUDGMENT in IMM-2631-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. There shall be no order as to costs; and

3. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2631-18
STYLE OF CAUSE:	XIAOWEI ZHUANG v MCI
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	FEBRUARY 20, 2019
JUDGMENT AND REASONS:	STRICKLAND J.
DATED:	MARCH 4, 2019

APPEARANCES:

Chloe Turner Bloom	FOR THE APPLICANT
Nicole Paduraru	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lewis and Associates Immigration Lawyers Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT