

Federal Court



Cour fédérale

**Date: 20220201**

**Docket: IMM-498-21**

**Citation: 2022 FC 115**

**Toronto, Ontario, February 1, 2022**

**PRESENT: The Honourable Madam Justice Rochester**

**BETWEEN:**

**XUEWEI LIANG**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The Applicant, Mr. Xuewei Liang, seeks judicial review of a decision by the Refugee Appeal Division of [RAD] of Immigration and Refugee Board of Canada rendered on December 24, 2020 [Decision] confirming the Refugee Protection Division [RPD]'s decision that the Applicant is neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97, respectively, of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

## **II. Background**

[2] The Applicant, Mr. Xuewei Liang, is a citizen of the People's Republic of China [China]. He was born in 1968. He is married and has one child.

[3] The Applicant claims that in January 2017, he began experiencing neck pain and was diagnosed with cervical spondylosis. The neck pain affected his work as a truck driver. The Applicant claims that he tried numerous treatments without success. He alleges that in July 2017 one of his colleagues recommended that the Applicant try Falun Gong.

[4] The Applicant claims that at first he practiced Falun Gong at home with his colleague. Initially he noticed an improvement to his health, however, the progress slowed. To improve his progress, the Applicant joined a group of Falun Gong practitioners in October 2017. By January 2018, his health had fully recuperated and such that he was able to recommence full time hours.

[5] The Applicant claims that in March 2018, the Public Security Bureau arrested a member of the Applicant's colleague's former practice group and consequently, his colleague then went into hiding. The Applicant states that subsequently his wife began making arrangements for a smuggler to help him obtain a visa to Canada and leave China.

[6] The Applicant claims that while waiting to leave China, the Public Security Bureau called him in for questioning but released him. The Applicant obtained his Canadian visa on July 5, 2018, with the help of the smuggler. He left China on July 26, 2018.

[7] On August 1, 2018, the Applicant lodged a claim for refugee protection in Canada on the basis that he fears persecution by the authorities in China, including the Public Security Bureau, due to his practice of Falun Gong.

[8] The RPD heard the Applicant's claim on November 14, 2019. On December 16, 2019, the RPD rejected the Applicant's claim for refugee protection and concluded that the Applicant was not credible based on (1) discrepancies between the information he provided in his Basis of Claim Narrative, the information provided in an interview with a Canada Border Services Agency [CBSA] Officer, and in his testimony before the RPD, and on (2) his insufficient knowledge of Falun Gong.

### **III. Decision**

[9] The RAD concluded that the determinative issue was credibility. The RAD acknowledged that facts sworn to be true by the Applicant are presumed true unless there is a valid reason to doubt their veracity. In the matter at hand, the RAD found that a number of inconsistencies undermined the credibility of the Applicant's claim and his credibility overall.

[10] The RAD found that there were inconsistencies as to the timelines of the events, notably, when the Applicant joined the Falun Gong group, when his colleague's former group member was arrested, and when the smuggler was hired. The RAD noted that certain dates provided in the Applicant's Basis of Claim form differed by several months from the dates he provided in an interview with the CBSA Officer.

[11] The RAD considered a copy of an Administrative Punishment Decision, the translation of which states, among other things, “Now investigation has revealed that Liang, Xuewei has been involved in illegal religious Falun Gong activities”. Both the RAD and the RPD concluded that the document was not a genuine document. The RAD referenced a Response to Information Request, Item 10.9, contained in the National Documentation Package for China (15 October 2020) [NDP], noting the differences between the document submitted and the authentic versions in the NDP. Consequently, the RAD found the document did not corroborate that the Applicant was interviewed by the Public Security Bureau or practiced Falun Gong, and attributed to no weight to it.

[12] As to evidence adduced to support the Applicant’s practice of Falun Gong in Canada, the RAD found that the photographs were of little probative value and did not establish that the Applicant is a genuine practitioner. The RAD also found that an affidavit of a Falun Gong practitioner in Canada was vague and lacking in detail and therefore provided little insight into the affiant’s claim that the Applicant is a genuine Falun Gong practitioner.

[13] The RAD noted that, unlike some religions, Falun Gong is a knowledge-based practice. The RAD referenced item 12.9 of the NDP, quoting that the “foundation of Falun Dafa *consists of a body of fundamental knowledge essential for the task of undertaking proper cultivation towards higher stages of attainment*” (emphasis in original). The RAD stated that the Applicant’s evidence is that he specifically joined Falun Gong for the purpose of obtaining its benefits through active practice. The RAD concluded that this would have necessarily required that the

Applicant acquired some knowledge of Falun Gong. Accordingly, it was open to the RPD to test the genuineness of the Applicant's practice by asking knowledge based questions.

[14] The RAD reviewed the interview with the RPD and determined that, since the Applicant answered incorrectly or admitted that he did not know the answers, he did not demonstrate a level of knowledge of Falun Gong that was consistent with his years of practice. The RAD therefore found that it was not credible that the Applicant was a genuine practitioner of Falun Gong.

[15] The RAD determined that as the Applicant was found not to be a genuine practitioner of Falun Gong and he is unlikely to practise it upon his return to China, he would not be at risk of persecution as a result. Additionally, the RAD found that there was no evidence or explanation to establish why the Applicant's activities in Canada would have come to the attention of the Chinese authorities and, therefore, that he did not have a *sur place* claim.

#### **IV. Issue and Standard of Review**

[16] The sole issue on this application for judicial review is whether the Decision is reasonable. In particular, the Applicant raises the following sub-issues, namely, did the RAD reasonably assess (i) the Administrative Punishment Decision document, and (ii) the Applicant's religious profile?

[17] The parties agree that the standard of review is reasonableness as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]

[18] It is the party challenging the decision who bears the burden of demonstrating that it is unreasonable (*Vavilov* at para 100). Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). For the reviewing court to intervene, the challenging party must satisfy the court 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”, and that such alleged shortcomings or flaws “must be more than merely superficial or peripheral to the merits of the decision” (*Vavilov* at para 100).

[19] A reviewing court should also refrain from reweighing or reassessing the evidence considered by the decision maker and must not, absent exceptional circumstances, interfere with factual findings (*Vavilov* at para 125). Nevertheless, *Vavilov* instructs that a decision maker “must take the evidentiary record and the general factual matrix that bears on its decision into account, and its decision must be reasonable in light of them” (at para 126).

## **V. Analysis**

### **(1) The RAD’s finding on the Administrative Punishment Decision document**

[20] The Applicant submits that the RAD’s finding that the copy of the Administrative Punishment Decision is not genuine is unreasonable on the basis that the RAD fundamentally misapprehended the materials in the NDP. Notably, the RAD failed to recognize that the forms vary depending on the type of form and that the contents of the sample forms are not unequivocal requirements. The Respondent pleads that it was open to the RAD, based on the evidence before it, to find that the Administrative Punishment Decision was not genuine.

[21] Having considered the Administrative Punishment Decision document and the contents of the NDP, I am not persuaded that the RAD's finding is unreasonable. This Court must not, absent exceptional circumstances, interfere with factual findings (*Vavilov* at para 125). The RAD found numerous issues with the Administrative Punishment Decision document, and that finding is reasonable in light of the contents of the Administrative Punishment Decision document and the information and sample documents contained in the NDP.

## **(2) The RAD's finding on the Applicant's Religious Profile**

[22] The Applicant submits that the RAD based its adverse credibility findings regarding the Applicant's overall credibility and his religious profile on "minor and immaterial inconsistencies". The Applicant pleads that the material issue is his current practice.

[23] The Respondent pleads that the inconsistencies are not minor and are relevant to whether the Applicant truly practiced Falun Gong. The Respondent submits that allegations concerning when the Applicant joined the Falun Gong group, when the arrest of his colleague's former group member took place, and when he hired a smuggler, all relate to central elements of the Applicant's story.

[24] While I agree with the Applicant that one of the inconsistencies was minor, being the type of injury that the Applicant's colleague had, as to the remainder, I agree with the Respondent. I find, based on the record before it, that the RAD was entitled to find that a number of the inconsistencies were not minor, that the Applicant failed to adequately address them, and thus draw a negative inference from them.

[25] The reasoning of my colleague Justice Gleeson in *Hirimuthugoda v Canada (Citizenship and Immigration)*, 2021 FC 784, is equally applicable to the matter at hand:

[11] I accept the Applicant's argument that a number of the inconsistencies highlighted by the RAD are minor and do not, on their own, justify a negative credibility finding. However, this is of little assistance to the Applicant. The RAD was under no obligation to consider the many inconsistencies and omissions in isolation. The RAD was entitled to consider and rely on the accumulation of inconsistencies, contradictions, and omissions in making its credibility finding (*Lawani v Canada (Minister of Citizenship and Immigration)*, 2018 FC 924 at para 22 [*Lawani*]).

[26] The Applicant relies on *Mohacsi v Canada (Minister of Citizenship & Immigration)* 2003 FCT 42, [2003] 4 F.C. 771, and submits that minor inconsistencies should not lead to a finding of a general lack of credibility where the documentary evidence supports the Applicant's story. The Applicant submits that it was unreasonable of the RAD to largely dismiss the photographs and the affidavit in the record. The Respondent submits that it was reasonable for the RAD to find that the evidence was of limited probative value given its contents.

[27] The RAD concluded that the affidavit was vague in detail and attributed little weight to it and to the photographs. The RAD noted that no detail was provided as to how many times or how often the affiant had encountered the Applicant practicing Falun Gong or other any other information providing insight into the affiant's claim that the Applicant is a genuine practitioner.

[28] Taking into account the evidence in question, I find that the RAD's conclusion was reasonable given the contents of the evidence and the RAD's concerns as to the credibility of the Applicant. The lack of credibility concerning central elements of the claim can be generalized to the documentary evidence presented to corroborate a version of the facts, just as the RAD is also



entitled to not give evidentiary weight to reports based on underlying elements found not to be credible (*Lawani* at para 24). The RAD was entitled to give the affidavit and the photographs little weight.

[29] I now turn to the RADs finding that the Applicant did not demonstrate a level of knowledge of Falun Gong commensurate with his years of practice, thereby conveying that he was not a sincere practitioner. The Applicant submits that the RAD erred by equating religious belief with religious knowledge, and that the bar for demonstrating religious knowledge is low. The Respondent agrees that the Applicant only had to prove the sincerity of his belief, but that his belief needed to be tied to the particulars of the religion, in this case Falun Gong. The Respondent relies on *Gao v Canada (Citizenship and Immigration)*, 2021 FC 271 [Gao] and *Sui v Canada (Citizenship and Immigration)*, 2016 FC 406.

[30] As noted above, RAD identified that, unlike some religions, Falun Gong is a knowledge-based practice, and referenced the NDP's information on, among other things, the foundation of Falun Gong. The RAD noted that the Applicant was "asked very basic questions such as why one send righteous thoughts, and what is the purpose of exercises 2 and 4." The Applicant was unable to answer the questions correctly, and the RAD was unpersuaded by counsel for the Applicant's argument that the Applicant's education was limited to that of a middle school graduate.

[31] In *Gao*, my colleague Justice Ahmed considered similar issues and found that it was reasonable for the RAD to assess the credibility of an applicant as a Falun Gong practitioner

based on whether his knowledge of Falun Gong was commensurate with his alleged experience of two years of practice. Justice Ahmed's findings are instructive for the case at bar:

[27] First, the RAD found that the Applicant was unable to adequately explain his understanding of righteous thoughts, which the RAD held is a central concept in Falun Gong. I find that it was reasonable for the RAD to impugn the Applicant's credibility for being unable to articulate this rudimentary concept of his faith (*Zheng v Canada (Citizenship and Immigration)*, 2019 FC 731 at para 17, citing *Wang v Canada (Citizenship and Immigration)*, 2018 FC 668 at paras 29-39). Furthermore, I find that the RAD also reasonably rejected the Applicant's explanation that his lack of knowledge was due to his minimal literacy and education, as the Applicant claims to study with the assistance of others, not in isolation. [...]

[29] Third, the RAD took issue with the Applicant's inability to recite the verses to his routine practices at the RPD hearing. At the time of the RPD's hearing, the Applicant claimed to have regularly practiced for over two years the four exercises that he was asked to recite. I therefore find that it was reasonable for the RAD to impugn the Applicant's credibility by determining that his knowledge of Falun Gong was not commensurate with the duration and depth of his claimed religious activities (*Qi v Canada (Citizenship and Immigration)*, 2020 FC 400 ("*Qi*") at para 18; *Gao v Canada (Citizenship and Immigration)*, 2017 FC 1156 ("*Gao*") at para 29).

[30] Finally, I am not persuaded by the Applicant's argument that the RAD unreasonably raised the threshold of knowledge required of a genuine Falun Gong practitioner by distinguishing Falun Gong as a "knowledge-based faith." When the RAD's decision is read as a whole, I find that the RAD reasonably considered the particulars of the religion and found that the Applicant's knowledge was not commensurate with his alleged experience. This determination follows an internally coherent and rational chain of analysis and is justified in relation to the relevant facts and law (*Vavilov* at para 85).

[31] In my view, the RAD's framing of Falun Gong as a "knowledge-based faith" is justified in relation to the evidence. As authority for this distinction, the RAD cited Item 12.9 from the National Documentation Package ("NDP") for China, 28 June 2019, which states: "[t]he foundation of Falun Dafa consists of a body of fundamental knowledge essential for the task of undertaking proper cultivation towards higher stages of attainment." By distinguishing Falun Gong as a knowledge-based faith, I understand the RAD to expect that genuine practitioners will generally have a grasp on concepts that are fundamental to the religion. This conclusion is supported by the NDP, which affirms that knowledge of certain concepts of Falun Gong is integral to its practice.

[32] The above interpretation is supported by the RAD's subsequent conclusion that "there is an expectation that a genuine practitioner would make efforts to grow in their understanding of this faith system from the time they begin their practice of Falun Gong." In my view, this conclusion is justified in relation to the jurisprudence that, as discussed above, asserts the genuineness of a claimant's religious identity may be reasonably questioned if the claimant's knowledge of their religion is not commensurate with their claimed experience (*Qi* at para 18; *Gao* at para 29). What qualifies as commensurate must be assessed on a case-by-case basis, as it will depend on the claimant's circumstances and the features of the religion in question. In this case, the RAD was alive to that consideration: it noted the important role of religious knowledge in Falun Gong, how that role informs the profile of a practitioner with the experience claimed by the Applicant, and how the Applicant does not meet that profile.

[32] In the matter at hand, the RAD considered the contents of the NDP, the questions asked by the RPD, the answers provided by the Applicant, and the length of time that the Applicant alleged to have practiced. The RAD also noted the Applicant's claim that he specifically joined Falun Gong to obtain its benefits through active practice, thereby justifying knowledge-based questions in order to test the genuineness of the Applicant's practice. By the time of the RPD hearing, the Applicant's claimed practice exceeded two years. The Applicant was nevertheless unable to answer basic questions concerning the practice of Falun Gong.

[33] Based on the evidence before it contained in the NDP, it was reasonable for the RAD to expect that genuine practitioners will have acquired knowledge of certain concepts that are integral to the practice of Falun Gong. It was therefore open to the RAD to question the genuineness of the Applicant's religious identity given that it found that the Applicant's knowledge of Falun Gong was not commensurate with his claimed experience.

[34] I find this case is distinguishable from *Lin v Canada (Citizenship and Immigration)*, (2012 FC 288), referenced by the Applicant, where the Court found that the finding was based on unattainable and unreasonable requirements for the knowledge of the practice of Falun Gong.

[35] I find the RAD's decision was reasonable, in that its determination concerning the sincerity of the Applicant's religious belief followed an internally coherent and rational chain of analysis, and was justified in relation to the facts of this case and the law (*Vavilov* para 85).

## **VI. Conclusion**

[36] For the foregoing reasons, this application for judicial review is dismissed. The parties are agreed that there is no serious question of general importance to be certified.

**JUDGMENT in IMM-498-21**

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

1. The Applicant's application for judicial review is dismissed;
2. There is no question for certification arising.

"Vanessa Rochester"

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Judge

**FEDERAL COURT**

**SOLICITORS ON RECORD**

**DOCKET:** IMM-498-21

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