

Federal Court



Cour fédérale

Date: 20211214

Docket: IMM-4187-20

Citation: 2021 FC 1406

Toronto, Ontario, December 14, 2021

PRESENT: Madam Justice Go

BETWEEN:

YUNRU BAI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms. Yunru Bai [Applicant] asked this Court to review a decision by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada [Decision] which confirmed the decision of the Refugee Protection Division [RPD] that the Applicant is not a Convention refugee or person in need of protection under the *Immigration and Refugee Protection Act*, S.C.2001, c. 27 [IRPA].

[2] The Applicant argues that the RAD erred by dismissing her allegation that a question by the RPD Member raised a reasonable apprehension of bias. She also challenges the RAD's credibility findings and analysis of her *sur place* claim. I find there was no apprehension of bias. However, I will grant the application as I find the Decision was unreasonable.

II. **Background**

A. *Factual Context*

[3] The Applicant is a citizen of China where she grew up in a farming family. She claims her friend introduced her to Christianity after her marriage fell apart and she left her son to be cared for by her in-laws.

[4] The Applicant states she attended a house church where she found release from her feelings of betrayal and anger by her ex-husband who had an affair. The Applicant travelled to Japan to get away from her family tension. She obtained the visa to Japan with the assistance of the same smuggler (or "snakehead") who later on brought her to Canada.

[5] The Applicant alleges that the house church was searched by the Public Security Bureau [PSB] on January 22, 2017. The PSB took everyone's identity information and warned them not to practice religious activities outside of a government-sanctioned church. After this incident, the Applicant was worried about her safety and her ability to continue to practice her faith, and she decided to leave China. She arrived in Canada on June 21, 2017, accompanied by the snakehead and surrendered her passport to them upon arrival.

B. *The RPD Decision*

[6] The RPD dismissed the claim on the grounds that the Applicant was not credible. The RPD drew an adverse inference on the grounds that the Applicant misrepresented information to Japanese immigration authorities when she applied for a visa. The RPD accepted that she has basic knowledge of Christianity, but found her answers rote and lacking in detail. The RPD accepted that she had been attending church in Canada, but found that there was insufficient evidence that Chinese authorities would have been aware of this, and therefore concluded that she had no *sur place* claim.

C. *Decision under Review*

[7] The Applicant did not seek to admit new evidence before the RAD, nor did she request an oral hearing. She raised three arguments: the RPD Member's questioning displayed a reasonable apprehension of bias, its credibility assessment was unreasonable, and it erred in its *sur place* assessment. The RAD rejected all three arguments.

III. **Issues**

[8] The issues in this application are as follows:

- a) *Did the RAD err in finding that the RPD Member's questioning did not raise a reasonable apprehension of bias?*
- b) *Was the RAD's finding that the Applicant lacked credibility reasonable?*
- c) *Was the RAD's dismissal of the *sur place* claim reasonable?*

IV. Standard of Review

[9] The presumptive standard of review of the merits of an administrative decision is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 25. The parties both submit that the reasonableness standard should apply as per *Vavilov*. To set aside a decision on this basis, “the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency”: *Vavilov*, at para 100.

[10] However, I find that the bias issue should be reviewed on a correctness standard as it is a question of procedural fairness: *Kozak v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 124 at para 44.

V. Analysis

A. *Did the RAD err in finding that the RPD Member’s questioning did not raise a reasonable apprehension of bias?*

[11] At the RPD hearing, the Member asked the Applicant how much she paid her pastor in Canada to write her a letter of support, and whether she paid him any money to perform her baptism. In oral submissions to the RPD, the Applicant’s counsel stated that this questioning was “somewhat objectionable” and “somewhat troubling”.

[12] Before the RAD, the Applicant argued that that the question gave rise to a reasonable apprehension of bias on the part of the RPD Member, and that she had objected to this question

at the earliest opportunity. The RAD found that while a close-ended question which presumed she had used financial means to obtain evidence could demonstrate a reasonable apprehension of bias, the RPD had permitted her to respond to the question in her own words and thereby displace the opinion of the RPD Member. The RAD also noted that the RPD had not found the pastor's letter to be fraudulent.

[13] On judicial review, the Applicant argues that the RAD breached procedural fairness by failing to properly examine the apparent bias of the RPD. The Applicant maintains that the RPD Member's questioning would make one think that the Member presupposed the pastor's letter and the baptism to have been obtained fraudulently. The Applicant submits that the issue of bias was raised at the earliest opportunity during the RPD hearing, in accordance with *Keita v Canada (Citizenship and Immigration)*, 2015 FC 1115 at para 27.

[14] As the Applicant submits, the well-established test for reasonable apprehension of bias was set out by the Supreme Court in *Committee for Justice and Liberty et al. v National Energy Board et al.*, 1976 CanLII 2 (SCC), [1978] 1 SCR 369 at 394:

... the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information... [The] test is "what would an informed person, viewing the matter realistically and practically—and having thought the matter through—conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly.

[15] The Applicant submits that, contrary to the RAD's reasoning, the issue was not whether the Applicant had a chance to respond to the Member's question or whether the RPD had found

the pastor's letter to be fraudulent; rather, bias could be seen in the questioning itself and was further demonstrated in the RPD's finding that "her attendance at church and baptism is solely to buttress her claim for refugee protection rather than her genuine involvement in the Christian faith".

[16] As the Respondent points out, the standard for establishing a reasonable apprehension of bias is a high one, quoting *Eshetie v Canada (Citizenship and Immigration)*, 2019 FC 1036 at para 26 [*Eshetie*] which states:

[26] It is well-established that the test for reasonable apprehension of bias is whether an informed person, reviewing the matter realistically and practically, and having thought the matter through, would conclude that the decision-maker would not decide fairly (*Committee for Justice and Liberty et al. v National Energy Board et al.*, [1978] 1 SCR 369; *Ma v Canada (Citizenship and Immigration)*, 2019 FC 392 at para 26). The threshold for finding bias or a reasonable apprehension of bias is high as decision-makers are presumed to be impartial (*Sagkeeng First Nation v Canada (Attorney General)*, 2015 FC 1113 at para 105).

[17] Further, there is jurisprudence establishing that the Board's role is an inquisitorial one, and that this may mean that Members have to ask the "hard questions" that would perhaps be inappropriate for a judge to ask: *Bozsolik v Canada (Citizenship and Immigration)*, 2012 FC 432 at para 16; *Benitez v Canada (Citizenship and Immigration)*, 2007 FCA 199 at para 18. The Federal Court has found that "the inquisitorial process could give rise to sometimes extensive and energetic questioning, expressions of momentary impatience or loss of equanimity, even sarcastic or harsh language, without leading to a reasonable apprehension of bias": *Aloulou v Canada (Citizenship and Immigration)*, 2014 FC 1236 at para 28.

[18] In this case, I am satisfied that the RAD adequately addressed the alleged breaches of fairness before the RPD and correctly concluded that a reasonable apprehension of bias did not arise. In coming to its decision, the RAD appropriately took into account the dialogue between the RPD and the Applicant after this question was asked. The RAD also noted that the RPD Member treated the Applicant respectfully by offering her breaks, reformulating questions, and giving her time to respond.

[19] Also, as noted by the RAD, the RPD did not make a finding in its written decision that the pastor's letter was fraudulent. I agree with the Respondent that the RPD may form tentative views on a matter as the hearing progresses, and that doing so does not amount to a reasonable apprehension of bias, so long as the issue has not been pre-judged. The Respondent relies on, and I adopt in my reasoning, this Court's decision in *Eshetie* at para 30, citing *Yukon Francophone School Board, Education Area #23 v Yukon (Attorney General)*, 2015 SCC 25 at para 33 [*Yukon*] which states: "[i]mpartiality and neutrality do not mean that a judge must have no prior conceptions, opinions or sensibilities. Rather, they require that the judge's identity and experiences not close his or her mind to the evidence and issues. There is, in other words, a crucial difference between an open mind and empty one."

[20] In conclusion, applying the high threshold for establishing a reasonable apprehension of bias, and having regard to the materials before me, I find the RAD did not err by dismissing the Applicant's allegation of a reasonable apprehension of bias.

B. Was the RAD's finding that the Applicant lacked credibility reasonable?

[21] The Applicant challenges the RAD's credibility findings with respect to the genuineness of her faith and her alleged misrepresentations in order to obtain a Japanese visa.

(a) *Genuineness of religious faith*

[22] The Applicant notes Justice Phelan's remarks on questioning a claimant on their religious beliefs in *Liang v Canada (Citizenship and Immigration)*, 2017 FC 1020 at para 17:

Questioning an applicant on religious beliefs is a delicate matter involving subjective viewpoints, theological and philosophical bases, and language and cultural differences. Such an exercise cannot be reduced to a checklist or a trivia quiz.

[23] In addition, the Applicant quotes the following passage from Justice Campbell in *Zhang v Canada (Citizenship and Immigration)*, 2012 FC 503 at para 16 [*Zhang*]:

...the presumption that a person swears to be of a certain religious faith cannot be rebutted simply on the basis of his or her knowledge of that religion. First, religious knowledge cannot be equated to faith. And second, the quality and quantity of religious knowledge necessary to prove faith is unverifiable. Therefore, a finding of implausibility that a certain person is not of a certain faith because he or she does not meet a certain subjective standard set by a decision-maker is indefensible as a matter of fact.

[emphasis in original]

[24] The Applicant also points to case law stating that decision makers should not expect the claimant's religious knowledge to be equal to their own: *Ren v Canada (Citizenship and Immigration)*, 2015 FC 1402 at para 18; *Ullah v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16589 at para 11. Similarly, minor deviations from doctrine are not

sufficient to impugn the genuineness of a claimant's faith: *Wang v Canada (Citizenship and Immigration)*, 2012 FC 346 at para 9.

[25] Like in *Huang v Canada (Citizenship and Immigration)*, 2008 FC 346 at paras 10-11, where the Court found that the Board's standard for knowledge of Christian doctrine was overly high, the Applicant submits that she has little education and was "raised in a country where the Christian faith is not part of the social fabric".

[26] Finally, the Applicant argues that a finding that she manufactured her claim "requires a high standard of proof since it raises a question of intent to deceive": *Ren v Canada (Citizenship and Immigration)*, 2015 FC 1402 at para 23.

[27] While the Respondent does not take issue with much of the Applicant's characterization of the jurisprudence, the Respondent disagrees that the RAD has applied an inappropriate standard to assessing the Applicant's faith in this case. The RAD found that despite the Applicant's testimony and Basis of Claim [BOC] narrative, which indicate that Christianity has struck such a chord with the Applicant, that she was moved to participate in an underground church in China and left China for Canada in order to practice her faith, it was inconsistent with that narrative for the Applicant to be unable to explain what her faith means to her. The Respondent submits this was not an unreasonable way of assessing whether someone has met the section 96 definition of religious persecution. The RAD, the Respondent argues, was not holding the Applicant to a particular standard of knowledge. Rather, it was because the Applicant was

unable to explain her relationship with her faith and because her answer was lacking in such details that her claim was denied.

[28] I note there is jurisprudence establishing that the RPD is entitled to ask questions about the basic tenets of a religion: *Shen v Canada (Citizenship and Immigration)*, 2015 FC 903 at para 22. I also note Justice Southcott's explanation of the difference between questioning on the genuineness of beliefs and the theological accuracy of beliefs in *Gao v Canada (Citizenship and Immigration)*, 2015 FC 1139 at para 26:

My reading of the jurisprudence is that it is not improper for the Board to engage in religious questioning in an effort to gauge the genuineness of a claimant's beliefs, but that such questioning and resulting analysis must indeed focus on the genuineness of those beliefs and not whether they are theologically correct. This can be a difficult task for the Board, as it is entitled to consider whether the claimant holds a level of religious knowledge that would be expected of someone in the claimant's position but should not reach an adverse conclusion based on minutiae or holding the claimant to an unreasonably high standard of religious knowledge. [emphasis added]

[29] Additionally, the Court has found that "it is reasonable for a decision-maker to expect a rudimentary knowledge of one's faith" (*Zheng v Canada (Citizenship and Immigration)*, 2019 FC 731 at para 17) and an "expectation that [the claimant] should be able to elaborate on the basic tenets of the faith when asked to do so [is] justified" (*Gao v Canada (Citizenship and Immigration)*, 2021 FC 490 at para 20).

[30] The Applicant gave evidence at the RDP demonstrating her knowledge of Christianity. For instance, on the topic of biblical knowledge, she mentioned during the hearing several of

Jesus' miracles, details about Jesus' death, resurrection and crucifixion. She was able to recite the Lord's Prayer. She also paraphrased a verse in response to the Member's question about which part of the Bible she finds interesting, although she could not remember which book of the Bible this verse was from. She submitted that her knowledge is commensurate with the fact that she has only nine years of formal education.

[31] I agree with the Applicant that when assessing the genuineness of her faith, the RAD should take into account the Applicant's profile of someone who has 9 years of formal education, who lived in a farming community for the majority of her relatively young life, and who has only been exposed to Christianity about two years prior to her RPD hearing. I also agree that such an assessment should also consider someone who came from a country where religion was not encouraged, to a completely different country with different customs and language.

[32] The Applicant cites the Supreme Court's statement that "religion is about freely and deeply held personal convictions or beliefs connected to an individual's spiritual faith" and is not limited to aspects that are "objectively recognized by religious experts as being obligatory tenets or precepts of a particular religion": *Syndicat Northcrest v. Amselem*, 2004 SCC 47 at paras 39, 43. While this statement was made in the context of section 2(a) of the *Canadian Charter of Rights and Freedoms*, it highlights the need for decision makers not to impose their personal standard in assessing the faith of a claimant.

[33] The Applicant did, in her own words, try to explain what her faith meant to her, including her belief that she will get eternal life if she believes in the Holy Spirit and follows the rule of

Jesus Christ, and that her faith encourages her to solve all her problems in her life and helps her build confidence. The RAD, like the RPD, took issue with the Applicant's inability to *define* eternal life. By raising this concern, the RAD was taking issue with the Applicant's *knowledge* about her religion, which has been found in *Zhang* to be a "subjective standard" that is indefensible to verify a claimant's faith.

[34] There were a few other instances where the Applicant was unable to answer the questions posed by the RPD Member about her faith, but was then able to elaborate upon questioning by her counsel. While the RAD acknowledged that the Applicant demonstrated some knowledge of the Christian faith, it took issue with the Applicant's inability to "explain the meaningfulness behind the religious terminology that she chose to use at her hearing". In so finding, the RAD was effectively imposing its own subjective standard to assess the Applicant's knowledge, with little regard to her background, and at the same time equating knowledge with genuine faith, contrary to the Court's jurisprudence.

[35] With respect to her evangelism, the Applicant testified that she helped distribute brochures and introduced Christianity to the people passing by. When asked where this took place, the Applicant testified that she followed the brothers and sisters from her church, but she could not give the exact locations. The Applicant was also asked why it was important to spread the gospel, to which she replied that she could let others know they could believe in God and get eternal life.

[36] The Applicant also submitted a photo of a religious parade, which she testified took place on the Pentecost day, when her “brother and sister” from the church brought maple leaves as “a celebration to welcome Jesus Christ”. The Applicant testified she distributed pamphlets with her church, which she said contained something about elections that she did not remember. The Applicant was asked by the RPD Member if the building they were at was Queen’s Park. The Applicant answered she did not speak English and did not know the name of the building.

[37] In effect, the Applicant was able to answer most of the questions about her evangelism and her church activities – including their purpose - except for the locations where these events were held. In view of the Applicant’s testimony, it was unreasonable for the RAD to conclude that the Applicant was “unable to give any details about her experience with evangelism in Canada”. Similarly, the RAD’s finding that the Applicant “was unable to provide any details on the purpose or reason behind [the religious parade]” was directly contradicted by the Applicant’s oral testimony.

[38] In summary, I find the RAD’s credibility finding in relation to the Applicant’s religious belief was unreasonable in view of the totality of the Applicant’s oral testimony. Further, the finding was also unreasonable as it failed to take into account the Applicant’s background and the short time she had been practicing Christianity.

(b) *Japanese Visa*

[39] The Applicant also took issue with the RAD’s finding that the RPD was correct to impugn the Applicant’s credibility on the basis that she had provided false information to obtain

a Japanese visa. At the hearing, the Respondent submitted that the issue with the Japanese visa was a “peripheral” and “small” issue, and that not much turned on it.

[40] I agree with the Respondent. I also find that the Applicant’s testimony of why and how she obtained the Japanese visa was confusing at best. Given my finding on the main issue of credibility, I do not find it necessary to address this issue.

C. *Was the RAD’s dismissal of the sur place claim reasonable?*

[41] The RPD noted that the Applicant had attended church in Canada but found that there was insufficient evidence this had been brought to the attention of the authorities, and thus that she had no *sur place* claim.

[42] The RAD did not use the term “sur place claim” but concluded that on a balance of probabilities, the Applicant’s religious activities in Canada have not placed her at risk of harm if she were to return to China. The RAD concluded:

As the RAD has found that the [Applicant] is not genuine in her Christian faith, she is not a person of interest to the PSB, and that the RAD finds that the Applicant would not practice Christianity if she were to return to China. Therefore, the RAD finds that the RDP’s decision is correct and it is upheld.

[43] In light of my finding that the RAD has erred with respect to the credibility findings of the Applicant’s genuineness in her Christian faith, and given that the RAD’s *sur place* analysis is based on its erroneous finding in that regard, I therefore find the RAD has erred in its conclusion regarding the Applicant’s *sur place* claim.

VI. **Certification**

[44] Counsel for both parties were asked if there were questions requiring certification. They each stated that there were no questions arising for certification and I concur.

VII. **Conclusion**

[45] The application for judicial review is allowed.

JUDGMENT in IMM-4187-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The decision under review is set aside and the matter referred back for redetermination by a different decision-maker.

3. There is no question to certify.

"Avvy Yao-Yao Go"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4187-20

STYLE OF CAUSE: YUNRU BAI v THE MINISTER OF CITIZENSHIP
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PLACE OF HEARING: HELD VIA VIDEOCONFERENCE

DATE OF HEARING: NOVEMBER 30, 2021

**REASONS FOR JUDGMENT
AND JUDGMENT:** GO J.

DATED: DECEMBER 14, 2021

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