Federal Court  Cour fédérale

Date: 20190711

Docket: IMM-5877-18

Citation: 2019 FC 918

Toronto, Ontario, July 11, 2019

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

CHENGKUN LIANG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

(Delivered from the Bench at Toronto, Ontario, on July 10, 2019, subject to revision including grammar, syntax, cases and citations)

[1] This is an application for judicial review by the Applicant under subsection 72(1) of the *Immigration and Refugee Protection Act* of a refugee claim which was rejected by the Refugee Protection Division [RPD] on September 7, 2018. Leave was granted on April 29, 2019.

[2] The Applicant is a citizen of the Republic of China. He claims to have a well-founded fear of persecution at the hands of the Government of China and its state police, the Public Security Bureau by reason of his practice of Falun Gong. The claimant alleges that it was as the result of a skin disorder he turned to Falun Gong on the recommendation of a relative. He maintains that he started to practice this in October, 2011. In April 2012 he claims that his Falun Gong practice group was raided by the Public Security Bureau [PSB]. He states that on the advice of his mother he went into hiding, that the PSP was looking for him, and that a fellow practitioner was arrested. He claims the snakehead that he hired took him out of the People's Republic of China and he arrived in Canada on July 1, 2012. He filed for refugee protection shortly thereafter.

[3] It is well established that reasonableness is the standard of review in a case such as this.

[4] In the *Canada (Canadian Human Rights Commission) v. Canada (Attorney General),* 2018 SCC 31, the Supreme Court of Canada explained what is required of a court inquiring on the standing of reasonableness the Court said:

> In reasonableness review, the reviewing court is concerned mostly with the "existence of justification, transparency and intelligibility within the decision-making process" and with determining "whether the outcome falls within a range of possible, acceptable outcomes that are defensible in respect of the facts and law *(Dunsmuir,* at para. 47; *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board),* 2011 SCC 62, [2011] 3 S.C.R. 708, at para. 14)".

[5] The Supreme Court of Canada also instructs the judicial review is not a line by line treasure hunt for errors, rather it mandate that the decision be approached as an organic whole,

and the ultimate determination is whether the decision, viewed as whole in the context of the record, is reasonable.

I. Issues

[6] The first issue is the fact that no summons was left at the Applicant's home by the PSB. The RPD held this was not plausible. In my view this finding, negative to the Applicant, was reasonable, given the large number of visits (5) that the PSB is alleged to have paid to the Applicant's home.

[7] The second issue is the school dismissal letter. In my view the RPD's handling of the school dismissal letter was not reasonable. In particular it was unreasonable to reject the letter because it lacked security features. I say this for two reasons: first there is no evidence that it should have had a security feature, and secondly it does indeed, at least in the Chinese version in the record, have a stamp on it, which is a form of a seal.

[8] The third issue is the letter from the Applicant's mother. I am disappointed that the Member rejected this letter as "self-serving." That finding is unreasonable and I will refer to my decision in *Tabatadze v. Canada (Citizenship and Immigration)*, 2016 FC 24, at paras 4 to 6, where the Court went to some trouble to gather up the law in this respect, which I also rely upon. The RPD knows better and should not have dismissed this letter in such a summary manner. It is argued that the letter is irrelevant or would not have made a difference. With respect to the able submissions of counsel for the Respondent, I disagree. The letter corroborates the essential and elemental facts alleged by the Applicant in connection with why he practiced Falun Gong.

[9] The next issue is a medical report, which was tabled post-hearing. This report corroborates that the Applicant had a skin disorder. This letter was not considered material by the RPD. In my respectful view it was material to his allegation that he was practicing Falun Gong because it provided the rationale for his practicing Falun Gong in the first place namely, to find a cure for this skin disorder. It should have been assessed but was not and that finding in my view was unreasonable. I also note that panelists said at the hearing, “I don’t think that’s a crucial document”. How could the officer say that without even seeing the letter? It is said the document is irrelevant however I disagree again, because it corroborates the reason why the Applicant took up Falun Gong in the first place.

[10] The final issue addressed at the hearing concerned the finding by the RPD that it was not plausible for the Applicant to have left China on his own passport. In my view that finding is not reasonable. I agree that this is a factual determination. There are certainly cases where such findings by the RPD have been upheld by this Court; and there are cases where that finding has been found unreasonable by this Court. The RPD specifically said in this respect that it adopted the reasoning of a Jurisprudential Guide dated November 30, 2016, bearing number TB6-11632. Counsel for the Respondent fairly and properly advised the Court that the Jurisprudential Guide was in fact revoked on June 28, 2019. In my view the revocation of the document on which the RPD expressly adopted must be taken to weaken its finding in this respect. I also have some doubt of the relevance of a jurisprudential guide issued in 2016 concerning an exit from China which took place in 2012. I also note the plausibility finding refers to the panel’s conclusion with respect the Applicant being a Falun Gong practitioner. That finding is weakened and requires

reconsideration for the reasons set out above in terms of the other material facts already discussed.

[11] Finally, I am not prepared to accept that the negative finding regarding the Applicant as a Falun Gong practitioner is reasonable, given the deficiencies I have noted that do not meet the test of reasonableness set out by the Supreme Court of Canada. I appreciate that a judicial review is not a treasure hunt for error. But on balance I have concluded that the decision does not fall within the range of acceptable, possible outcomes in respect of the fact and the law applicable in this case. Therefore judicial review will be granted.

[12] Neither party proposed a question of general importance to certify, and none arises.

JUDGMENT in IMM-5877-18

THIS COURT'S JUDGMENT is that:

1. The judicial review is granted;
2. The decision of the RPD is set aside and the matter is remanded for re-determination by a differently constituted panel;
3. There is no question of general importance to be certified; and
4. There is no order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5877-18
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