Federal Court  Cour fédérale

Date: 20210608

Docket: IMM-3990-20

Citation: 2021 FC 572

Ottawa, Ontario, June 8, 2021

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

CHENGXIAN JIANG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Chengxian Jiang, seeks judicial review of the decision of the Refugee Appeal Division [RAD] dated August 11, 2020 [the Decision] dismissing his appeal and confirming the decision of the Refugee Protection Division [RPD] dated August 26, 2019 that the Applicant is neither a Convention refugee nor a person in need of protection pursuant to paragraph 111(1)(a) of *the Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] For the reasons that follow, the application for judicial review is dismissed.

II. Facts

[3] The Applicant is a citizen of China who fears persecution on account of his opposition to the expropriation of his property by the Chinese authorities. The full details of his refugee claim are set out in his Basis of Claim Form narrative. They are neatly summarized in the Applicant's memorandum of fact and law as follows.

[4] The Applicant received a notice from the government on August 10, 2017 telling him that his land would be expropriated. Two weeks later, he received a compensation notice. He felt that the compensation amount was unreasonably low. There were 50 households in his area affected by the expropriation and the property-owners met to discuss the matter. They decided to complain to the town government about the compensation amount.

[5] On August 28, 2017, the group went to the town government office, but they were turned away and told to appoint representatives to advocate for them. The group subsequently elected eight representatives, including the Applicant. Thereafter, they decided to obtain property evaluations. They also wrote a petition, which was signed by all 50 property-owners. The representatives returned to the town government on three occasions and were told to wait. They were also advised that it could take a half a year or longer for a decision on the matter.

[6] In early December 2017, two of the property-owners consulted with lawyers and were told that there was nothing that the lawyers could do to help them.

[7] On April 11, 2018, demolition officers went to the Applicant's village with the intention of forcibly demolishing the houses. The villagers protested and formed a human wall in order to prevent the demolition. The police ultimately arrived on the scene and began to arrest villagers. A dozen people, including the Applicant, were arrested. The Applicant was detained for two weeks and then released on bail.

[8] The Applicant suffered injuries as a result of beatings that he received in detention. After his release, his mother decided that he had to leave China. With the help of a smuggler, the Applicant fled China on June 28, 2019. His property was demolished that same month.

[9] The Applicant fears persecution on account of his opposition to the expropriation of his property by the Chinese authorities.

A. *The RPD Decision*

[10] In August 2019, the RPD rejected the Applicant's refugee claim, finding that he was not credible in his allegations. The RPD's considerations included the following:

- The Applicant provided inconsistent evidence regarding the land expropriation / demolition and related events, without satisfactory explanation.

- The Applicant testified that he received the notice of demolition on August 10, 2017 and that his mother left for Canada on August 15, 2017. The RPD found that it was not credible that his mother would leave China soon after receiving the notice of demolition, and once again while the Applicant was in detention, in order to look after his brother's child in Canada; particularly given the effort she had made to secure his safety and well-being.

- The Applicant had not reasonably explained why the passport he had attempted to destroy upon arrival in Canada showed that he had travelled prior to coming to Canada and that the stamps in that passport did not reveal that he was in China at the time he was allegedly detained. The RPD rejected the explanations that the stamps were not real, that passports are not stamped upon return to China, and that he had admitted to that travel during his interview with CBSA because he had been told to by the smuggler who arranged his travel to Canada.

- The documents provided to corroborate the claim were not sufficiently probative to overcome the credibility concerns. These were a Notice of Detention, a Release Certificate, and a PSB receipt for the monies paid for his release.

- Moreover, the Applicant did not provide any documentation regarding his medical treatment. The Applicant explained that the Chinese doctor who treated him wrote something, but he did not submit it because he thought it was not useful. However, it was not credible that he would not provide the document if it was true that the doctor had written something.

B. *The RAD Decision*

[11] The RAD reviewed the record and agreed with the Applicant that the RPD erred in not conducting a proper assessment of his supporting documents, given that they went to the heart of his claim that he was arrested by the authorities in China for protesting the expropriation of his property.

[12] The RAD found that it was able to conduct its own assessment of these documents without an oral hearing. The RAD also found that it is able to assess the letter from the Applicant's mother and his affidavit without holding a hearing in light of the totality of the

findings in the decision. Moreover, the RAD found that this information in itself would not justify allowing or rejecting the refugee protection claim.

[13] The RAD concluded that the Applicant was not arrested for protesting and was not wanted by the authorities. As this was determinative of the claim, the RAD found it unnecessary to address the other arguments put forward by the Applicant.

[14] Despite admitting new evidence of the Applicant's mother, the RAD assigned no weight to the letter of the Applicant's mother as it was inconsistent with other documentary evidence and findings, and the timing of the letter was suspect.

[15] The Applicant provided several documents relating to the land expropriation in China. The RAD found that these documents can only speak to the expropriation, the compensation offer, the evaluation of his property, the petition and the destruction of a property, but did not support the Applicant's allegations that he protested against the compensation offer and was detained and beaten by the authorities, or that the authorities still seek him out.

[16] The RAD found numerous documents to be fraudulent. Furthermore, the RAD noted that submitting a false or irregular document may have an impact on the weight assigned to other documents provided by the Applicant, especially when they are interrelated, and on the overall credibility of an Appellant.

[17] The RAD found inconsistencies in the Notice of Detention and concluded that it was not a genuine document. The RAD noted that case law indicates that, where there is sufficient evidence to cast doubt on the authenticity of the document, whether because of an irregularity on the face or the questionable circumstances in which it was obtained or provided, the document may be assigned little or no weight. While evidence of widespread availability of fraudulent documents in a country is not by itself sufficient to reject foreign documents as forgeries, the RAD concluded it may be relevant if there are other reasons to question the documents or a claimant's credibility. The RAD also considered that fraudulent documents, even of some complexity, are widespread in China. The RAD made a negative credibility inference from the submission of the fraudulent document and found that the Applicant had not established, on a balance of probabilities, that he was detained.

[18] The RAD also found that the Applicant's bail receipt was fraudulent, citing the following reasons. First, the document makes no mention that the money was paid as bail for the Applicant's release. Second, under the heading Name of Subject, it states "Disturbed Social Security", rather than the Applicant's name. Third, the RAD noted that the amount of 5300 yuan was paid by the Applicant, which is inconsistent with the Applicant's evidence that his uncle paid this money. The RAD has also considered that this receipt is interrelated with other documents connected to his detention which were found to be fraudulent.

[19] The RAD considered that there is no evidence of a pending trial; that the Applicant was able to exit the country despite being a defendant in a criminal case; that there is no evidence of the medical condition requiring his release either in the release notice or in a separate document;

and that the receipt the Applicant provided does not indicate that the money was paid as bail. For these reasons, the RAD concluded that the release certificate was not a genuine document.

[20] The RAD concluded that the Applicant did not establish that he was in China at the time of the alleged events. The Chinese passport in his name recovered by Canadian Border Services Agency [CBSA] authorities in the washroom of the airplane the Applicant arrived on showed that he exited China on two occasions: September 23, 2017 and November 23, 2017. Although the Applicant stated that passports are not stamped upon re-entry to China, it is clear from the passport stamps that passports are stamped upon exit. This is reinforced by the documentary evidence noting that passports are stamped upon exit from China.

[21] The RAD noted that the Applicant's passport did not contain an exit stamp for June 28, 2018, the date he alleged he left China. The Applicant stated that all the stamps relating to travel to different countries prior to June 2018 were put in the passport by the smuggler and that he had never left China prior to June 2018. However, the RAD noted that CBSA provided information to the Applicant at the July 2, 2018 interview that he had tried to come to Canada at least four times in the previous year from Panama, Costa Rica, Jamaica and the Netherlands. The CBSA officer noted that he had attempted to board flights to Canada. In addition, the Applicant wrote in response to question 4(E) of the Schedule A form 22 that he was refused entry from Jamaica in January 2018.

[22] The Applicant stated at the CBSA interview that he had tried to board a plane to Canada from Jamaica before his problems started, but was not allowed to board the plane. He testified at

the hearing before the RPD that this never happened and this is what the smuggler told him to say. The RAD did not find the Applicant's explanation for the inconsistency reasonable given that he also wrote about Jamaica in his Schedule A form and because the CBSA already had information that he had attempted to come to Canada four times in the previous year.

[23] The RAD found that the issue of whether the Applicant was arrested for protesting in April 2018 went to the heart of his allegations and was determinative of the claim. Having found that the Applicant did not establish these events on a balance of probabilities, the RAD determined that he is not a person of interest to the authorities in China and there is not a serious possibility he would suffer persecution should he return to China.

III. Issues

[24] The Applicant raises a number of arguments with respect to the reasonableness of the RAD decision. According to the Applicant, the application gives rise to three distinct issues:

(i) Whether the RAD made unreasonable credibility findings?

(ii) Whether the RAD determinatively erred by impugning the Applicant's corroborative documents based on concerns not raised by the RPD?

(iii) Whether the RAD conducted an unreasonable assessment of the Applicant's new evidence and failed to call a hearing?

IV. Standard of Review

[25] There is no dispute regarding the applicable standard of review. In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], at paragraph 10, the Supreme Court of Canada concluded that the presumptive standard of review is reasonableness, and a reviewing court should only derogate from that presumption "where required by a clear indication of legislative intent or by the rule of law." There is no such indication in this case.

[26] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is 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* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[27] Where a decision provides reasons, those reasons are the starting point for review (*Vavilov* at para 84). A decision's reasons need not be perfect; as long as the reasons allow the reviewing court to understand why the decision maker made its decision and determine whether the conclusion falls within the range of acceptable outcomes, the decision will normally be reasonable (*Beddows v Canada (Attorney General)*, 2020 FCA 166 at para 25, citing *Vavilov* at para 91).

[28] For a decision to be unreasonable, an applicant must establish that the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). A reviewing court must refrain from reweighing or reassessing evidence before the decision maker, and it should not interfere with findings of fact absent exceptional circumstances (*Vavilov* at para 125). Credibility determinations are therefore to be provided "significant deference" upon review (*Azenabor v Canada (Citizenship and Immigration),* 2020 FC 1160 at para 6, citing *N'kuly v Canada (Citizenship and Immigration),* 2016 FC 1121 at para 21).

V. Analysis

A. *The RAD's Credibility Findings*

[29] It is important to point out from the outset that the RAD had numerous significant credibility concerns with the Applicant's evidence, not the least of which was his failure to establish that he was in China during the period of the alleged events set out in his refugee claim. The Applicant simply glosses over this manifestly important and critical detail in his memorandum of fact and law, choosing instead to focus on alleged errors by the RAD in impugning the Applicant's supporting documents.

[30] The Applicant submits that while he can understand the RAD's concern about his passport, "by this time in the RAD's decision, his appeal had already been lost and the presumption of truth already unfairly rebutted." According to the Applicant, by the time the RAD considered this issue, it had already determined that the Applicant was lying about what happened to him in China and that all of his documents were fraudulent. The Applicant submits

that the RAD's approach to the passport issue was therefore grounded in a presumption of untruth and cannot be sustained. I disagree.

[31] The RAD concluded that the Applicant did not establish that he was in China at the time demolition officers went to the Applicant's village with the intention of demolishing the houses. Consequently, if the Applicant was outside the country at the time the villagers protested, the incidents that allegedly happened to him afterwards, such as the detention and beating, tumble like a house of cards.

[32] In my view, the RAD's conclusion that the Applicant had been travelling outside of China and was outside of China during the periods when the alleged events happened to him, including events relating to the expropriation, attempted demolition and his arrest, detention and beating, is amply supported by the evidence before the RAD.

[33] In fact, there is no better evidence than that provided by the Applicant during his interview with CBSA officials. The interviewing Officer's notes include the following exchange:

> Q: SO WHEN DID YOU LEAVE CHINA FOR CANADA?
>
> A: ON JUNE 28 2018
>
> Q: HAVE YOU EVER TRIED TO TRAVEL TO CANADA BEFORE?
>
> A: NO
>
> Q: ARE YOU AWARE THAT WE LOCATED YOUR PASSPORT AND THE DOCUMENTS THAT YOU ATTEMPTED TO DESTROY ON THE INCOMING AIRCRAFT?
>
> A: OH

Q: WE ARE ALSO AWARE THAT YOU ATTEMPTED TO TRAVEL TO CANADA PREVIOUSLY?

A: OH, WELL YES. ONCE THROUGH JAMAICA BUT THEY REFUSED TO BOARD ME. BUT THAT WAS BEFORE MY PROBLEMS STARTED.

Q. SO WHY WERE YOU TRYING TO COME TO CANADA THEN?

A. FOR SITE (SIC) SEEING

INFORMATION IN CBSA POSSESSION SHOWS THAT SUBJECT TRIED TO TRAVEL TO CANADA AT LEAST 4 TIMES IN THE PAST YEAR, FROM PANAMA, COSTA RICA, JAMAICA AND THE NETHERLANDS, PRESENTING HIMSELF AS A PR OF THE USA TO AIRLINES. STAMPS IN HIS PASSPORT, SEEN ON THE PAGES HE ATTEMPTED TO DETROY (SIC) AND DISPOSE OF, INCLUDE ALSO ECUADOR, DOMINICAN REPUBLIC AND BUA. HE HAD A VALID SCHENGEN VISA IN THE PPT.

Q. OUR INFORMATION SHOWS THAT YOU TRIED AT LEAST FOUR TIMES TO TRAVEL TO CANADA IN THE PAST YEAR PRETENDING OT (SIC) BE A GREEN CARD HOLDER IN THE USA. WHY WOULD YOU DO THAT FOR "SITE (SIC) SEEING"?

A. I AM NOT A GREEN CARD HOLDER.

Q. I KNOW – SO WHY SO MANY ATTEMPTS TO GET TO CANADA BEFORE THE "PROBLEMS" EVEN STARTED IN CHINA?

A. OK – MY BROTHERS LIVE IN CANADA

. . .

Q. SO YOU ACKNOWLEDGE BEING IN CENTRAL, SOUTH AMERICA AND THE CARIBBEAN FOR ABOUT THE PAST YEAR?

A. YES, THIS IS TRUE

Q. SO HOW COULD YOU HAVE BEEN IN CHINA IN APRIL OF THIS YEAR?

A. I WENT BACK

Q. WHY DID YOU ATTEMPT TO DESTROY YOUR CHINESE PASSPORT?

A. SO YOU COULD NOT SEND ME BACK, THEY WILL KIL (SIC) ME…

Q. OR SO THAT WE COULD NOT SEE THAT YOU WERE NOT IN CHINA AT ALL IN 2018?

A. I WAS, THEY JUST DON'T STAMP PASSPORTS IN CHINA ANY MORE

Q. IF YOU WERE IN CHINA, AND DECIDED TRO (SIC) LEAVE USING YOUR PASSPORT, WOULD YOU NOT HAVE BEEN CAUGHT BY THE GOVERNMENT WHEN THEY DO EXIT CONTROL?

A. WELL, THE LAND THING IS NOT SO SERIOUS, THE CENTRAL GOVERNMENT DOES NOT CARE.

Q. DIDN'T YOU JUST SAY THAT YOU WOULD BE KILLED IF YOU RETURNED ?

A. WELL, MAYBE NOT KILLED…BUT I WOULD NOT BE ALBE (SIC) TO FIND A JOB FOR SURE. I WOULD BE BLACKLISTED.

Q. HAVE YOU EVER BEEN ARRESTED ASIDE FROM THE ALLEGED ARREST IN APRIL 2018?

A. IN HONG KONG IN 2016 I WAS CONVICTED OF USING FRAUDULENT DOCUMENTS. IS (SIC) SERVED 8 MONTHS AND WAS REMOVED FROM THERE BACK TO CHINA.

[34] The Applicant assumes that based on the order in which the issues are addressed in the Decision, the lens through which the RAD viewed the evidence was distorted and that the RAD isolated the evidence into individual silos, denying it the insight provided by a global assessment. I disagree.

[35] Upon reviewing the Decision and the way it is structured, I am satisfied that the RAD considered all of the evidence before putting pen to paper. The Decision as a whole is transparent, intelligible, and more importantly well justified. There is a rational connection between the evidence before it and the Decision, and the reasons are responsive to the Applicant's arguments.

[36] There was ample objective and documentary evidence that the Applicant was not in China during the specified dates. The Applicant tendered no evidence to rebut this objective evidence. Instead, the Applicant explained that he was smuggled out of China. His testimony of the alleged smuggling shifted and evolved as well. He told the CBSA officer that he tried to enter Canada at an earlier date and then later reversed his story. The RAD reasonably concluded that the Applicant was not in China during the protest and subsequent arrest.

B. *Applicant's Corroborative Documents*

[37] The Applicant argues that while the RAD found that it was improper for the RPD to reject the Applicant's supporting documents without identifying any deficiencies, it then proceeded to reject these documents for different reasons. The Applicant argues that this was a breach of procedural fairness because the RAD did not advise the Applicant before impugning the documents. The Applicant cites *Fu v Canada (MCI)*, 2017 FC 1074 [*Fu*] at paragraphs 12-15 in support of this proposition, and in particular paragraph 14:

> [14] The RAD has a duty to allow parties to address pivotal new matters not raised by the RPD (*Ehondar v Canada (Citizenship and Immigration*), 2016 FC 1253 at paras 13-14). In *Ortiz v Canada (Citizenship and Immigration)*, 2016 FC 180, Justice Shore faulted the RAD for raising doubts about the genuineness of

> a police report, which were neither raised as an issue by the RPD, nor put to the applicant (at para 22). In another case, Justice Hughes found that where "the RAD chooses to take a frolic and venture into the record to make further substantive findings, it should give some sort of notice to the parties and give them an opportunity to make submissions" (*Husian v Canada (Citizenship and Immigration)*, 2015 FC 684 at para 10).

[38] However, in the present case, unlike the situation in *Fu*, the RAD did not raise a new matter by itself. On appeal, the Applicant submitted that the RPD's rejection of the corroborative evidence "was clearly the fruit of its other unsustainable findings" and he sought the RAD's intervention if the RPD erred in its assessment of the documents. This is not a situation where the decision maker considered extrinsic evidence without giving the Applicant the opportunity to review it. On the contrary, the Applicant specifically raised the issue of the RPD's credibility findings and argued that the RPD's rejection of his corroborating documents was determinative of his entire claim. The Applicant cannot now say that he was not given an opportunity to respond as he submitted that these documents were genuine and probative. I am satisfied that the RAD conducted an independent review of these documents, as it was asked to do by the Applicant and as was its duty.

[39] It was open to the RAD, on an independent review of the evidence, to impugn the genuineness of three interrelated supporting documents, namely, the notice of detention, the certificate of release, and the receipt. This went to credibility, which was the determinative issue before the RPD, and related to a point raised in the Applicant's appeal submissions regarding the sufficiency of the RPD's assessment of this evidence.

[40] The RAD correctly concluded that submitting a false or irregular document may have an impact on the weight assigned to the other documents, especially when they are interrelated, and on the overall credibility of the Applicant (*Uddin v. Canada (Minister of Citizenship and Immigration*), 2002 FCT 451 at para 10).

C. *Assessment of the Applicant's New Evidence*

[41] Moreover, it was open to the RAD to assign no weight to new evidence from the Applicant's mother indicating that the authorities had come looking for him anew in May 2020, two years after he allegedly fled the country and around the time that his appeal was being considered by the RAD. In my view, the RAD did not err by not convoking an oral hearing based on this information.

[42] Section 110(6) of the *IRPA* allows the RAD to hold a hearing where, there is new documentary evidence that raises a serious issue with respect to an appellant's credibility that is central to the decision and that, if accepted, would justify allowing or rejecting the refugee claim.

[43] The Applicant argues that in the present case, the letter from the Applicant's mother, if credible, was enough to ground the Applicant's claim for protection, as it corroborates key aspects of his story and confirms that he is wanted by the Chinese authorities. Moreover, given the RAD's credibility concerns about this evidence, its failure to call a hearing amounted to a breach of procedural fairness. I disagree.

[44] There were numerous inconsistencies between this evidence and other evidence. The RAD had good reason to be suspicious of the timing of the letter and the mother's account that a police officer was seeking out the Applicant two years after the events alleged in his refugee claim. When the timing of events amount to an extraordinary coincidence that is suspiciously convenient, the RAD can reasonably regard such evidence as dubious (*Meng v. Canada (Citizenship and Immigration)*, 2015 FC 365 at para 22).

[45] Given the obvious reasons to doubt the veracity of this evidence, the RAD reasonably concluded this evidence was not credible without having to hold an oral hearing. In addition, it bears repeating that the RAD concluded that this evidence would not change the result. I defer to the RAD's expertise on this issue and I see no reason to disturb its conclusion.

VI. Conclusion

[46] For the above reasons, I see no reviewable error in the RAD's determination that the Applicant is neither a Convention refugee nor a person in need of protection pursuant to paragraph 111(1)(a) of the *IRPA*. The application for judicial review is accordingly dismissed.

[47] There are no questions for certification.

JUDGMENT IN IMM-3990-20

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

"Roger R. Lafrenière"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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