

Federal Court



Cour fédérale

Date: 20190506

Docket: IMM-4688-18

Citation: 2019 FC 587

Toronto, Ontario, May 6, 2019

PRESENT: Mr. Justice Campbell

BETWEEN:

YUANBIAO YE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The decision under review in the present Application is the Refugee Protection Division's (RPD) September 13, 2018 rejection of the Applicant's claim for refugee protection as a person being sought and summoned by Chinese authorities for participating in a demonstration without a permit.

[2] To make a refugee claim in Canada, on October 5, 2012, the Applicant flew to Canada via Hong Kong. In the hearing before the RPD, the Applicant testified that he was able to depart from the Hong Kong airport without difficulty with the aid of smuggler. In the course of dismissing the Applicant's claim, the RPD made findings of negative credibility with respect to the Applicant's evidence on this issue.

[3] The RPD found that if the Applicant was wanted by the authorities and a summons had been issued, the Applicant's information would have been entered into the computer system known as the "Golden Shield" (Decision, para 33) and it is unlikely that the authorities wanted the claimant because if he was wanted "it is more likely than not that he would have been detained at exit control and prevented from leaving China and Hong Kong" (Decision, para 34). In making this finding the RPD relied upon the Jurisprudential Guides-Decision TB6-11632, which purports to act as a reliable source of general policy and practice statements with respect to governmental operations in China.

[4] The RPD's finding under consideration in the present Application is essentially an implausibility finding. That is, the Applicant's account of how he left Hong Kong is not plausible because it runs counter to the evidence about the Golden Shield. On this form of analysis, the RPD concluded that the Applicant is not a person in need of refugee protection.

[5] I find that the decision in *He v Canada (MCI)*, 2017 FC 1089 is parallel to the situation presently under review and, thus, the following passages from that decision are relevant to the present outcome:

The law with respect to the making of an implausibility finding is stated by Justice Muldoon in *Valtchev v Canada (MCI)*, 2001 FCT 776 at paragraphs 6 and 7:

The tribunal adverts to the principle from *Maldonado v. M.E.I.*, [1980] 2 F.C 302 (C.A.) at 305, that when a refugee claimant swears to the truth of certain allegations, a presumption is created that those allegations are true unless there are reasons to doubt their truthfulness. But the tribunal does not apply the *Maldonado* principle to this applicant, and repeatedly disregards his testimony, holding that much of it appears to it to be implausible. Additionally, the tribunal often substitutes its own version of events without evidence to support its conclusions.

A tribunal may make adverse findings of credibility based on the implausibility of an applicant's story provided the inferences drawn can be reasonably said to exist. However, plausibility findings should be made only in the clearest of cases, i.e., if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant. A tribunal must be careful when rendering a decision based on a lack of plausibility because refugee claimants come from diverse cultures, and actions which appear implausible when judged from Canadian standards might be plausible when considered from within the claimant's milieu. [see L. Waldman, *Immigration Law and Practice* (Markham, ON: Butterworths, 1992) at 8.22].

An inference is a conclusion reached on the basis of evidence and reasoning. What might reasonably be said to be such a conclusion in a given situation is not established by speculation; it is established on a balance of probabilities on cogent and verifiable evidence.

For a person who is Falun Gong and who has been persecuted by the PSB or police, two possible inferences arise from that person not being stopped when transiting security measures at an airport in China having used their own genuine passport: the person is lying that she or he is a Falun Gong practitioner; or no record exists on the Golden Shield system that negatively relates to him or her. Accordingly, it is not possible to assume only that the former of the two possible conclusions is true.

In the present case there is no evidence to support a finding that a record was made as a result of PSB contact with the Applicants, no evidence to support a finding that such a record was placed on the Golden Shield system, or that any record exists on the Golden Shield system that negatively relates to the Applicants.

Since the RAD had no verifiable evidentiary base to reach the fundamentally important implausibility finding expressed in paragraph 6 above, I find that the decision under review is unreasonable. [Emphasis added]

[6] Accordingly, in the present case, the RPD had no evidence that the policy and practice was actually active in the circumstances presently under review. In my opinion, without evidence that a record implicating the Applicant actually exists on the Golden Shield, the RPD's decision is unreasonable because it is based on mere speculation.

JUDGMENT IN IMM-4688-18

THIS COURT'S JUDGMENT is that the decision under review is set aside and the matter is referred back to a different decision-maker for determination.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4688-18

STYLE OF CAUSE: YUANBIAO YE v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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JUDGMENT AND REASONS: CAMPBELL J.

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