

Federal Court



Cour fédérale

Date: 20200228

Docket: IMM-2529-19

Citation: 2020 FC 318

Ottawa, Ontario, February 28, 2020

PRESENT: The Honourable Madam Justice Fuhrer

BETWEEN:

QIAOYUN ZHU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Background

[1] The Applicant, Qiaoyun Zhu, is a citizen of China. Since 2013, Ms. Zhu has made annual trips to Hong Kong. On her trips in 2015 and 2016, she purchased books by controversial author, Liu Xiaobo, which she smuggled into China and sold to a friend. While she knew that Liu

Xiaobo's books were banned, she did not know the serious consequences of smuggling them into China; she just wanted to make money at the end of her trips.

[2] While on an extended trip to Canada in 2017 to visit family and friends, her mother allegedly called and informed her the Chinese national security service [also known as Public Service Bureau or PSB] had visited their shared house several times to look for Ms. Zhu because she was selling forbidden books. Ms. Zhu filed her claim for refugee protection soon after the alleged call from her mother. I note that several days before her mother's call, Ms. Zhu had come to the attention of the Canada Border Security Agency [CBSA] Inland Enforcement for allegedly working [for a Vancouver escort company], contrary to her Temporary Resident [Visitor] status. CBSA recommended that she be permitted to leave Canada voluntarily by, and she had purchased a plane ticket for, a date falling shortly after the call from her mother.

[3] The Refugee Protection Division [RPD] found her claim for protection, whether based on sections 96 or 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], had no credible basis, and on March 25, 2019, refused her application pursuant to IRPA s 107(2). The Applicant brought this application for judicial review of the RPD's decision pursuant to IRPA s 72(1).

[4] For the reasons that follow, I dismiss this application for judicial review.

II. Impugned Decision

[5] I note the RPD's decision issued after the hearing was convened three times between June 22, 2018 and February 19, 2019, with most of the issues of concern to the RPD being raised during the hearing on November 8, 2018. Further, at the conclusion of the hearing on February 19, 2019, the RPD afforded the parties an opportunity to provide written submissions prior to the issuance of the final decision on March 25, 2019. The Minister filed additional submissions on February 28, 2019, while the Applicant filed additional submissions on March 19, 2019.

[6] The determinative issue before the RPD was Ms. Zhu's credibility. The RPD found misrepresentations and inconsistencies about personal information on her applications for Canadian and American visas [both filed in 2015], her application for permanent residence in Canada under the spousal sponsorship category [filed in 2018], and her current refugee claim, were serious and could not be dismissed as clerical errors made by third parties as she was responsible for the content of the applications. Consequently, the RPD drew a negative inference about Ms. Zhu's credibility. The RPD also found she "appeared to be unconcerned with the gravity of these discrepancies", which was similar to her lack of knowledge and concern about the seriousness of her alleged book smuggling, and further noted that when she made her applications, she was not wanted by Chinese authorities at the time [that is, she was not under duress or stress for that reason]. In particular, she stated in her application for permanent residence that she did not have any criminal history in China and provided a notarial certificate

purporting to corroborate this allegation. The RPD found it unreasonable to believe she would be able to produce this document if she were wanted by the Chinese authorities for criminal activity.

[7] The RPD also did not believe Ms. Zhu's statements that Chinese authorities were searching for her because of her alleged book smuggling [which she claimed she never realized was illegal or potentially dangerous], and found there was no proof the Chinese authorities were interested in her. The RPD noted Ms. Zhu provided little to no corroborative documents, such as a letter from her mother, a warrant or summons, receipts from her bookstore purchases, or letters or affidavits from anyone else including her Canadian husband [whom she met and married on her trip to Canada in 2017, and who was available during one of the interviews but did not testify], despite having several months to do so between the November 8, 2018 and February 19, 2019 dates on which the hearing was held before the RPD in this matter. Nor did Ms. Zhu provide any reasonable explanation for her lack of corroborating documents, despite previously having obtained a notarial certificate or police clearance for her permanent residence application with the assistance of her mother. The RPD thus drew a negative inference from the fact she failed to provide any reliable evidence to corroborate her allegation that she is at risk in China, notwithstanding the RPD providing several opportunities to do so.

[8] In sum, because of the above credibility concerns and lack of corroborating evidence, the RPD rejected Ms. Zhu's claim, whether based on IRPA s 96 or 97(1), and held she was neither a Convention refugee nor a person in need of protection. Given that Ms. Zhu's testimony "was on a whole, on a balance of probabilities, neither trustworthy nor credible," the RPD also found her claim had no credible basis pursuant to IRPA s 107(2).

III. Issues

[9] The only live issue is whether or not the RPD's credibility assessment, and hence the "no credible basis" determination, was unreasonable.

IV. Relevant Provisions

[10] The relevant provisions are reproduced in Annex A.

V. Analysis

[11] This matter was heard the day before the Supreme Court of Canada [SCC] adopted a rearticulated approach for determining and applying the standard of review to the merits of administrative decisions. The starting point is that a rebuttable presumption of reasonableness is applicable in all cases: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10-11. I find none of the situations in which the presumption of reasonableness is rebutted [summarized in *Vavilov*, above at paras 17 and 69] is present in the instant proceeding. Accordingly, "[i]n conducting a reasonableness review, a court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified": *Vavilov*, above at para 15. The SCC defined a reasonable decision owed deference as "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker": *Vavilov*, above at para 85. The SCC found "it is not enough for the outcome of a decision to be *justifiable* ... [,] ... the decision must also be *justified* ...":

Vavilov, above at para 86 [emphasis in original]. In sum, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility – and it must be justified in relation to the factual and legal constraints applicable in the circumstances: *Vavilov*, above at para 99. The party challenging the decision has the onus of demonstrating that it is unreasonable: *Vavilov*, above at para 100. Both parties advocated for the applicability of the reasonableness standard, albeit based on antecedent case law; as the rearticulated approach does not impact the outcome of this proceeding, I found it unnecessary to request submissions from the parties, as per *Vavilov*, above at para 144.

[12] I note both parties agree that a finding of “no credible basis” pursuant to IRPA s 107(2) is only appropriate where there is no credible or trustworthy evidence on which to make a positive determination to grant refugee protection: *Rahaman v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 89 at paras 16-18, 29, 51; *Ramón Levario v Canada (Citizenship and Immigration)*, 2012 FC 314 at para 19. This reflects the significant consequences of such a finding which precludes an appeal to the Refugee Appeal Division.

[13] In my view, while objective evidence was provided which suggests individuals who smuggle illegal books into China, especially those by Liu Xiaobo, are sought by the PSB, no objective evidence was provided to demonstrate Ms. Zhu purchased, smuggled or transported and resold such books, as alleged. In particular, she offered no receipts for the more than 80 books she allegedly purchased over the course of several trips to Hong Kong. Only her testimony directly linked her to the potential harm or risk, and she denied engaging in smuggling [she brought them into China in a box in her luggage] or being aware of the serious

consequences of her actions until she looked the books up on the internet after the call with her mother.

[14] In addition, Ms. Zhu asserts that she was able to obtain a Chinese police clearance certificate for the purposes of her spousal sponsorship application because the authorities only searched for her; she testified the PSB only attended [three times] and called [once] her home, but did not leave a summons or warrant. Accordingly, she argues it is speculative to assume that the PSB's suspicions were high enough that (i) she would be flagged in their systems and (ii) a routine criminal record check would reflect their alleged concerns. She notes this Court has held that findings of implausibility are permissible only in the clearest of cases, where no other inference could be reasonably drawn: *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7. Plausibility findings therefore should be rooted in "a reliable and verifiable evidentiary base" to avoid unfounded speculation: *Aguilar Zacarias v Canada (Citizenship and Immigration)*, 2012 FC 1155 at para 11, citing *Gjelaj v Canada (Citizenship and Immigration)*, 2010 FC 37 at para 4.

[15] I note that in her March 19, 2019 written submissions filed with the RPD, the Applicant relied on a dated article [July 6, 2012] in the National Documentation Package or NDP for China regarding the information to be recorded in "a unified criminals record system" [also known as the Golden Shield Project], **including** criminals' basic information, details regarding the verdicts, crimes, punishments and enforcement. It is unknown from the record for this matter whether the Golden Shield would have included at the outset, or would have been expanded by 2017 to include, investigations into suspected criminals and those charged but not yet convicted

of crimes. I therefore agree the RPD acted unreasonably in making its finding that a notarial or police clearance certificate would not be issued if Ms. Zhu's allegations were believable that the PSB were interested in her; in doing so the RPD based its finding on unfounded speculation.

[16] That said, in my view this implausibility finding is not a determinative error. This finding was but one of several factors considered by the RPD in the context of whether Ms. Zhu was wanted by the Chinese authorities as alleged. There was no objective credible evidence to support that the Chinese authorities had any interest in harming her: *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 [*Ward*]; *Yan v Canada (Citizenship and Immigration)*, 2017 FC 146 at paras 20-22. As noted in *Ward*, the burden of proving fear of persecution [in all countries of which the claimant is a national] lies with Applicant, not the Minister.

[17] I note the RPD made cumulative negative credibility findings or inferences based on Ms. Zhu's various omissions and contradictions in her applications and her testimony, and her failure to provide corroborative evidence. Ms. Zhu submits the RPD unreasonably drew serious negative credibility inferences based on omissions and errors in her visa and sponsorship application forms, which she argues were related to peripheral matters. For example, her sister's name and birth date [in one instance Ms. Zhu listed her own birth date as that of her sister] were inconsequential to the basis of her claim, and could be attributed to human or translation errors. In her March 19, 2019 written submissions, she resolved this by including a photocopy of her sister's passport. Of greater concern for the RPD, however, were the inconsistencies and omissions regarding Ms. Zhu's "family composition," among other things; for example, her

Temporary Resident Visa application in 2015 mentioned only one sibling, a brother, while her Basis of Claim [BOC] referred to a brother and a sister.

[18] When questioned at the hearing about errors in her various application forms, Ms. Zhu attested the information was correct. When later confronted with the discrepancies, however, she attributed them to a third party's lack of diligence. The RPD, rightly in my view, rejected her third party explanation, noting she was ultimately responsible for confirming the information on her forms and they were completed at a time she was not under duress. Given these inconsistencies, the RPD required corroborative evidence for the claim to proceed, which she failed to provide or explain why. With respect to her failure to provide a letter from her mother, for example, Ms. Zhu submits not only did she testify her mother's health was failing, but also people don't communicate that way anymore; they communicate by phone. No further questions were asked of her after her responses to this effect. She further notes she was not asked directly why her spouse did not testify, even though she testified he was in the building. These concerns were raised by the RPD on the November 8, 2018, leaving three months until the conclusion of the hearing on February 19, 2019 by which date corroborative evidence, such as a letter from her mother about the PSB visits and the assistance her mother provided in obtaining the notarial or police clearance certificate, could have been provided.

[19] I agree that generally inconsistencies which are irrelevant to the central aspects of a refugee's claim in themselves cannot be determinative; otherwise, any inconsistency may absolve the RPD from its statutory obligation of assessing the crux of a claim for protection: *Attakora v Canada (Minister of Employment & Immigration)*, [1989] FCJ No 444 at para 9.

Where, however, inconsistencies are so ubiquitous they undermine the ability of the RPD to rely on the overall accuracy of forms or testimony, it is reasonable for the RPD to expect corroborative evidence to find the claim substantiated: *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 25, citing *Ndjavera v Canada (Citizenship and Immigration)*, 2013 FC 452 at paras 6-7 and *Ismaili v Canada (Citizenship and Immigration)*, 2014 FC 84 at paras 33-35. In my view, overall the cumulative inconsistencies in her evidence [regarding her family composition, including previous marital status, travel to and from China, and alleged purchase, smuggling or transporting and resale of banned books] were sufficient to support an overall finding that she was not credible: *Zhai v Canada (Citizenship and Immigration)*, 2012 FC 452 at para 17; *Qasem v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1182 at para 48.

[20] As the RPD notes, Ms. Zhu provided no additional evidence. Given she provided none over the course of three hearing dates nor in subsequent written submissions [apart from clarifying the identity and birth date of her sister], the RPD was justified, in relation to the facts and law that constrain it, in rejecting the claim and making a finding of no credible basis. The decision in my view is internally coherent and based on rational chain of analysis. I find that the Applicant has not met her burden of proving fear of persecution nor the onus of demonstrating that the RPD's decision is unreasonable.

VI. Conclusion

[21] This judicial review application therefore is dismissed. No serious question of general importance was raised by either party for certification and I find that there is none.

JUDGMENT in IMM-2529-19

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed and there is no question for certification.

“Janet M. Fuhrer”

Judge

Annex A: Relevant Provisions

1. Part 2 of the IRPA governs Canada's refugee regime. Canada confers refugee protection upon individuals who are found to be Convention refugees or persons in need of protection:

IRPA ss 95-97.

Immigration and Refugee Protection Act (S.C. 2001, c. 27)	Loi sur l'immigration et la protection des réfugiés (L.C. 2001, ch. 27)
95 (1) Refugee protection is conferred on a person when	95 (1) L'asile est la protection conférée à toute personne dès lors que, selon le cas :
(a) the person has been determined to be a Convention refugee or a person in similar circumstances under a visa application and becomes a permanent resident under the visa or a temporary resident under a temporary resident permit for protection reasons;	a) sur constat qu'elle est, à la suite d'une demande de visa, un réfugié au sens de la Convention ou une personne en situation semblable, elle devient soit un résident permanent au titre du visa, soit un résident temporaire au titre d'un permis de séjour délivré en vue de sa protection;
(b) the Board determines the person to be a Convention refugee or a person in need of protection; or	b) la Commission lui reconnaît la qualité de réfugié au sens de la Convention ou celle de personne à protéger;
(c) except in the case of a person described in subsection 112(3), the Minister allows an application for protection.	c) le ministre accorde la demande de protection, sauf si la personne est visée au paragraphe 112(3).
(2) A protected person is a person on whom refugee protection is conferred under subsection (1), and whose claim or application has not subsequently been deemed to be rejected under subsection 108(3), 109(3) or 114(4).	(2) Est appelée personne protégée la personne à qui l'asile est conféré et dont la demande n'est pas ensuite réputée rejetée au titre des paragraphes 108(3), 109(3) ou 114(4).
96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality,	96 A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de

membership in a particular social group or political opinion,	sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or	a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.
97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally	97 (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :
(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or	a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;
(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if	b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,	(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,	(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
(iii) the risk is not inherent or incidental to lawful sanctions,	(iii) la menace ou le risque ne résulte pas de sanctions

unless imposed in disregard of accepted international standards, and	légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.
(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.	(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

2. At first instance, the RPD is the authorized decision maker in respect of a refugee claim:

IRPA s 107(1).

107 (1) The Refugee Protection Division shall accept a claim for refugee protection if it determines that the claimant is a Convention refugee or person in need of protection, and shall otherwise reject the claim.	107 (1) La Section de la protection des réfugiés accepte ou rejette la demande d'asile selon que le demandeur a ou non la qualité de réfugié ou de personne à protéger.
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3. Applicants whose claims are found to have no credible basis have no further access to the

Refugee Appeal Division: IRPA s 107(2).

107 (2) If the Refugee Protection Division is of the opinion, in rejecting a claim, that there was no credible or trustworthy evidence on which it could have made a favourable decision, it shall state in its reasons for the decision that there is no credible basis for the claim.	107 (2) Si elle estime, en cas de rejet, qu'il n'a été présenté aucun élément de preuve crédible ou digne de foi sur lequel elle aurait pu fonder une décision favorable, la section doit faire état dans sa décision de l'absence de minimum de fondement de la demande.
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4. Applicants who are not otherwise precluded from doing so may appeal their negative RPD decisions to the RAD: IRPA s 110(1).

<p>110 (1) Subject to subsections (1.1) and (2), a person or the Minister may appeal, in accordance with the rules of the Board, on a question of law, of fact or of mixed law and fact, to the Refugee Appeal Division against a decision of the Refugee Protection Division to allow or reject the person's claim for refugee protection.</p>	<p>110 (1) Sous réserve des paragraphes (1.1) et (2), la personne en cause et le ministre peuvent, conformément aux règles de la Commission, porter en appel — relativement à une question de droit, de fait ou mixte — auprès de la Section d'appel des réfugiés la décision de la Section de la protection des réfugiés accordant ou rejetant la demande d'asile.</p>
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5. On appeal to the RAD, applicants may present only evidence that arose after the rejection of their claim, that was not reasonably available at the time of their claim, or that they could not reasonably have been expected in the circumstances to have presented: IRPA s 110(4).

<p>(4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.</p>	<p>(4) Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.</p>
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FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2529-19

STYLE OF CAUSE: QIAOYUN ZHU v THE MINISTER OF CITIZENSHIP
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PLACE OF HEARING: TORONTO, ONTARIO

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APPEARANCES:

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