

Federal Court



Cour fédérale

Date: 20210413

Docket: IMM-1416-20

Citation: 2021 FC 318

Ottawa, Ontario, April 13, 2021

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

**XIAOPEI ZENG,
XINTONG YE,
LUCAS YE**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This application is brought by Xiaopei Zeng (the Applicant) and her two minor children challenging a decision of the Refugee Appeal Division (RAD) which dismissed their claims to refugee protection. The basis of their claims to protection was the Applicant's asserted practise in China and later in Canada of Falun Gong. Both the Refugee Protection Division (RPD) and

the RAD concluded that the Applicant was not a genuine practitioner of Falun Gong and dismissed the claims on that basis.

[2] The RAD's negative credibility finding was primarily founded on perceived weaknesses in the Applicant's knowledge of Falun Gong teachings and practises. The RAD also found that a Public Security Bureau (PSB) summons relied upon by the Applicant was a forgery and this further damaged her credibility.

[3] The determinative issues presented by this case are evidence-based and thus stand to be resolved on the deferential standard of reasonableness. For the reasons that follow, I am allowing the application and remitting the matter for redetermination on the merits.

[4] The Applicant argues that the RAD's treatment of the tendered PSB summons was unreasonable because it focussed on the format of the document and not on its content. The tendered document was translated and the specimen document was not, making it impossible to compare their content. I accept the point that a comparison of both the content and format of a tendered document with a reliable specimen is a safer approach to assessing reliability than the method used here. However, when a refugee claimant tenders a public document that is inconsistent with a specimen available in the IRB National Documentation library, it is up to the claimant to explain or justify the inconsistencies. Failing to do so can lead to an adverse credibility finding as was the case here. This was not an unreasonable finding.

[5] I do, however, note a concern that the RAD's reasons on this issue are taken virtually word for word from its earlier decision in RAD file TB8-10310, including the adoption in this case of inapt pronouns. This is not a practice to be encouraged because it can suggest to the unsuccessful party that the decision was written without due care and attention to the record.

[6] This is a case where both the RPD and the RAD purported to assess the *bona fides* of the Applicant's asserted belief system as a disciple of Falun Gong. As this Court has frequently cautioned, immigration decision-makers must be very careful about drawing firm credibility conclusions about the authenticity of a person's religious or philosophical beliefs based on supposed weaknesses in the knowledge of relevant doctrine: see *Dong v Canada (MCI)*, 2010 FC 55, [2010] FCJ No 54; *Chen v Canada (MCI)*, 2007 FC 270, [2007] FCJ No 395; *Feradov v Canada*, 2007 FC 101, [2007] FCJ No 135; *Huang v Canada (MCI)*, 2008 FC 346, [2008] FCJ No 452; *Ullah v Canada (MCI)*, [2000] FCJ No 1981, 101 ACWS (3d) 792; and *Wang v Canada (MCI)*, 2011 FC 1030, [2011] FCJ No 1291.

[7] Caution is warranted because a legitimate devotee may lack a capacity to deeply understand, interpret or articulate a complex code of applicable principles. That problem can be exacerbated where the relevant doctrine is obscure or where the decision-maker fails to sufficiently probe the issue.

[8] These concerns are manifest in this case. The RPD noted that the Applicant had to be prompted to provide more detailed answers to practice questions but, at the same time, it failed to fully explore her depth of knowledge about Falun Gong doctrine. The RAD drew adverse

credibility inferences from the same deficient evidentiary record. A good example of this can be seen from the following exchange with the RPD concerning the concept of “righteous thoughts”:

Q: And do you send for righteous thoughts?

A: Yes.

Q: Why do practitioners do that?

A: To elevate the practice of the Gong.

Q: Any other reason practitioners send forth righteous thoughts?

A: They also enable the practitioner to get rid of evil menace.

Q: What is that?

A: Yeah bad things.

[9] From this brief exchange, the RAD made the following adverse credibility findings:

[42] I find that the Appellant’s testimony in this regard while not completely wrong was incomplete. She had to be prompted to give further information. Had the member not prompted further, her sole response would have been that such thoughts are meant to elevate the practice of gong, which does not fully explain why they perform this act. Her answer as its [sic] stand [sic] was that the practice is done in order to elevate one’s practice and to help practitioners get rid of bad things. However, her response is missing one of the primary reasons for performing this act. Master Li Hongzhi considers this a major tenet of Falun Gong practice. Righteous thoughts are taken very seriously and are to be sent out on a daily basis in order to **reduce the evil beings’ persecution of Dafa**. I find that given the importance of sending out righteous thoughts, the principal Appellant should be able to articulate a more detailed reply and explain why she is doing it. Her inability to do so detracts from her credibility.

[Footnotes omitted.]

[10] A similar concern was expressed by the RAD from the Applicant's supposed inability to describe the recognized "method" for sending righteous thoughts. That concern arose out of the following short exchange with the RPD:

Q: Is there a method for sending righteous thought?

A: I don't understand the question madam.

Q: When you send righteous thoughts is there a procedure that you go through in order to send them?

A: No.

[11] Notably, the above evidence begins with the Applicant's statement that she did not understand the question. Having previously testified that she had a practice of sending righteous thoughts, it was unreasonable for the RAD to draw an adverse inference from the Applicant's bare "no" in this second brief exchange. This was an issue where considerably more questioning was required in order to assess the true depth of the Applicant's knowledge. Indeed, the RPD has a responsibility to prompt and probe where it harbours a concern like this and the RAD has a corresponding responsibility to hold the RPD to that interrogatorial standard.

[12] It is also noteworthy that the RAD relied on a lengthy, abstruse passage of Falun Gong doctrine which it felt the Applicant ought to have been able to recount in some measure. That passage, however, teaches that some students "haven't really grasped the essentials of sending righteous thoughts". It goes on at length but without clearly articulating a "method" of sending righteous thoughts beyond the need to employ highly focused meditation.

[13] It is clear from the record before me that the RAD's knowledge of the finer points of Falun Gong far exceeded that of the Applicant. As in *Ullah v Canada*, above, at paragraph 6, the RAD's attributions of expected knowledge to the Applicant applied too high a standard.

[14] Furthermore, the RAD's unfavourable inferences about the Applicant's level of knowledge were drawn from a markedly insufficient examination by the RPD and were, therefore, unreasonable. For these reasons, the decision is set aside and the matter is to be re-determined on the merits by a different decision-maker.

[15] Neither party proposed a certified question and no issue of general importance arises on this record.

JUDGMENT IN IMM-1416-20

THIS COURT'S JUDGMENT is that the decision is set aside and the matter is to be re-determined on the merits by a different decision-maker.

"R.L. Barnes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1416-20

STYLE OF CAUSE: XIAOPEI ZENG, XINTONG YE, LUCAS YE V v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

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APPEARANCES:

Diane Coulthard FOR THE APPLICANTS

Laoura Christodoulides FOR THE RESPONDENT

SOLICITORS OF RECORD:

Levine Associates FOR THE APPLICANTS
Barristers & Solicitors
Toronto, ON

Attorney General of Canada FOR THE RESPONDENT
Toronto, ON