Federal Court  Cour fédérale

Date: 20220214

Docket: IMM-2755-21

Citation: 2022 FC 196

Toronto, Ontario, February 14, 2022

PRESENT: Justice Andrew D. Little

BETWEEN:

GEWEN SHI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant is a citizen of China who unsuccessfully claimed protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the "*IRPA*"). The basis of his claim was that he feared persecution in China as a practitioner of Falun Gong.

[2] The applicant asks the Court to set aside a decision by the Refugee Appeal Division ("RAD") dated April 12, 2021. The RAD dismissed an appeal from the Refugee Protection Division ("RPD"). Both concluded that the applicant and his claims were not credible. Both

concluded, for different reasons, that the applicant had tendered a fraudulent document. The RAD and the RPD also concluded that the applicant was not a genuine practitioner of Falun Gong, as he did not demonstrate sufficient knowledge of it.

[3] On this application, the applicant submitted that the RAD did not provide him with procedural fairness because it made a determinative finding that a summons was fraudulent without providing him with an opportunity to make further argument or adduce evidence on why it was not. As explained below, I conclude that the RAD's process was procedurally fair to the applicant. The RAD's determination of whether the summons filed by the applicant was fraudulent was not a new issue on appeal. It had been addressed by the RPD and was the subject of the applicant's arguments to the RAD. The applicant knew the case to meet on the appeal.

[4] The applicant also argued that the RAD made unreasonable credibility findings against him. Applying the principles in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, I conclude that the applicant did not demonstrate that the RAD's decision was unreasonable.

[5] The application will therefore be dismissed.

I. Facts and Events Leading to this Application

[6] The applicant, Mr. Gewen Shi, based his claim for IRPA protection on the following allegations.

[7] In November 2017, a friend introduced the applicant to Falun Gong. Within about three months, he began to experience benefits from the practice.

[8] The applicant claimed that in March 2018, police raided the applicant's Falun Gong practice group. The police apprehended the applicant and took him to a local Public Security Bureau ("PSB") office where he was detained and questioned. While in detention, he was handcuffed, slapped, kicked, forced to kneel, and whipped with an electric rod. He was also deprived of food and sleep and subjected to brainwashing classes. The applicant was forced to sign a confession letter promising to cease his Falun Gong activities. After two weeks, he was released.

[9] The police also detained Mr. Shi's friend (Ma) who had introduced him to Falun Gong. The police did not release Ma, but instead charged him with leading a Falun Gong group contrary to law.

[10] After the applicant's release, he had to report to police each week and was required to participate in classes three times per week. He lost his job because his employer feared trouble from the authorities. He was unable to find other employment.

[11] The applicant claimed that local police officers often came to his home to see if he was still practising Falun Gong. The police searched his home and harassed him. His wife left to live with her parents.

[12] The police continued to inquire about the applicant and, according to the claim, issued a summons dated May 22, 2018, that required the applicant to attend the police station for interrogation on September 28, 2018.

[13] The applicant's family worried that he would be arrested. In late May 2018, he went to live in the countryside with an aunt. Family members began to look for a smuggler to help him leave China. While he was in hiding, the applicant learned that Ma had been sentenced to a prison term of 10 years. The police told the applicant's family that they had to report his whereabouts.

[14] Fearing arrest, the applicant fled China on August 16, 2018, with the assistance of a smuggler. On arrival in Canada, the applicant filed a claim for IRPA protection.

[15] By decision dated February 17, 2020, the RPD dismissed his claim. The determinative issues were credibility and the documentary evidence provided in support of the claim. The RPD found that the applicant was not credible due to inconsistencies between his basis of claim narrative and his oral testimony; the reliability of the police summons and his marriage license; and the applicant's ability to leave China using his own, genuine passport.

[16] The RPD's findings included:

a) *Fraudulent Summons and Marriage Licence*: the RPD found that the police summons dated May 22, 2018 was not genuine. The RPD also found that the applicant's marriage license was fraudulent. The RPD concluded that the

submission of these fraudulent documents severely damaged the applicant's credibility.

b) *Knowledge of Falun Gong practices*: considering the applicant's alleged practice of Falun Gong for three years, the RPD found that he lacked the knowledge or detail reasonably expected. While he demonstrated an understanding of the basic theory, the RPD found that he could not reply when questioned about how to apply Falun Gong practices to his daily life.

c) *Departure from China*: the RPD found that the applicant's account of leaving China was not credible. He claimed that he was able to leave China from an airport using his own passport. However, citing evidence of the Chinese government's tracking system known as the Golden Shield, the RPD concluded that the applicant should not have been able to leave China, which undermined his central allegation that the police had issued a summons and were trying to find him.

d) *Sur Place Claim*: the RPD found no persuasive evidence that the applicant's Falun Gong practices in Canada had come to the attention of Chinese authorities or that he would be perceived as a Falun Gong practitioner on his return to China.

[17] The RPD concluded that the applicant was not a genuine Falun Gong practitioner and therefore would not face persecution or other risk owing to his activities in Canada.

[18] By decision dated April 12, 2021, the RAD dismissed his appeal. The RAD's decision is the subject of this judicial review application.

II. The RAD's Decision

[19] The RAD concluded that the RPD made a number of errors in its reasoning. However, the RAD reviewed the evidence itself and came to the same or similar conclusions as the RPD on important issues relevant to this application.

[20] First, with respect to the fraudulent summons, the RAD agreed with the applicant that some of the RPD's reasoning could not be sustained. However, the RAD concluded that the summons was fraudulent based on its own independent assessment of the evidence. Like the RPD, the RAD compared the applicant's document with the information in the Immigration and Refugee Board's ("IRB") National Documentation Package ("NDP") for China. The RAD found a "significant difference" between the two which was "not small nor immaterial". The "problematic difference" was the legal instrument under which the summons was issued. The summons filed by the applicant indicated that it was issued according to "section 82 of The Administrative Punishments of Public Security Law of the People's Republic of China". By contrast, information in the NDP indicated that the type of summons was issued under article 82 of the Public Security Administration and Punishment Law of the People's Republic of China or the Public Security Administration Punishments Law of the People's Republic of China.

[21] The RAD found, on a balance of probabilities, that "a genuine and official document would not contain errors in the name of the statute under which it [was] issued." In addition, noting the differences in the summonses, other credibility findings and the "widespread availability of fraudulent documents in China", the RAD found a "sufficient basis" to find that the applicant's summons was "not genuine".

[22] The RAD found that the summons was determinative of the applicant's claim. Because it was not genuine, it failed to corroborate his core allegations. This led the RAD to conclude that the applicant was not credible overall: he was not a Falun Gong practitioner in China or in Canada, had not established his allegations about the police raid on his Falun Gong practice group, and was not being pursued by the PSB in China.

[23] Second, the RAD considered the applicant's knowledge and practice of Falun Gong in Canada at length. After a detailed review of the applicant's testimony, the RAD agreed with the RPD that, on a balance of probabilities, the applicant's knowledge was inadequate to demonstrate that he was, or is, a sincere Falun Gong practitioner in China or Canada. This conclusion was also based on the cumulative negative credibility findings. The RAD rejected the applicant's *sur place* claim.

[24] The RAD also considered a letter from the applicant's brother. The RAD concluded that the RPD had erroneously failed to consider the letter. However, giving it "some weight", the letter did not overcome or outweigh the negative credibility findings against the applicant, especially with respect to the fraudulent summons.

III. Evidence on this Application

[25] There are two preliminary issues about the evidence for this application.

[26] First, the applicant filed an affidavit from an immigration consultant and interpreter who is fluent in English and Mandarin. The affidavit concerned the translation of the summons,

specifically the translation of the name of the Chinese law under which the purported summons was issued.

[27] The general rule is that the evidentiary record before a reviewing court is limited to the evidentiary record that was before the administrative decision maker. Evidence that was not before the decision maker and that goes to the merits of the matter is not admissible on an application for judicial review in this Court: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22, at para 19; *Delios v Canada (Attorney General)*, 2015 FCA 117, at para 42; *Perez v Hull*, 2019 FCA 238, at para 16, citing *Sharma v Canada (Attorney General)*, 2018 FCA 48, at para 8. There are exceptions to the general rule. One is that an affidavit may be necessary to bring the reviewing court's attention to procedural defects that cannot be found in the evidentiary record of the administrative decision maker, to enable the court to fulfil its role of reviewing the decision for procedural unfairness. See the discussions in *Perez*, at para 16; *Association of Universities*, at para 20; and *Bernard v Canada (Revenue Agency)*, 2015 FCA 263, esp. at para 26.

[28] At the Court's request, both parties made oral submissions on this issue at the hearing. In my view, the affidavit is not admissible. The contents of the interpreter's affidavit go to the merits of the RAD's decision. It refers to an error in the English translation of the summons filed by the applicant and provides the two possible (corrected) translations of the name of the Chinese legislation and the references to the provision at issue ("article" versus "section"). The affidavit does not identify or explain the applicant's procedural fairness issue, which, in any event, can be well identified from the contents of the RPD and RAD's decisions and the

Certified Tribunal Record. The interpreter's affidavit therefore falls within the general rule, not the exception for procedural fairness. It cannot be used on this application.

[29] Second, the day before the hearing, the applicant asked to file documents sourced from the NDP for China that contained an authentic sample Chinese summons and translation of it, to show that the RAD could have compared the Chinese characters in the authentic summons with the Chinese characters in the applicant's summons. Once the parties agreed that the documents were in the Certified Tribunal Record, the respondent did not object to their use at the hearing. The documents were not, in fact, new evidence.

[30] The comparison of the summons filed by the applicant and its English translation, on one hand, and the sample summons in the NDP for China and its English translation, on the other, is important to the outcome of this application. I return to this issue below.

IV. Analysis

[31] The applicant advanced two overall issues to challenge the RAD's decision: procedural fairness, and reviewable errors in the RAD's credibility analysis. The parties focused nearly all of their submissions at the hearing on procedural fairness.

A. *Procedural Fairness*

[32] The Court's review of procedural fairness issues involves no deference to the decision maker. The question is whether the procedure was fair having regard to all of the circumstances, focusing on the nature of the substantive rights involved and the consequences for the individual(s) affected: *Canadian Pacific Railway Company v Canada (Transportation Agency)*, 2021 FCA 69, at paras 46-47; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69, [2019] 1 FCR 121, esp. at paras 49 and 54; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817.

[33] The applicant submitted that the RAD's finding that the applicant had tendered a fraudulent summons was determinative of his appeal, for two reasons: first, it caused the RAD to conclude that he was not a Falun Gong practitioner in China, was not wanted by the PSB and had not become a genuine Falun Gong practitioner in Canada. Second, if genuine, the document was proof of the applicant's allegations.

[34] The applicant submitted that the RPD concluded that the summons was fraudulent on certain grounds but the RAD reached the same conclusion on an "entirely different ground". The applicant submitted that the RAD's issue with the summons was not raised by the RPD and the RAD did not notify him of its new concern. He argued that if the RAD had notified him, he could have explained the interpretation error or discrepancy. Because the RAD did not do so, he was deprived of an opportunity to respond before the summons was impugned on a new ground. Because he does not speak English, he could not have known of the interpretation error in the

English translation without such notice. According to the applicant, the RAD breached his right to procedural fairness by failing to notify him.

[35] The applicant also submitted that the RAD's conclusion about the summons was microscopic and unreasonable. He submitted that the summons clearly identified the correct Chinese legislation but its name was translated slightly differently.

[36] After examining the RPD's decision, the arguments made by the applicant on appeal to the RAD, the RAD's decision and the case law of this Court, I conclude that the RAD did not deprive the applicant of procedural fairness. There are several interrelated reasons, explained below.

[37] First, in my view, the RAD's conclusion did not relate to a new issue on the appeal. The legal test for whether procedural fairness required notice to the applicant and an opportunity to be heard is whether the RAD raised an issue that is new, in the sense that it is "legally and factually distinct from the grounds of appeal advanced and cannot reasonably be said to stem from the issues raised on appeal": *Lopez Santos v Canada (Citizenship and Immigration)*, 2021 FC 1281 (Norris J.), at para 45, citing *R v Mian*, 2014 SCC 54, [2014] 2 SCR 689, at paras 30-33; *Ching v Canada (Citizenship and Immigration)*, 2015 FC 725 (Kane J.), at paras 65-76.

[38] Before both the RPD and the RAD, the issue was whether the summons was fraudulent. Both concluded that it was. At the RPD, part of the Member's reasoning was that the applicant's filed summons did not conform to any of the sample summonses found in Sections 9.2 and 9.3 of

the NDP for China. The applicant's summons also did not have certain physical characteristics of the samples.

[39] The applicant appealed the RPD's conclusion. His written submissions specifically argued that the RPD's reasoning was flawed on this issue, when it compared his summons with the sample summons because the sample was outdated (an argument not made on this application because the sample had been updated) and because there was no evidence that a genuine summons necessarily had certain physical characteristics.

[40] On appeal, the RAD was persuaded by some of the applicant's arguments that the RPD had erred in its assessment of the summons. The RAD performed its own assessment, comparing the summons to the information in the NDP. It found a significant difference with respect to the legal instrument under which the summons was issued, as already noted. The RAD found that "a genuine and official document would not contain errors in the name of the statute under which it [was] issued." The RAD further noted that the NDP supported that fraudulent documents are widespread in China. It observed that this Court had recognized that differences in small or microscopic details may be the way that a forgery is exposed (which was not the subject of submissions on this application). The RAD concluded that the summons was fraudulent for the following reasons:

> When the differences in the summonses are viewed together with the other credibility findings, as well as the widespread availability of fraudulent documents in China, I find, on a balance of probabilities, that there is a sufficient basis to find that the [applicant's] summons is not genuine.

[41] From this review, it is apparent that the issue before the RPD and the RAD, and as raised by the applicant on his appeal, was the same: was the summons fraudulent? In addition, one argument before the RAD on appeal was whether the RPD had properly compared the summons filed by the applicant with the sample summons in the NDP for China. Having found that the RPD erred in its comparison of the applicant's summons with the sample summons, the RAD performed its own comparison and reached the same conclusion as the RPD.

[42] In the circumstances, I cannot conclude that the issue on appeal was new within the meaning established by the Supreme Court and the decisions of this Court: see *Mian*, at para 30; *Lopez Santos*, at para 45; *Ching*, at paras 66-67 and 74. The RAD's conclusion about the fraudulent summons was not based on an "entirely different ground", as the applicant contended.

[43] Second, the summons and its translation were filed by the applicant himself. In *Moïse v Canada (Citizenship and Immigration)*, 2019 FC 93, Justice LeBlanc stated at paragraphs 9 and 10:

> The case law of this Court is unambiguous: the rules of procedural fairness do not require refugee claimants to be confronted about information that they are aware of and which they have, in addition, provided themselves … [citations omitted]
>
> It is an entirely different situation when extrinsic evidence is used against the refugee claimant and the claimant is not confronted about this information.

See also: *Omirigbe v Canada (Citizenship and Immigration)*, 2021 FC 787 (Diner J.), at para 40; *Han v Canada (Citizenship and Immigration)*, 2021 FC 1390 (Ahmed J.), at para 31.

[44] The evidence at issue here was not extrinsic evidence. The applicant provided the summons and the translation of it. The sample summons came from the NDP for China. I note that the applicant did not argue on appeal, or in this Court, that the comparison process itself was unfair or should not have been conducted at all.

[45] Third, I have considered the reasoning in prior decisions of this Court, recognizing that each case on procedural fairness must be assessed on its own facts and merits.

[46] The applicant relied on *Fu v Canada (Citizenship and Immigration)*, 2017 FC 1074. I find *Fu* to be consistent with the legal principles on new issues discussed already, but distinguishable from the present case on its facts. In *Fu*, the RAD made several determinations in respect of a summons that were not raised by the RPD. One determination by the RAD was that after the applicant had not complied with the summons, the PSB would have used a more forceful state instrument such as a coercive summons or arrest warrant against the applicant. Justice Diner stated that the RAD has a duty to allow parties to address pivotal new matters not raised by the RPD: *Fu*, at para 14. He found a breach of procedural fairness because the applicants were entitled to an opportunity to respond to the RAD's "frolic" into Chinese criminal procedure not raised by the RPD: *Fu*, at para 15, quoting from *Husian v Canada (Minister of Citizenship and Immigration)*, 2015 FC 684 (Hughes J.), at para 10.

[47] In the present case, the RAD took no such frolic: the allegedly fraudulent nature of the summons and the comparison process (summons versus sample summons) were both squarely before the RAD. It is part of the RAD's role to examine the record itself and determine whether

the RPD came to the correct conclusion: *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93, [2016] 4 FCR 157, at para 103; *Kreishan v Canada (Citizenship and Immigration)*, 2019 FCA 223, [2020] 2 FCR 299, at paras 41-42; *Rozas del Solar v Canada (Citizenship and Immigration)*, 2018 FC 1145, [2019] 2 FCR 597 (Diner J.), at paras 122-125.

[48] A closer decision of this Court is *He v Canada (Citizenship and Immigration)*, 2018 FC 627. The applicants in *He* claimed that the RAD's decision was procedurally unfair for raising a new issue on appeal without notice. The RPD had concluded that Mrs. He was generally not credible and that she had submitted fraudulent documents to support her case. On appeal, the RAD challenged the authenticity of a summons and a penalty decision issued by the Public Security Bureau in China that prohibited her from leaving her original place of residence and requiring her cooperation on any further investigation. Associate Chief Justice Gagné concluded that the RAD had not breached procedural fairness by raising the issue of the authenticity of the penalty decision: *He*, at paras 20-21. She noted that the RPD had referred numerous times to the existence and contents of the penalty decision. In addition, the RPD had stated that the "totality of the claimants' documentary disclosure" was considered and that "fraudulent documents are widespread in China". Gagné ACJ concluded that those references should have prepared the applicants to address the contents and the authenticity of their documents before the RAD. She adopted the following statement by Justice Favel in *Oluwaseyi Adeoye v Cana*da (Citizenship and Immigration), 2018 FC 246:

> [13] In this case, the RAD did not raise a new issue on appeal because the Applicant's credibility was already at issue before the RPD. There 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... The Applicant was already on

> notice that credibility was a live issue based on the RPD's original decision.
>
> [Citation in quotation omitted.]

See also: *Tarar v Canada (Citizenship and Immigration)*, 2021 FC 1222 (Gleeson J.), at paras 9-14 and *Han v Canada (Citizenship and Immigration)*, 2021 FC 1390 (Ahmed J.), at paras 29-32.

[49] In this case, as in *He* and *Oluwaseyi Adeoye*, the applicant's credibility was at issue. As in *He*, both the RPD and the RAD noted that fraudulent documents are widespread in China (citing the NDP for China). In my view, the applicant had significantly more notice and understanding of the issues on appeal than did the applicants in *He*. In particular, he had an opportunity to make submissions on whether the summons was fraudulent and specifically on the comparison between his filed summons and the sample summons.

[50] Fourth, one must remember what the RAD did. It compared the words in two English translations (the English translation of the summons as filed by the applicant with the English translation of the sample summons in the NPD) to see if they matched. They did not.

[51] The applicant submitted at the hearing that the RAD was also required to take another step, namely, to compare the Chinese characters in the summons he filed with the Chinese characters in the sample summons in the NDP for China. The applicant cited no rule, court decision or other authority that required or enabled the RAD to do so, nor any case to support his submission that it was a reviewable error not to do so.

[52] I cannot conclude that the RAD should have ventured behind the two English translations and compared the underlying Chinese characters to see if they matched. In my view, the RAD lawfully and properly relied on the two English translations. Any other conclusion would mandate the RAD effectively to ignore or disbelieve a translation certified by an interpreter and tendered by a party on an appeal, if it perceives that the underlying words or characters do not match. That would invite mischief. The applicant's position also ignores the complexity and nuance of language and the considerable skills and acumen involved in interpretation and translation. In my view, disputes about the contents of a translation should be resolved by evidence from qualified professionals, not by untrained eyes deciding whether Chinese characters seem to look alike.

[53] Finally, the applicant argued that the RAD conducted a microscopic and unreasonable assessment of the summons. This position cannot be sustained. The well-established legal principle is that an administrative decision maker must not conduct an over-vigilant analysis of the evidence or a microscopic examination of irrelevant or peripheral details of the claimant's refugee claim. In addition, a negative credibility finding should not be based on a "microscopic" analysis of issues irrelevant or peripheral to the claim: see e.g. *Paulo v Canada (Citizenship and Immigration)*, 2020 FC 990 (Gascon J.), at paras 56 and 59; *Haramicheal v Canada (Citizenship and Immigration)*, 2016 FC 1197 (Tremblay-Lamer J.), at para 15; *Cooper v Canada (Citizenship and Immigration)*, 2012 FC 118 (Rennie J.), at paras 3- 4; *Lubana v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 116 (Martineau J.), at para 11; Attakora v Canada (Minister of Employment and Immigration) (1989), 99 NR 168 (FCA).

[54] In this case, the RAD's analysis concerned a central issue before the RPD and raised by the applicant's appeal, not an irrelevant or peripheral matter. Its review of the issue is better characterized as thorough and detailed: see, e.g., *Paulo*, at paras 60-61.

[55] For these reasons, I conclude that the applicant has not established that the RAD did not provide procedural fairness to him on the appeal. He was aware of the issue on appeal and had an opportunity to make submissions both on whether the summons he filed was fraudulent and on the comparison between his filed summons as translated and the sample summons as translated. He was aware of the case to meet on appeal.

B. *Was the RAD's Credibility Analysis Unreasonable?*

(1) Standard of Review

[56] The standard of review of the RAD's substantive 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.

[57] Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Vavilov*, at paras 12-13 and 15. The Court examines the reasons provided by the decision maker holistically and contextually, and in conjunction with the record that was before the decision maker: *Vavilov*, at paras 85, 91-96, 97, and 103; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, at paras 28-33. A reasonable decision is one that 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*, esp. at paras 85, 99, 101, 105-106 and 194.

(2) Analysis

[58] The applicant made two principal submissions, which will be addressed in turn.

[59] First, the applicant challenged the RAD's credibility findings based on his lack of knowledge of Falun Gong practices. According to the applicant, there was no reasonable basis for the RAD's finding that he failed to explain how Falun Gong philosophy factored into his life. The applicant challenged the RAD's assessment of his knowledge.

[60] In my view, the RAD's analysis did not contain a reviewable error.

[61] The RAD conducted an independent assessment of the applicant's testimony. The RAD detailed its assessment over five pages in its reasons. In brief, the applicant claimed he had been a Falun Gong practitioner for three years and had read the Zhuan Falun ten times. He testified that he read it every day and performed Falun Gong exercises. In its analysis, the RAD considered the RPD's assessment of the applicant's testimony and agreed with it. Based on its own review of the record, the RAD had additional concerns with the applicant's testimony and set out those concerns. The RAD concluded that the applicant did not demonstrate a personal connection with Falun Gong teachings and was unable to explain how he applied them in his daily life, which indicated a lack of sincerity of his beliefs. The RAD also concluded that the applicant had memorized Falun Gong information in order to advance his refugee claim.

[62] In my view, the applicant's submissions on this application simply disagree with the RAD's analysis and conclusion on this issue. The applicant did not challenge the RAD's reasoning process or refer to any evidence that constrained the RAD to reach a different outcome, or demonstrate that the RAD's conclusion was untenable: *Vavilov*, esp. at paras 101 and 126. It is not the role of this Court to agree or disagree with the RAD or to reassess the evidence about the applicant's knowledge or beliefs. The applicant has not demonstrated that the RAD made a reviewable error in its analysis of this issue.

[63] The applicant raised a second argument in his written submissions but not at the hearing. He contended that the RAD unreasonably assessed a letter from his brother. The respondent did address the issue expressly.

[64] The applicant focused on the following reasoning by the RAD:

> The [applicant] argues the RPD erred by failing to consider the letter from his brother, which states, generally, that the PSB are still pursuing the [applicant].
>
> I find the RPD erred by failing to consider the letter, especially given its relevance to the central issue in this claim. Though I find the letter merits some weight, when it is considered with the totality of the evidence, I do not find that it overcomes or outweighs the negative credibility findings, especially with regard to the fraudulent summons.

[65] Referring to the RAD's finding that the letter merited "some weight", the applicant contended that the RAD's assessment of the letter should have been all or nothing. That is, either the letter was substantively trustworthy or it was not (citing *Osikoya v Canada (Citizenship and Immigration)* 2018 FC 720 (Norris J.), at para 51).

[66] On this issue, the concern in the Court's decided cases relates to implicit negative credibility findings or concerns about the authenticity of a document, without a proper analysis or explanation. Failing to do so may lead to concerns about analytical incoherence or a lack of justification and transparency, as required by *Vavilov*. In addition to *Osikoye*, see *Sitnikova v Canada (Citizenship and Immigration)*, 2017 FC 1082 (Mactavish J.), at paras 18-21; *Oranye v Canada (Citizenship and Immigration)*, 2018 FC 390 (Ahmed J.); *Arsu v. Canada (Citizenship and Immigration)*, 2020 FC 617 (McHaffie J.), at paras 39-42; *Mabirizi v Canada*, 2021 FC 1354 (Sadrehashemi J.), at paras 18-20; *Sinnathamby v Canada (Citizenship and Immigration)*, 2021 FC 1387, at para 28.

[67] Mere identification of an allegedly unexplained or veiled finding does not inevitably lead to a reviewable error. The specific circumstances must be carefully considered: see e.g. *Arsu*, at paras 41-42. In addition, this Court has recognized that it is open to a decision maker to assess the weight or probative value of evidence without considering whether it is credible: *Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1082 (Zinn J.), at paras 25-27; *Arsu*, at paras 37 and 41. Justice Zinn observed in *Ferguson* that this occurs when the decision maker believes that the credibility or reliability of the evidence is irrelevant because the evidence is to be given little or no weight, even if it is found to be reliable evidence: *Ferguson*, at para 26.

[68] Reading the RAD's passage about the brother's letter in the midst of its overall reasoning, and with the legal principles above in mind, I conclude that the RAD's statement does not constitute a reviewable error. While I acknowledge that the matter is not free from doubt, the better view is that the RAD concluded that even accepting the letter as credible or reliable

evidence, it did not do enough to counterbalance the evidence against the applicant's claim given all the negative findings about the applicant's own credibility, particularly the fraudulent summons. The letter from the applicant's brother supported the applicant's position that the police were looking for him and to that extent, it was proof of his allegations and related to a central issue in his claim for IRPA protection. Importantly, however, it did not address why the police were doing so. It did not refer to the applicant's Falun Gong practices and beliefs. Nor did it provide any first-hand evidence that the applicant participated in Falun Gong practices, attended a meeting raided by the police, was detained by the police or went to the countryside to live with an aunt. In other words, it did not provide additional, direct evidence to support the rest of the applicant's claim that related to his claim to protection on a Convention ground or under section 97.

[69] Accordingly, even if I were to conclude that the RAD had made the kind of error identified in *Sitnikova* and its progeny, I would not set aside the RAD's decision in the circumstances. Given the narrow contents of the brother's letter and all of the RAD's other conclusions, any error was not sufficiently salient to the RAD's analysis to render the overall decision unreasonable: *Vavilov*, at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156, at para 36; *Alexion Pharmaceuticals Inc v Canada (Attorney General)*, 2021 FCA 157, at para 13.

[70] For these reasons, the applicant has not demonstrated that the RAD's decision was unreasonable.

V. Conclusion

[71] The application is therefore dismissed. Neither party proposed a question to certify for appeal and none will be stated.

JUDGMENT in IMM-2755-21

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

2. No question is certified under paragraph 74(*d*) of the *Immigration and Refugee Protection Act.*

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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