

Federal Court



Cour fédérale

Date: 20200120

Docket: IMM-2900-19

Citation: 2020 FC 75

Toronto, Ontario, January 20, 2020

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

**LILING ZHANG
JIANNING ZHANG
JIA YI ZHANG ZHANG
JIA HOA ZHANG
JIA LIN ZHANG**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Liling and Jianning Zhang are a married couple. They are citizens of China. They have three minor children. Jia Yi and Jia Hoa are citizens of Venezuela, where they were born. Jia Lin

is a citizen of Hong Kong, where he was born. Liling and Jianning Zhang are former permanent residents of Venezuela.

[2] The Zhangs seek judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board [IRB]. The RAD confirmed a decision of the Refugee Protection Division [RPD] of the IRB, which found that the Zhangs are neither refugees nor persons in need of protection pursuant to ss 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[3] The basis upon which the RAD dismissed the Zhangs' refugee claims differed from that of the RPD. The RAD held that, at the time their refugee claims were heard, the Zhangs held a status in Venezuela that was substantially similar to nationals of that country. The RAD found they had voluntarily relinquished this status, and were therefore excluded from refugee protection pursuant to Article 1E of the United Nations *Convention Relating to the Status of Refugees*, July 28, 1951, 189 UNTS 150 [Convention] and s 98 of the IRPA.

[4] At the hearing of this application for judicial review, counsel for the Zhangs confirmed that no claim for protection is being advanced on behalf of the minor child, Jia Lin, who is a citizen of Hong Kong.

[5] For the reasons that follow, I am not persuaded that the RAD applied the wrong standard of review to its analysis of the RPD's decision. The RAD's assessment of the Zhangs' credibility and its determination that Liling and Jianning were excluded from refugee protection under

Article 1E of the Convention were both reasonable. The application for judicial review is dismissed.

II. Background

[6] Liling Zhang was born in Guangdong Province in 1976. She says she left for Venezuela in 1999 because of China's "one-child" policy.

[7] Liling and Jianning met in Venezuela, and their two eldest children were born there in 2002 and 2004. In 2007, the children were sent to live with Liling's parents in China due to the deteriorating political situation in Venezuela. China does not recognize dual citizenship, and the two eldest children hold only Venezuelan citizenship. The youngest child was born in Hong Kong in 2008.

[8] The Zhangs say that Jianning was the victim of several kidnapping attempts in Venezuela, at least one of which was successful. Liling says that the store she ran was robbed repeatedly. She testified about high crime and violence against Chinese immigrants in Venezuela, beginning in 2006.

[9] The Zhangs provided no documents to support their assertions of kidnappings or robberies, nor to show they were victims of violence because they were Chinese immigrants. None of the crimes allegedly committed against them were reported to the authorities.

[10] The Zhangs say they considered returning to China, but feared persecution due to the “one-child” policy and their practice of Christianity. They provided no documents to support either risk of harm. The RPD noted that the Zhangs had returned to China many times after 2011, and concluded they could freely practice their faith in China together with millions of other Chinese Christians.

[11] The Zhangs entered Canada on August 5, 2013, as tourists with visitor’s visas. After spending five months in this country, they decided to stay. They continued to travel between Hong Kong, China, Canada and Venezuela. They did not initiate a claim for refugee protection until January 10, 2015.

[12] Jianning did not return to Venezuela after March 2014. Liling returned to Venezuela in May 2014 to renew Jia Hoa’s Venezuelan National Identity Card. Liling returned to China in 2016 with Jia Yi and Jia Hoa, and again left them in the care of her parents.

A. *The RPD’s Decision*

[13] The hearing before the RPD began on March 5, 2015, but was adjourned when the Minister of Citizenship and Immigration [Minister] intervened and recommended exclusion under Article 1E of the Convention. The hearing did not resume until April 23, 2018.

[14] On June 5, 2018, the RPD declined to exclude the Zhangs from refugee protection pursuant to Article 1E of the Convention. By this time, they had lost their permanent resident

status in Venezuela because they had remained outside that country for two continuous years. Their right to return to Venezuela lapsed in 2016.

[15] The RPD nevertheless found that the Zhangs had failed to demonstrate they would be subject to persecution in China, Venezuela or Hong Kong. There was insufficient evidence that they would be persecuted in China due to their practice of Christianity, and Guangdong Province relaxed its “one-child” policy in 2016.

[16] The RPD also found that the Zhangs had failed to rebut the presumption that the Venezuelan authorities would protect Jia Yi and Jia Hoa as citizens of that country. No risk of harm was advanced on behalf of Jia Lin in relation to Hong Kong.

B. *The RAD's Decision*

[17] The sole issue raised by the Zhangs before the RAD was the manner in which the RPD assessed the evidence and rejected their credibility. However, the RAD informed the Zhangs that it intended to revisit the question of their exclusion from refugee protection under Article 1E of the Convention. They were given an opportunity to make further submissions, which they did.

[18] The RAD concluded that the RPD had improperly assessed the Zhangs' status in Venezuela as of April 23, 2018. The RAD found they still had permanent resident status in Venezuela when the RPD hearing began on March 5, 2015, and allowed it to lapse voluntarily.

[19] The RAD applied the analytical framework established by the Federal Court of Appeal in *Canada (Citizenship and Immigration) v Zeng*, 2010 FCA 118 [Zeng] at paragraph 28:

Considering all relevant factors to the date of the hearing, does the claimant have status, substantially similar to that of its nationals, in the third country? If the answer is yes, the claimant is excluded. If the answer is no, the next question is whether the claimant previously had such status and lost it, or had access to such status and failed to acquire it. If the answer is no, the claimant is not excluded under Article 1E. If the answer is yes, the RPD must consider and balance various factors. These include, but are not limited to, the reason for the loss of status (voluntary or involuntary), whether the claimant could return to the third country, the risk the claimant would face in the home country, Canada's international obligations, and any other relevant facts.

[20] The RAD concluded that the Zhangs were permanent residents of Venezuela when the hearing before the RPD began, and were at that time excluded from refugee protection under Article 1E of the Convention. The RAD did not accept the Zhangs' explanation for their failure to renew their Venezuelan permanent residence, namely that they believed it was unsafe to return to Venezuela.

[21] The RAD considered country conditions in Venezuela, and concluded that the Zhangs could have returned to Venezuela to renew their status between the beginning and end of the RPD hearing. The RAD rejected the Zhangs' allegations of persecution in Venezuela, and held they had voluntarily relinquished their status in that country. Liling and Jianning were therefore excluded from refugee protection under Article 1E of the Convention. There was no probative evidence that the Venezuelan-born children could not return there, or that the youngest child would be at risk in Hong Kong.

III. Issues

[22] This application for judicial review raises the following issues:

- A. Did the RAD apply the wrong standard of review?
- B. Did the RAD unreasonably exclude the Zhangs from refugee protection under Article 1E of the Convention?
- C. Did the RAD unreasonably reject the Zhangs' credibility?

A. *Did the RAD apply the wrong standard of review?*

[23] Counsel for the Zhangs did not address the argument respecting standard of review in oral submissions before the Court, and indicated he would rely on his written representations.

[24] The RAD is required to review findings of fact (and mixed fact and law) against the standard of correctness when they do not involve questions of the credibility of oral evidence. After carefully considering the RPD's decision, the RAD must conduct its own analysis of the record to determine whether the RPD erred. Having done this, the RAD must provide a final determination, by either confirming the RPD's decision or setting it aside and substituting its own determination of the merits of the refugee claim. It is only when the RAD is of the opinion that it cannot provide such a final determination without hearing the oral evidence presented to

the RPD that the matter can be returned to the RPD for redetermination (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 [*Huruglica*] at para 103).

[25] The Zhangs take issue with the RAD's statement that "[i]n assessing issues involving credibility of oral testimony, I have applied the RAD modified standard of reasonableness in those situations where the RPD enjoys a meaningful advantage in making a particular finding". The Zhangs say there is nothing to indicate that the RAD reviewed the transcript or audio recording of the hearing, and it therefore failed to assess the evidence independently.

[26] I am not persuaded that the RAD applied the wrong standard of review. The RAD excluded the Zhangs from refugee protection under Article 1E of the Convention, and credibility assessments were less central to its analysis. Furthermore, the RAD repeatedly stated that its conclusions were based on an independent assessment of the evidence. The Zhangs have identified nothing in the RAD's decision that demonstrates it applied the wrong standard of review. Nor have they established that a more independent assessment of the evidence would have affected the result. The RAD provided transparent and intelligible reasons for confirming or rejecting the RPD's assessment of the Zhangs' credibility and other matters it was required to consider.

B. *Did the RAD unreasonably exclude the Zhangs from refugee protection under Article 1E of the Convention?*

[27] The RAD's findings of fact and credibility assessments are subject to review by this Court against the standard of reasonableness (*Huruglica* at para 35; *Canada (Minister of*

Citizenship and Immigration) v Khosa, 2009 SCC 12 at para 59 [*Khosa*]) This is consistent with the presumption stated in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paragraph 10 that reasonableness is the applicable standard in all cases. The parties agree that this is the applicable standard of review here.

[28] The Court will intervene only if it is satisfied “there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100). These criteria are met if the reasons allow the Court to understand why the decision was made, and enable the Court to determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85-86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[29] The Zhangs argue that the RAD unreasonably found they had voluntarily relinquished their status in Venezuela. They say they could not be expected to return to Venezuela given their fear of persecution in that country. Furthermore, returning to Venezuela could potentially undermine their refugee claims in Canada.

[30] There is no dispute that the Zhangs were excluded from refugee protection under Article 1E of the Convention at the time the hearing into their claims began in 2015. The RAD found no probative evidence that the Zhangs were unable to return to Venezuela before their status lapsed in 2016. There was nothing to corroborate their claims they had been the victims of violent crime, or that they had been targeted because of their Chinese ancestry.

[31] I am satisfied that the RAD reasonably balanced the relevant factors identified by the Federal Court of Appeal in *Zeng*. It conducted a thorough assessment of the country conditions and potential risks, the Zhangs' ability to return to Venezuela, and their explanation for allowing their status to lapse. The RAD's conclusion that the Zhangs had voluntarily relinquished their status in Venezuela, and its determination that Liling and Jianning were excluded from refugee protection under Article 1E of the Convention, were therefore reasonable.

C. *Did the RAD unreasonably reject the Zhangs' credibility?*

[32] The Zhangs argue that the RAD unreasonably found they had no subjective fear of persecution, given their frequent travels between China, Canada, the United States and Venezuela. They say that the RAD made unwarranted assumptions about the way resettled immigrants should behave. While the Zhangs may have been businesspeople, they say they were not sufficiently sophisticated to make enquiries about the asylum processes in each of the countries they visited.

[33] The Zhangs cite *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (FCA) for the proposition that their testimony was presumed to be true, and should not have been rejected unless there were serious reasons to doubt it. However, the Zhangs offered nothing to corroborate their assertions of kidnappings or robberies, and nothing to show they were victims of violence because they were Chinese immigrants. They admit that none of the crimes they allegedly experienced were ever reported to the authorities.

[34] The Zhangs are essentially asking this Court to reweigh the evidence, and substitute its view for that of the RAD. But that is not the role of this Court in an application for judicial review (*Khosa* at para 61). The RAD reasonably found that any risks faced by the Zhangs in Venezuela were generalized and not personal. The RAD's findings respecting the Zhangs' credibility are coherent and transparent, and therefore reasonable.

IV. Conclusion

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

JUDGMENT in IMM-2900-19

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

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2900-19

STYLE OF CAUSE: LILING ZHANG, JIANNING ZHANG, JIA YI ZHANG,
JIA HOA ZHANG AND JIA LIN ZHANG v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 8, 2020

JUDGMENT AND REASONS: FOTHERGILL J.

DATED: JANUARY 20, 2020

APPEARANCES:

Oluwakemi Oduwole FOR THE APPLICANTS

Rachel Hepburn Craig FOR THE RESPONDENT

SOLICITORS OF RECORD:

Topmarké Attorneys FOR THE APPLICANTS
Barristers and Solicitors
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario