Date: 20211209

Docket: IMM-6713-20

Citation: 2021 FC 1390

Ottawa, Ontario, December 9, 2021

PRESENT: The Honourable Mr. Justice Ahmed

 BETWEEN:

XIUMIAN HAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I.   **Overview**

[1]   The Applicant, Ms. Xiumian Han, seeks judicial review of a decision of the Refugee Appeal Division ("RAD") dated December 2, 2020 confirming the determination of the Refugee Protection Division ("RPD") that the Applicant is neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2]   The Applicant submits that the RAD erred in its negative credibility findings, and that the RAD breached the Applicant's right to procedural fairness by failing to give her the opportunity to clarify the inconsistencies in her evidence.

[3]   For the reasons that follow, I find the RAD's decision to be reasonable and that there was no breach of procedural fairness. I therefore dismiss this application for judicial review.

II.   Facts

A.   *The Applicant*

[4]   The Applicant is a 49-year-old resident of China. The Applicant claims to fear persecution at the hands of the Chinese authorities, including the Public Security Bureau ("PSB"), based on her beliefs as a Guanyin Famen ("GF") practitioner.

[5]   The Applicant claims she began practising GF in September 2017. She joined a weekly meditation group, became a vegetarian and meditated daily.

[6]   On January 6, 2018, the Applicant alleges that she and two other members of her GF group were arrested for teaching GF to two new members. The Applicant was detained for three days, and warned that she would be taken back into custody if she continued to participate in illegal activity.

[7]   The Applicant left China on March 31, 2018 with the assistance of a smuggler to come to Canada. Once in Canada, the Applicant was informed that her GF group had been raided by the PSB in April 2018, and that her cousin had been detained. She also alleges that the PSB had visited her home, searching for her, and that the PSB later returned to her home with a summons (the "Summons").

[8]   The Applicant states that after approximately nine months in Canada, she found a GF group and began practising again. The Applicant did not meet with the GF group in the three months leading up to her RPD hearing.

B.   *The RPD Decision*

[9]   On February 5, 2020, the Applicant's refugee claim was rejected by the RPD on credibility grounds. The RPD was not persuaded that the Applicant is a genuine GF practitioner, as she failed to demonstrate basic knowledge of GF. In particular, the Applicant was unable to explain why vegetarianism is a core practice of the faith, and she failed to remember GF teachings or explain basic tenets of GF practice. The RPD also found the documents submitted by the Applicant to be fraudulent, as the Applicant provided unclear and inconsistent testimony about how she acquired the documents. These documents included the Summons, a document confirming the Applicant's release from detention (the "Detention Document"), and an arrest notice to the Applicant's family (the "Arrest Notice to Family").

[10]   Overall, the RPD determined that the Applicant's claim was not credible, that she had not provided sufficient trustworthy evidence to support her claim, and that she does not face a

risk of persecution if she were to return to China. The Applicant appealed the RPD's decision to the RAD.

C. *Decision Under Review*

[11] In a decision dated December 2, 2020, the RAD confirmed the RPD's findings that the Applicant failed to establish that she is a genuine GF practitioner. The RAD also raised credibility concerns with respect to the inconsistencies between the Applicant's testimony and the record, and gave little weight to the documents submitted as part of the Applicant's evidence, finding them to be fraudulent.

[12] Given significant credibility issues that touch on core aspects of the Applicant's claim, the RAD found that the Applicant failed to establish that she is a genuine and active adherent to GF or that she faces a prospective risk of persecution in China.

III. **Issues and Standard of Review**

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

A. *Whether the RAD's decision is reasonable.*

B. *Whether there was a breach of procedural fairness.*

[14]   The first issue is reviewed upon the reasonableness standard in accordance with the

Supreme Court of Canada's decision in *Canada (Citizenship and Immigration) v Vavilov*, 2019

SCC 65 ("*Vavilov*") at paragraphs 16-17.

[15]   The second issue is reviewed upon what is best reflected in the correctness standard, as it

concerns whether the RAD complied with the principles of procedural fairness (*Mhlanga v

Canada (Citizenship and Immigration)*, 2021 FC 957 at para 12; *Canada (Citizenship and

Immigration) v Khosa*, 2009 SCC 12 at para 43; *Canadian Association of Refugee Lawyers v

Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35).

[16]   Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13).

The reviewing 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).

[17]   For a decision to be unreasonable, the applicant must establish the decision contains

flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns

about a decision will warrant intervention. A reviewing court must refrain from reweighing

evidence before the decision-maker, and it should not interfere with factual findings absent

exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep." The problem must be sufficiently central or significant to render the decision unreasonable (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156, at para 36).

[18]   Correctness, in contrast, is a non-deferential standard of review. The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paragraphs 21-28; (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

IV.   Analysis

A.   *Whether the RAD's decision is reasonable.*

[19]   The RAD gave considerable weight to the Applicant's lack of knowledge of the basic beliefs and tenets of GF, particularly since the Applicant claims to have practiced GF for two years. Specifically, the RAD found that the Applicant could not name four out of five of the key prohibitions mandated by GF and that she was unable to explain the importance of vegetarianism. The RAD determined that the RPD had correctly found that the Applicant's vague and general knowledge of GF was not sufficient to demonstrate her identity as a genuine GF practitioner.

[20]   The RAD also raised credibility concerns with respect to inconsistencies between the

Applicant's testimony and a support letter on the record from one of the leaders in the

Applicant's GF practice group in Canada, and affirmed the RPD's finding that the documents

provided by the Applicant are fraudulent. The RAD therefore gave little weight to the

documents to bolster the Applicant's claim that she was arrested and detained.

[21]   Furthermore, the RAD found that the Applicant's testimony that it was not important to

her to practice GF with a group reinforced its finding that the Applicant is not a genuine GF

practitioner. Hence, the RAD also found that the Applicant would be unlikely to join a GF group

if she returns to China, and that she would thus not be at risk of persecution upon her return to

China.

[22]   The Applicant's submissions failed to clearly identify how the RAD's credibility findings

are unreasonable, other than challenging the fact that the RAD did not give the Applicant the

opportunity to respond to its credibility concerns.

[23]   The RAD affirmed the RPD's credibility findings, which are entitled to deference on

judicial review as the RPD is in a better position to assess whether evidence is credible (*Hohol v

Canada (Citizenship and Immigration),* 2017 FC 870 ("*Hohol*") at para 18). In *Hohol,* at

paragraph 19, this Court notes:

> The RPD is also entitled to make general findings of lack of
> credibility. The accumulation of inconsistencies, contradictions,
> etc., taken as a whole, can lead to such a finding. As well, a
> general finding of lack of credibility can extend to all relevant
> evidence emanating from the Applicant's version and all

documentary evidence he submitted to corroborate his version of the facts (*Lawal v Canada (Minister of Citizenship and Immigration),* 2010 FC 558 at para 22).

[24]   I agree with the Respondent that the RAD considered the evidence as a whole to determine the Applicant's credibility and the authenticity of the documents. I find that the RAD reasonably drew a negative credibility inference from the inconsistencies in the Applicant's evidence and testimony, including the lack of details about the Applicant's arrest and how she came to receive the Summons. The RAD also reasonably took into consideration the prevalence of fraudulent documents in China as a factor in its overall credibility analysis. While a finding that documents are fraudulent cannot be based solely on the fact that they were produced in a country where fraudulent documents are prevalent, this fact can inform the assessment of the documents on their merits (*Azenabor v Canada (Citizenship and Immigration)*, 2020 FC 1160, at para 33).

[25]   Given the Applicant's lack of knowledge of the core beliefs of GF, I also find that it was reasonable for the RAD to determine that the Applicant failed to demonstrate that she is a genuine GF practitioner.

[26]   An analysis of whether a refugee claimant requires protection must also be grounded in an objective assessment of risk (*Sanchez v Canada (Citizenship and Immigration)*, 2007 FCA 99 at para 15). In her testimony before the RPD, the Applicant indicated that it is not very important to her to practice GF with a group, and that she is content to be vegetarian and meditate in private without attending group gatherings. The Applicant also testified to practicing

less often since her arrival in Canada, due to her busy work schedule. She stated that prior to the

RPD hearing, three months had passed since she had attended a group GF meeting.

[27]   The Respondent submits that, based on this testimony, it was reasonable for the RAD to

determine that the Applicant is not likely to join a GF practice group upon her return to China

and that she thus failed to demonstrate, on a balance of probabilities, that she faces an objective

risk of persecution from the Chinese authorities. I agree.

[28]   I find that it was reasonable of the RAD to draw negative inferences from its analysis of

the documentary evidence and the Applicant's testimony and that it was reasonable of the RAD

to find that the Applicant is not a genuine practitioner of GF and therefore not at risk of

persecution in China.

B.   *Whether there was a breach of procedural fairness.*

[29]   In its decision, the RAD affirmed the RPD's determination that the documents provided

by the Applicant are fraudulent. The RAD agreed with the RPD that the Applicant was

inconsistent in her testimony about how she received the Summons, and the RAD could not

establish the authenticity of the Detention Document. The RAD also examined the Arrest Notice

to Family, which named the Applicant's cousin as the person arrested, and found that it is not

similar to any of the other sample arrest notices in the National Documentation Package.

Finally, the RAD found that the Applicant failed to provide any other commonly issued

detention documents such as an arrest warrant or a notice of arrest. Accordingly, the RAD

determined that the documents are inauthentic and gave them little weight to bolster the Applicant's claim that she was arrested and detained.

[30]   The Applicant submits that the RAD breached her rights to procedural fairness by failing to notify her of its credibility concerns, and depriving her of the opportunity to explain the discrepancies in her evidence. Specifically, the Applicant states that she was not given the chance to address the issues with the Arrest Notice to Family or the Detention Document. The Applicant cites this Court's decision in *Fu v Canada (Citizenship and Immigration)*, 2017 FC 1074 ("*Fu*") at paragraph 14 to submit: "the RAD has a duty to allow parties to address pivotal new matters not raised by the RPD."

[31]   I find the case at hand to be distinguishable from *Fu,* as the RAD merely elaborated on credibility concerns that had already been raised as an issue by the RPD. In fact, the Applicant's appeal to the RAD specifically raised the issue that the RPD had erred in its credibility finding. The Applicant submitted to the RAD that the RPD had failed to conduct a substantive review of the documentary evidence and that this error was determinative of her entire claim. The RAD then conducted an independent review of these documents, as it is required to do. As such, I do not find that this is a case in which the RAD considered extrinsic evidence that would have required notice to the Applicant, nor do I find the issue of the authenticity of the documents in the record to be a pivotal new matter.

[32]   The RAD was not required to notify the Applicant of its concerns because its credibility assessment concerning the authenticity of the documents consisted of further findings related to

same issue that was before the RPD (*Al-Hafidhi v Canada (Citizenship and Immigration)*, 2018 FC 315, at para 37). This Court has found on numerous occasions that "[t]here is no procedural fairness issue when the RAD finds an additional basis to question the Applicant's credibility using the evidentiary record before the RPD" (*Oluwaseyi Adeoye v Canada (Citizenship and Immigration)*, 2018 FC 246, at para 13; *Fatime v Canada (Citizenship and Immigration)*, 2020 FC 594 at para 25). Most recently in *Farah v Canada (Citizenship and Immigration)*, 2021 FC 116 at paragraph 16, this Court stated:

> […] it is well established that where credibility is already in issue, an additional basis with respect to that credibility does not constitute a new issue giving rise to a right to be given notice and an opportunity to respond.
>
> [citations omitted]

[33]   I therefore find that there was no breach of procedural fairness in the case at hand.

V.   Conclusion

[34]   For the reasons above, I find the RAD's decision to be reasonable and that there was no breach of procedural fairness. This application for judicial review is dismissed.

[35]   No questions for certification were raised, and I agree that none arise.

<u>JUDGMENT in IMM-6713-20</u>

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question to certify.

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"Shirzad A."

Judge

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FEDERAL COURT

SOLICITORS OF RECORD

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