

Federal Court



Cour fédérale

Date: 20190412

Docket: IMM-4420-18

Citation: 2019 FC 454

Ottawa, Ontario, April 12, 2019

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

**YONGQUAN LI
YUZHEN PAN
YATIAN LI
LIUJIN LI**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Yongquan Li, Yuzhen Pan and their two daughters seek judicial review of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB]. The RPD found that they are neither Convention refugees nor persons in need of protection under ss 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] The RPD identified nine separate aspects of the Applicants' narrative that gave rise to credibility concerns. The RPD acknowledged that none of the concerns was individually sufficient to reject the Applicants' credibility, but the cumulative effect was to undermine their refugee claims. The Applicants have advanced grounds for challenging only some of the RPD's adverse credibility findings.

[3] The RPD's decision falls within a 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

[4] The Applicants are citizens of China. They claim to fear persecution because of their adherence to Falun Gong, a religious faith that is outlawed in China. Their refugee claim is based on the following contentions.

[5] Mr. Li and Ms. Pan married in 1998, and their first daughter was born later that year. A second daughter arrived in 2000, and Ms. Pan was then forced to wear an intrauterine device [IUD].

[6] The IUD caused Ms. Pan to experience medical problems, which worsened in September 2010. She asked to have her IUD removed, but Chinese family planning officials refused. Ms. Pan's deteriorating emotional state led to a breakdown of her marriage to Mr. Li. The couple divorced on December 3, 2010.

[7] Ms. Pan tried various medications, including pain killers, but nothing improved her condition. She went on several vacations with her former husband and children in the hope of improving her mood. Then in July 2011, a friend of Ms. Pan's offered help.

[8] The friend suggested that Ms. Pan try Falun Gong. Ms. Pan knew that the religion was illegal in China, and she could face serious consequences for practicing it. She nevertheless began to practice the faith in August 2011. Within two months, there was a marked improvement in Ms. Pan's health and mood. In October 2011, she joined a group session.

[9] Mr. Li noticed the improvement in his former wife's quality of life. He suffered from lower back pain, and she suggested that he try Falun Gong. Mr. Li joined Ms. Pan's Falun Gong group session in January 2012, and his health also began to improve. Ms. Pan's emotional state improved to the point that she was able to reconcile with her former husband.

[10] Mr. Li's and Ms. Pan's group session was raided by the Chinese Public Security Bureau [PSB] on May 27, 2012. They had advance warning, and managed to escape through a back door. They went into hiding at a cousin's house.

[11] On May 29, 2012, Mr. Li's father called to say that the PSB had searched their home and interrogated him regarding their whereabouts. The PSB said the couple should promptly turn themselves in. Mr. Li and Ms. Pan failed to report to the PSB, and later learned that their daughters had been suspended from school.

[12] The Applicants escaped China with the help of a smuggler, who provided them with fraudulent United States visas. They left China on August 5, 2012 using their genuine passports.

They entered Canada from the US on August 11, 2012. They made their refugee claims more than one month later, on September 24, 2012.

[13] The RPD heard the Applicants' refugee claims on June 28 and August 2, 2018, and dismissed them on August 13, 2018.

III. Decision under Review

[14] The RPD rejected the Applicants' credibility. It also found that they lacked a subjective fear of persecution, based on their failure to claim refugee status in the US.

[15] The RPD identified nine separate aspects of the Applicants' narrative that gave rise to credibility concerns. The RPD acknowledged that none of these concerns was individually sufficient to reject the Applicants' credibility, but the cumulative effect was to undermine their refugee claims.

[16] The aspects of the Applicants' narrative that caused the RPD to question their credibility were as follows:

- a) The Applicants' description of the PSB raid, particularly the suggestion that the PSB would not have the foresight to surround the building, was neither credible nor plausible. The Applicants claimed to have escaped by running through fields, yet they lived in Jiangmen City, the most populous city in Guangdong. Ms. Pan provided no details of the raid beyond what was contained in her Personal Information Form [PIF].

- b) It was doubtful that the smuggler existed. The Applicants left China using their genuine passports, and the smuggler had not instructed them to give their passports to him. The passports contained the fraudulent US visas the smuggler allegedly obtained and the stamps of the various border officials the smuggler allegedly bribed. This information had the potential to undermine the smuggler's operation. Ms. Pan initially testified that she and Mr. Li only left the cousin's house to meet the smuggler in a parking lot. She later testified that they accompanied the smuggler to the US consulate for visa interviews. She also testified that the Applicants had walked to Vancouver from a park in Seattle. She later amended her testimony to claim they were driven to a park south of Vancouver, from which they walked into Canada.
- c) It was doubtful that the Applicants could leave China using their genuine passports. This was inconsistent with Jurisprudential Guide TB6-11632 [Jurisprudential Guide], which describes Chinese programs to monitor citizens and prevent their unauthorized departure from the country.
- d) Ms. Pan testified that, since the raid in 2012, the PSB had visited the Applicants' former home roughly twice each year, but they never left an arrest warrant or summons. This was inconsistent with country condition reports for China.
- e) Ms. Pan testified that the Applicants' passports and other identity documents were still at their former home after the PSB searched it. However, country condition reports for China indicate that the PSB often seizes identity documents of wanted individuals. Ms. Pan said the documents were in a locked drawer.

- f) The Applicants' family members in China suffered no repercussions due to Mr. Li's and Ms. Pan's practice of Falun Gong. This was contrary to country condition reports for China.
- g) The Applicants produced no medical documents to confirm Ms. Pan's or Mr. Li's health problems. Ms. Pan admitted that she was partly motivated to divorce Mr. Li to regularize her second daughter's status, given China's one-child policy. This was not mentioned in her PIF narrative, in which she stated that the divorce resulted from health problems caused by her IUD.
- h) Ms. Pan's knowledge of Falun Gong was rudimentary and not commensurate with her alleged seven years of practice. The RPD's conclusion regarding the insincerity of the Applicants' adherence to Falun Gong provided a sufficient basis to reject the evidence of their practice of the faith in Canada, which consisted of two photographs and one letter from another practitioner.
- i) There was no evidence that the Chinese authorities were aware of the Applicants' practice of Falun Gong in Canada. The only reports of Chinese monitoring in Canada were supplied by Falun Gong-related organizations, and contained no independent sources.

[17] The RPD also drew an adverse inference from the Applicants' failure to make refugee claims in the US. The RPD held that refugee claimants' subjective fear is put into question when they do not make a claim in another safe country through which they have travelled (citing

Assadi v Canada (Citizenship and Immigration), [1997] FCJ No 331 and *Gomez Bedoya v Canada (Citizenship and Immigration)*, 2007 FC 505 at para 22).

IV. Issue

[18] The sole issue raised by this application for judicial review is whether the RPD's rejection of the Applicants' refugee claims was reasonable.

V. Analysis

[19] The RPD's decision is subject to review by this Court against the standard of reasonableness. This is a deferential standard, and is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. The Court will intervene only if the decision falls outside a 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).

[20] The Applicants challenge the RPD's decision on a number of substantial grounds. They note that the RPD is not an expert on the professionalism or techniques of the PSB, and should refrain from speculation about how Chinese authorities might behave in certain circumstances (*Huang v Canada (Citizenship and Immigration)*, 2019 FC 94 at para 21). The Applicants' confusion about the precise manner in which they entered Canada from Seattle is understandable, given that they were strangers in a strange land. The RPD should not be overzealous in assessing the sincerity of refugee claimants' religious beliefs (*Huang v Canada (Citizenship and Immigration)*, 2012 FC 1002 at para 12; *Lin v Canada (Citizenship and Immigration)*, 2012 FC 288 at para 59).

[21] The Applicants note that this Court has previously held it is unreasonable to draw an adverse inference from the relative ease with which refugee claimants are able to leave China using their genuine passports (*Ren v Canada (Citizenship and Immigration)*, 2015 FC 1402 at paras 15-16; *Huang v Canada (Citizenship and Immigration)*, 2017 FC 762 at para 68). The Minister responds that the jurisprudence on this point is decidedly mixed, and there are many cases in which this Court has upheld a finding that applicants who are sought by Chinese authorities are unlikely to be able to leave China using their genuine passports (e.g., *Li v Canada (Citizenship and Immigration)*, 2018 FC 877 at paras 14-16; *Yan v Canada (Citizenship and Immigration)*, 2017 FC 146 at paras 20-21).

[22] In this case, the RPD relied on a Jurisprudential Guide issued by the Refugee Appeal Division [RAD] of the IRB that describes the manner in which the Chinese authorities monitor and control unauthorized departures. Associate Chief Justice Jocelyn Gagné recently said the following about the RPD's reliance on the Jurisprudential Guide in these circumstances (*Huang v Canada (Citizenship and Immigration)*, 2019 FC 148 at para 38 [*Huang*]):

In this particular case, as in *Gong*, supra at para 14, *Chen*, supra at paras 31-32, and *Lin*, supra at para 40, the RPD pointed to the objective country conditions evidence to support its finding that it was unlikely for the Applicants to have been able to exit China, despite having hired a smuggler. This is consistent with Jurisprudential Guide TB6-11632 at paragraphs 32-36 which found unlikely that a wanted refugee claimant could bypass all of the exit controls in place, even with the assistance of a smuggler. I note that, as per the *Policy Note regarding the identification of TB6-11632 as a RAD Jurisprudential Guide*, RPD and RAD members are expected to apply Jurisprudential Guides in cases with similar facts or provide reasoned justifications for not doing so. This increases the consistency, certainty and predictability in the decision-making process (*Jiang v Canada (Citizenship and Immigration)*, 2018 FC 1064 at paras 26-27).

[23] I cannot fault the RPD for relying on the Jurisprudential Guide in the manner prescribed by the RAD and endorsed by Associate Chief Justice Gagné in *Huang*. The Applicants have not persuasively challenged the RPD's findings regarding the lack of documentation to corroborate their claims, the absence of repercussions for family members in China, the Applicants' failure to make refugee claims in the US, or the various inconsistencies in their testimony. Inconsistencies in the way a claimant tells a story are important indicators of credibility (*Bersie v Canada (Citizenship and Immigration)*, 2016 FC 900 at para 27).

[24] The role of this Court on judicial review is not to reweigh evidence and draw different inferences, but to determine whether the inferences drawn by the RPD were reasonable (*Benko v Canada (Citizenship and Immigration)*, 2017 FC 1032 at paras 22-23; *Herrera Arbelaez v Canada (Citizenship and Immigration)*, 2012 FC 1129 at para 13). Despite the able submissions of counsel for the Applicants, I am satisfied that the RPD's decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[25] The RPD was entitled to import its finding that the Applicants were not genuine Falun Gong practitioners into its *sur place* analysis (*Zhou v Canada (Citizenship and Immigration)*, 2015 FC 5 at paras 22-23, 25), and to reject the evidence of their ongoing practice in Canada (*Jin v Canada (Citizenship and Immigration)*, 2012 FC 595 at para 20). It was also open to the RPD to find that the Applicants had failed to present sufficient evidence that Chinese authorities were aware of their Falun Gong activities in Canada (*Zhang v Canada (Citizenship and Immigration)*, 2016 FC 765 at paras 27, 29).

VI. Conclusion

[26] The application for judicial review is dismissed. None of the parties proposed that a question be certified for appeal.

JUDGMENT

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

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4420-18

STYLE OF CAUSE: YONGQUAN LI, YUZHEN PAN, YATIAN LI, LIUJIN
LI v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 3, 2019

**REASONS FOR JUDGMENT
AND JUDGMENT:** FOTHERGILL J.

DATED: APRIL 12, 2019

APPEARANCES:

Phillip Trotter FOR THE APPLICANTS

Alison Engel-Yan FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lewis & Associates FOR THE APPLICANTS
Barrister and Solicitor
Toronto, Ontario

Deputy Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario