

Federal Court



Cour fédérale

**Date: 20211109**

**Docket: IMM-3563-20**

**Citation: 2021 FC 1204**

**Toronto, Ontario, November 9, 2021**

**PRESENT: Justice Andrew D. Little**

**BETWEEN:**

**XIAOYAN TAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicant, Ms. Xiaoyan Tan, is a citizen of China who has claimed protection on the basis that she is a Convention refugee and a person in need of protection under s. 96 and subsection 97(1) of the *Immigration and Refugee Protection Act* (the “IRPA”).

[2] Ms. Tan’s claims were rejected by the Refugee Protection Division (“RPD”) based on credibility issues. On appeal, the Refugee Appeal Division (“RAD”) admitted new evidence but

dismissed her appeal. Ms. Tan now applies to this Court for judicial review, asking that the RAD's decision be set aside as unreasonable under the principles set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

[3] For the reasons that follow, the application is dismissed. In my view, the RAD did not make a reviewable error in reaching its decision.

**I. Events and Decisions Leading to this Application**

[4] The applicant claimed that in February 2017, while living in China, she was introduced to Christianity by a friend (Ms. Mei Mei Yu). In March 2017, she joined a Christian “house church” and attended until June 2017. The church had 16 members and held weekly meetings. It was not approved by the Chinese government.

[5] The applicant's conversion to Christianity and membership at the house church did not sit well with her father. After she converted, he arranged, without her consent, to get the applicant a Canadian visa so she could go to Canada and practice her religion freely.

[6] In June 2017, while the applicant attended a bible study session at the house church, the Chinese Public Security Bureau (“PSB”) raided the home. The PSB accused the worshippers of holding an illegal religious gathering and seized two bibles from the home. The PSB took three worshippers, including the applicant and her friend Ms. Yu, to the police station and interrogated them. They were released from detention after a few hours with a warning that the local Neighbourhood Committee would be keeping an eye on them.

[7] After this incident, Ms. Tan acquiesced to her father's wish that she leave China in order to continue to practice her faith. With the assistance of a smuggler, she travelled to Canada. She arrived on July 13, 2017.

[8] The applicant claimed that by November 2017, the PSB had detained Ms. Yu and the other worshipper who had been caught in the house raid. The PSB also then went to the applicant's former home and left a summons for her there. The PSB came back to look for her after she failed to appear at the police station. According to the applicants' materials, her father informed the PSB that the applicant had gone to work in another province.

[9] In December 2017, the applicant's father recovered her Resident Identity Card, so she was able to start her refugee claim in Canada.

**A. *The Refugee Protection Division Decision***

[10] The Refugee Protection Division concluded that Ms. Tan's allegations were not credible. The RPD made detailed credibility findings arising from inconsistent evidence about when she began attending the house church, the composition of her household, the status of her house church, and the source of her knowledge about the arrest of the other worshippers. The RPD considered several documents filed to support her core allegations about the events in China, including an administrative punishment decision in relation to her detention in June 2017, and a summons issued by the PSB dated November 6, 2017.

[11] The RPD concluded that Ms. Tan had not established her core allegations on a balance of probabilities. As a result of the credibility issues, the RPD did not believe that she was a genuine Christian, whether as a result of her conversion in China or as a result of a genuine conversion since her arrival in Canada. The RPD found that several aspects of her testimony were confusing, including Ms. Tan's inability to explain "the significance of Holy Communion and what it is, particularly if she claims to partake in it herself".

[12] The RPD weighed the credibility issues against the summons and the administrative punishment decision. The RPD was not satisfied that the applicant was attending a house church in China, or that she had been persecuted in China as a result of her involvement in such a church. The RPD further held that the authorities in China do not have an interest in the claimant, and that she would not be genuinely motivated to attend a host church if she returns to China.

[13] Accordingly, Ms. Tan did not have a well-founded fear of persecution on a ground in the Convention under s. 96 of the IRPA, and did not face a risk under IRPA subsection 97(1). The RPD dismissed her claims.

[14] The applicant appealed to the RAD.

**B. *The Refugee Appeal Division Decision***

[15] By decision dated July 27, 2020, the RAD dismissed the applicant's appeal.

[16] The RAD admitted new evidence tendered by the applicant under IRPA subsection 110(3), but denied her request for an oral hearing under subsection 110(6). On an independent review of the evidence to determine whether the RPD was correct, the RAD found that the applicant was not a credible witness. The new evidence she provided did not overcome the credibility issues.

[17] The RAD noted that the RPD made five negative credibility findings, but the applicant had not challenged four of them. The RAD found that this was “significant because these findings undermine the [applicant’s] credibility and inform the remainder of the analysis”. After describing the four unchallenged negative credibility findings, the RAD concluded that they were significant, because they “go to the core of the applicant’s claim: her religion and the events that occurred in China”.

[18] At the RAD, the applicant argued that the fifth negative credibility findings made by the RPD was an error. This credibility finding concerned the date when the applicant began attending house church in China. In her Basis of Claim form, the applicant stated that she began attending church on March 6, 2017. However, her Chinese passport revealed that the applicant was in Japan from March 2, 2017 to March 8, 2017. Therefore, at the outset of the hearing at the RPD, she asked to amend her Basis of Claim form to state that she began attending the house church on March 19, 2017. She could not explain how this error occurred. The RPD concluded that she had not provided a reasonable explanation.

[19] The RAD recognized that the applicant benefited from a presumption that her evidence was true unless there were serious reasons to doubt it. The RAD concluded that the inconsistency between the passport and the Basis of Claim form gave rise to a serious reason to doubt her evidence. The RAD concluded:

... I concur with the RPD's assessment about the significance of this discrepancy. The [applicant's] entire BOC is premised around her attending a house church in China, and an inconsistency in this regard is serious. When I take this finding along with the four unchallenged findings above, I have serious reasons to doubt the [applicant's] credibility. I find that she is not a credible witness.

[20] The RAD also concluded that the RPD had correctly assessed the administrative punishment decision and the summons, which the applicant argued should corroborate her claim. Reviewing the case law, the RAD concluded that because the applicant had been found to lack credibility in central aspects of her claim, it was open to the RPD to find that supporting documents should be given little or no weight. The RAD agreed with the RPD's assessment.

[21] The new evidence tendered to the RAD by the applicant included an affidavit sworn by the applicant and a letter from her father. Her father's letter advised that, in late June 2020, he met Ms. Yu while having a walk outside. Ms. Yu was walking unevenly. She told the applicant's father that she had been kicked in the leg in May 2020 by a police officer while reporting to the PSB. She advised him that the house church had been closed because of the ongoing persecution of Christians in China, and that the pastor of another church had been sentenced to a nine-year prison term. Her father advised that members of the Neighbourhood Committee frequently asked him about the applicant, and had threatened to punish her father if they found out that he had concealed anything about her religious activities.

[22] The RAD concluded that this evidence was “of no weight and does not overcome the credibility issues outlined above”. The RAD noted that the applicant had not directly challenged the RPD’s negative findings about the new evidence from her father, which undermined that evidence. The RAD found that the “timing of the evidence” lacked credibility, because the applicant did not update her evidence for 18 months but then, after she was advised that she could submit new evidence on her appeal, she “coincidentally” received the new information from her father. In addition, the RAD found the evidence to be vague and lacking in detail because it did not explain where her father allegedly saw Ms. Yu, or when (her father said “late June”), when the house church had been closed, and other details.

[23] The RAD concluded that the applicant’s own testimony about her Christian faith was “so lacking in credibility” that the new evidence did not outweigh it. To the RAD, the central question was whether the applicant was a genuine Christian. Reviewing the record, the RAD concluded that the evidence on that issue was not credible.

## **II. Standard of Review**

[24] The standard of review of the RAD’s decision is reasonableness, as described in *Vavilov*. The onus is on the applicant to demonstrate that the decision is unreasonable: *Vavilov*, at paras 75 and 100.

[25] Reasonableness review entails a sensitive and respectful, but robust, evaluation of administrative decisions: *Vavilov*, at paras 12-13. The starting point is the reasons provided by the decision maker, which must be read holistically and contextually and in conjunction with the

record that was before the decision maker: *Vavilov*, at paras 84, 91-96, 97, and 103; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, at para 31.

[26] The court's review considers both the reasoning process and the outcome: *Vavilov*, at paras 83 and 86. A reasonable decision is based on an internally coherent and a rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker: *Vavilov*, at paras 85 and 99.

### **III. Analysis**

[27] The applicant made the following arguments on this application for judicial review:

- the RAD conducted an unreasonable assessment of the new evidence and erred by failing to hold a hearing under IRPA subsection 110(6);
- the RAD made unreasonable credibility findings related to the amendment of the Basis of Claim form and in its assessment of the administrative punishment decision and the summons.

[28] I will address them in turn.

#### **A. *Did the RAD conduct an unreasonable assessment of the evidence?***

[29] The applicant challenged the RAD's conclusion that her father's letter was not credible because it was vague and lacking in detail. The applicant submitted that the RAD took a "microscopic" approach to the evidence and drew a negative inference based on what the letter



did not say, even though what it did say was entirely consistent with the applicant's claim for protection (referring to *Arslan v Canada (Citizenship and Immigration)*, 2013 FC 252). The applicant also submitted that the RAD based its assessment of the timing of the new evidence on a "presumption of untruth".

[30] The applicant built on these submissions, maintaining that the RAD's concerns about the new documents could have been addressed if it had called a hearing under IRPA subsection 110(6). According to the applicant, if the new documentary evidence raised a serious issue with respect to her credibility that is central to the decision and that, if accepted, would justify allowing or rejecting her refugee claim, then the RAD could hold a hearing. In this case, the applicant submitted that the letter from her father was enough to ground her claim for protection because it corroborated key aspects of her story and confirmed that she was targeted because of her religion. On this argument, the RAD committed a reviewable error or a breach of procedural fairness by failing to convoke a hearing.

[31] I am not persuaded that the RAD's decision contains an error that would permit this Court to intervene.

[32] First, the RAD's analysis did not only refer to concerns about the timing of the new evidence, and the absence of details in it. The RAD first noted that the applicant had not directly challenged findings of the RPD that undermined the new evidence, including the lack of credibility of the evidence that the applicant's father lived with her and therefore was privy to

information about her status, and the lack of credibility of the applicant's evidence as to what was the status of her house church and the members of that church.

[33] In that context, the RAD found that the timing of the new evidence lacked credibility. While the RAD could have come to another conclusion, it was open to the RAD to reach the conclusion it did, namely that it was more than a coincidence that shortly after the RAD invited her to present new evidence, her father happened to meet her friend on the street and obtained new information to support her claim.

[34] Second, I agree that there is merit in the applicant's argument that the RAD could have taken a less demanding approach to the contents of the applicant's father's letter. However, in the context of the RAD's other two findings above justifying its conclusion that the new evidence should have no weight and did not overcome the negative credibility determinations made by the RPD, any concerns that the RAD took a "microscopic" approach do not rise to the level of a reviewable error.

[35] Next, the applicant challenged the inconsistency between the RAD's conclusion that the new evidence was credible for the purposes of admission under subsection 110(4), with its conclusion that the evidence was not credible and "of no weight". In my view, it is not inconsistent to find that a document is "credible" for the purposes of its admission in the proceeding, and that the document also be given little or no weight (i.e., probative value) when considering its contents. The first goes to the trustworthiness of the document: in this case, her father's letter came attached to her affidavit, together with proof of receipt and the identification

of the sender in China (through the online application used by the applicant's father). On the other hand, the probative value of the document goes to its ability to establish the facts it is being tendered to prove. A document may be reliable and trustworthy to warrant admission, and yet incapable of proving the facts for which it is tendered due to a lack of probative value of its contents.

[36] The applicant's submissions with respect to an oral hearing appear to be based in part on a misconception about subsections 110(4) and 110(6) of the IRPA. My colleague Justice Ahmed explained in *AB v Canada (Citizenship and Immigration)*, 2020 FC 61:

[17] In view of the jurisprudence, the Applicants have advanced a misconstrued conception of the application of subsections 110(4) and 110(6) of the *IRPA*. The RAD is not required to hold an oral hearing to assess the credibility of new evidence—it is when otherwise credible and admitted evidence raises a serious issue with respect to the general credibility of the applicant that the determination of an oral hearing becomes relevant. A “credibility finding” on the admissibility of new evidence is not equivalent to a credibility assessment on the Applicants.

[Original emphasis.]

[37] In this case, the evidence admitted included an affidavit from the applicant. However, that affidavit only restated, omitting a few details, the contents of the letter from her father about his discussion with Ms. Yu. The RAD's concerns about the new evidence go to the reliability and probative value of the evidence of her father's discussion with Ms. Yu, i.e., to her father's letter, rather than to the applicant's restatement of it and therefore her credibility.

[38] The RAD did not conclude that it further questioned the applicant's credibility due to concerns about the contents of her father's letter. As I read the RAD's reasons, the RAD found

that the applicant's previous non-credible evidence undermined the contents of her father's letter, because on the appeal the applicant did not challenge the RPD's findings that the applicant did not give consistent testimony about whether she and her father lived at the same residence, and her evidence about how she knew that the house church had been shut down. The applicant's failure to challenge the RPD's credibility findings on these two issues at the RAD means that she cannot now complain that the RAD failed to use the letter to conclude that she did live with her father and that he did pass information to her about the status of the home church.

[39] In addition, in my view, the RAD was not required to hold a hearing to enable the applicant to address credibility issues identified by the RAD arising in the admissible new evidence tendered by the applicant. Under subsection 110(6), the RAD "may" hold a hearing if the three conditions in that provision are met, which include whether, in its opinion, there is documentary evidence mentioned in subsection (3) that raises a "serious issue with respect to the credibility of the person who is the subject of the appeal", i.e. the credibility of the applicant. In the present circumstances, the RAD had no obligation to convoke a hearing into the contents of the letter from the applicant's father as the letter did not invoke further concerns about the applicant's credibility. That conclusion is not affected by the existence of the applicant's affidavit because it merely restated most of the contents of her father's letter.

[40] Finally, it is worth reemphasizing that the RAD found that the applicant's own testimony about her Christian faith—the central basis of her claim for refugee status and for protection—was so lacking in credibility that the new evidence did not outweigh it. The RAD concluded that the new evidence did not overcome the problems with the applicant's own testimony.

[41] For these reasons, I conclude that the applicant has not demonstrated that the RAD unreasonably assessed the evidence.

**B. *Did the RAD make unreasonable credibility findings?***

[42] The applicant challenged two credibility findings made by the RAD.

[43] First, the applicant submitted that the RAD applied a “presumption of untruth” when it did not accept that the applicant made a mistake about the date when she began attending her church in China. I see no basis for this submission in the reasons provided by the RAD. The applicant made the same argument to the RAD, contending that the RPD applied a presumption of untruth. In my view, the RAD was entitled to consider the inconsistency between the applicant’s passport and her Basis of Claim form and to determine that it gave rise to a serious reason to doubt her evidence. It is hard to quarrel with the RAD’s characterization that the premise of the applicant’s claim was that she attended a house church in China, so that an inconsistency about the evidence of that attendance could be serious.

[44] The applicant’s second submission was that the RAD erred by upholding the RPD’s conclusions that the applicant disclosed a fraudulent administrative punishment decision and a fraudulent summons. According to the applicant, the RAD’s finding about these documents was based solely on its other credibility findings and was therefore fatally tainted by its previous errors in assessing the applicant’s credibility. Because the applicant has not established that the RAD’s credibility findings were unreasonable, this argument cannot succeed.

**IV. Conclusion**

[45] For these reasons, the application is dismissed. Neither party proposed a question for certification and none is stated.

**JUDGMENT in IMM-3563-20**

**THIS COURT'S JUDGMENT is that:**

1. The application is dismissed.
2. No question is certified for the purposes of paragraph 74(d) of the *Immigration and Refugee Protection Act*.

"Andrew D. Little"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

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