

Federal Court



Cour fédérale

**Date: 20220301**

**Docket: IMM-3999-17**

**Citation: 2022 FC 278**

**Ottawa, Ontario, March 1, 2022**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**DINDUP TSERING**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for judicial review of a June 16, 2017, decision of the Refugee Protection Division [the RPD] of the Immigration and Refugee Board of Canada rejecting the Applicant's claim for refugee protection because he failed to credibly establish his identity.

[2] Prior to the hearing of this application and after attempting to advise his client of this course of action, Applicant's counsel sought and was granted an Order removing him as the

solicitor of record, as he was unable to obtain instructions from the client. Thereafter, counsel for the Respondent agreed that this application should be determined on the basis of the written materials filed by the parties.

[3] I find on a holistic basis that the decision on identity is reasonable and this application will be dismissed.

### **Background**

[4] The Applicant claims that his name is Dindup Tsering and that he was born in Kyidong, Tibet.

[5] The Applicant says that his parents fled with him into Nepal when he was very young and he has no memory of living in Tibet. The Applicant lived in Manang, Nepal, until he was eight years old. He was then taken to live and study in a Tibetan Buddhist monastery in India, but he was unsuccessful in his studies. The Applicant left the monastery when he was 18 years old, and his family encouraged him to go to the West.

[6] He obtained a fraudulent Nepalese passport with his photograph and the name Dindup Chhiring Punel. He used the passport to obtain a visa to the USA at its visa office in Kathmandu, Nepal. He traveled to the USA and says that he then sent the fraudulent passport back to Nepal. The Applicant brought his monastery identification with him. He says that it bore his real name, but it was stolen from the apartment he was living in with several other undocumented individuals. He did not report the theft because of his immigration status.

[7] The Applicant sought asylum in the USA in 2002 or 2003 but did not receive it. The asylum claim was made under the name on his false Nepalese passport, Dindup Chhiring Punel. The Applicant did not attend his hearing. He applied again for asylum in 2010, again using the name Dindup Chhiring Punel, and claimed he was born in Kathmandu, Nepal. He was again unsuccessful. In his 2010 claim, he said that he did not attend his hearing in his first claim because he was afraid that the woman who helped him with his application had not put down correct information on his application and had instead said that he had been living in Tibet before arriving in the USA.

[8] In March 2012 the Applicant was detained by American immigration authorities, who were looking for his roommate. The Applicant claims that the authorities took his Tibetan Green Book, a form of identification for Tibetans issued by the Tibetan Government-in-Exile, kept the original, and gave him a copy.

[9] In 2013, the Applicant asked his parents to obtain identity documents for him from the Tibetan Welfare Office [TWO] in Nepal. He received a Tibetan birth certificate and an accompanying letter [the TWO Documents].

[10] The Applicant lived and worked in the USA without status until March 11, 2017, when he came to Canada. The Applicant entered Canada irregularly so as to avoid the effect of the Safe Third Country Agreement. Upon arrival, he made a refugee claim.

[11] On March 12, 2017, the Applicant was interviewed by a Canadian Border Services Agency [CBSA] officer. The Applicant indicated that his full name was Dindup Tsering. When asked where he was born, he said: “My parents say between Nepal and Tibet. They call it Manang, I don’t really know it.”

[12] The Applicant told the Officer that the information in his Tibetan Green Book and the TWO Documents was correct, but when asked why the documents said he was born in Kyidong, Tibet, the Applicant said that his parents “had to lie over there because the Nepalese embassy they don’t accept me.” When asked what his citizenship was, the Applicant said: “I don’t have any idea. I can’t figure it out because I was born in Manang but Nepal don’t [*sic*] recognize me because I’m Tibetan.”

[13] When asked why in his 2010 American asylum application he claimed to be born in Kathmandu, the Applicant indicated that his lawyer must have put it “because I told him Manang and it didn’t show up.”

[14] The officer then asked the Applicant if he was really born in Manang or if his birth certificate was real. The Applicant answered: “I was born in in Kyidong. I am sorry.”

[15] A hearing was conducted by the RPD on May 23, 2017. The Applicant was represented by counsel.

[16] On June 16, 2017, the RPD rejected the Applicant's claim. It held that the determinative issues in the application for protection were "identity (that is, a failure to establish his personal identity and country/countries of citizenship) and credibility."

[17] The RPD found that the Applicant was not a credible witness and had failed to provide sufficient reliable and trustworthy evidence to establish his identity on a balance of probabilities. Specifically, the RPD found that the Applicant had not established his name, date of birth, place or birth, country of birth, and country of citizenship.

[18] The RPD indicated that, in making this finding, it was mindful of the Applicant's allegations with respect to his poor memory, his level of sophistication, and the stresses of the hearing room. The RPD also considered the difficulties Tibetans face in accessing personal identification documents.

## **Issues**

[19] The Applicant's Memorandum sets out the following issues: (1) whether the RPD erred in finding that the Applicant failed to credibly establish his identity, and (2) whether the RPD erred by not considering whether the Applicant would be persecuted in Nepal or China, regardless of whether he was born in Nepal or China.

[20] If an applicant cannot establish his identity to the satisfaction of the RPD, the application must be dismissed. As I find that the decision regarding identity is reasonable, I need not consider the second stated issue.

## Analysis

[21] As noted above, a claimant must establish personal identity as a prerequisite to conducting an assessment of a claim and failure to do so is fatal.

[22] The RPD, at paragraph 15 of the decision, explains the basis for the preliminary requirement that identity be established as follows:

Absent a finding that the personal and national identity have been established by a claimant on a balance of probabilities, an assessment of the potential merits of a claim cannot be properly executed. Where the personal and national identity of a claimant have not been established on a balance of probabilities, an assessment of the remainder of the claim is not necessary.

The RPD cites as support of that proposition the decision of Justice Joyal in *Husein v Canada (Citizenship and Immigration)*, [1998] FCJ No 726 (TD), where he stated at para 13:

In my respectful view, once the Board had concluded that identity had not been established or that the main applicant had not proven who she allegedly is, it was not necessary for the Board to analyze the evidence any further. Identity was central to the case. The main applicant's failure to prove that she belonged to a persecuted clan effectively undermined any claim of a well-founded fear of persecution.

[23] I agree with this observation. Absent a finding as to identity it is impossible to assess whether there is any credible basis for the protection claimed. Furthermore, as noted by the RPD, claimants bear the burden of providing acceptable documentation of identity. If they do not, they must provide a reasonable explanation for the lack of documents or demonstrate that reasonable steps were taken to obtain them.

[24] The RPD summarized the Applicant's alleged narrative. The RPD noted the inconsistencies between his current claim and the 2010 American asylum claim. The Applicant claimed at this hearing that the 2010 claim was not translated for him; however, the RPD noted that he said in his 2010 claim that he was fluent in English. Before the RPD, the Applicant indicated that this was not true; however, the RPD noted the Applicant's extensive work history in the USA, including as a clerk at a convenience store for two years, a restaurant waiter for four years, and a labourer at a deli/grocery for more than one year.

[25] Based on these facts, it was open to the RPD to conclude, as it did, that the Applicant's "responses indicate a deliberate attempt to minimize his knowledge of the English language in order to mislead the panel regarding his personal involvement with entering and submitting information in his U.S. asylum application that he now claims was untrue." It was reasonable for the RPD to draw a negative credibility finding from these facts.

[26] The RPD found that while it was possible that the Applicant was misled by an unscrupulous legal advisor with his first asylum claim, it was unlikely that the Applicant would have continued to use a false identity to make "a second asylum application using the same false identity, eight years after arriving to the U.S. and three occupations later, having learned the English language sufficiently well in order to orient himself." The RPD found that "this could not be explained away by a poor memory or not knowing what was written down in the second asylum application."

[27] I am unable to find this to be an unreasonable assessment. Having failed once to establish a claim for identity under an allegedly false name, one must ask why anyone would think they might succeed a second time using the same false name. This is all the more puzzling as the Applicant apparently had no difficulty asserting his “true identity” in his Canadian application.

[28] The RPD found that the Applicant’s claim that he brought his real identification to the USA in addition to his false Nepalese passport was unreasonable. There is a risk of travelling with conflicting identity documents. Had they been discovered, he would have been refused entry into the USA and sent back. The RPD drew a negative credibility finding and found that it was more likely than not that the Applicant travelled to the USA only with identity documents in the name of Dindup Chhiring Punel. I find that to be reasonable.

[29] The RPD reviewed the Applicant’s various claims about his birthplace, including in the American asylum applications and in his interview with the CBSA officer, and found them to be inconsistent, even most recently when he was interviewed by the CBSA officer. This too weighed into the RPD’s adverse credibility finding.

[30] With respect to the TWO Documents, the RPD considered the challenges some Tibetans have in obtaining identity documents. However, at paragraph 23, it found that this Applicant was somewhat an exception from the norm:

The panel notes that the claimant in the case at hand was educated at a Tibetan monastery in India and has lived in the United States for fifteen years. He indicates that he can communicate in the English language and that he has been able to contact his parents



who are in Nepal, for assistance. Therefore, the panel must assess his claim in light of these allegations as this lends credence to the claimant possessing a higher level of sophistication, ability and knowledge in terms of knowing what identity documents would be available to him and how to obtain them, than some other Tibetans may.

[31] The RPD was entitled to draw an adverse credibility finding from his responses to the CBSA officer as to his place of birth. It was only when the CBSA officer asked the Applicant why, if he was born in Manang as he had asserted, the TWO Documents state that he was born in Kyidong, Tibet, that the Applicant testified that his parents had lied to obtain these documents. This was clearly offered to explain this discrepancy. However, when subsequently asked if the TWO Documents were fraudulent, the Applicant changed his evidence and asserted that he was born in Kyidong.

[32] The RPD reasonably found at paragraph 39 that these contradictory responses went to the Applicant's credibility:

The panel finds the claimant's testimony about how his parents obtained the documents very vague and unclear. The panel is not satisfied that these documents were issued upon reliable and trustworthy information that the claimant was actually born in Kyidong nor that they even had reliable information that the claimant even exists or is the son of the individuals who presented themselves in Nepal to have the documents issued. The panel finds his evidence contradictory when compared to his earlier statements that he was born in Manning. The panel finds that the claimant's oral evidence with respect to his place of birth is inconsistent. The panel draws a negative credibility inference.

[33] In addition to these findings, the RPD also considered photographs submitted with the documentary evidence, the Tibetan Green Book, and two letters, the first from Tulku Dawa

Gyalpo [Gyalpo], Vice President of the Palyul Pema Mani Center in Toronto, and the second from the General Secretary of Thegchog Namdrol Shedrub Dargeyling [Namdroling Monastery] in India.

[34] The RPD noted that the photographs on the TWO Documents and the Tibetan Green Book did not, in the RPD's opinion, resemble the Applicant at the hearing or in the other documents he provided, such as his American asylum claim. The RPD found that, on a balance of probabilities, these documents were either issued based on false information or were issued to another individual named Dindup Tsering.

[35] The Applicant submits that the RPD failed to take into account that the Applicant's parents would have used an older photo of their son. The Applicant further submits that the only feature explicitly identified by the RPD as different are the Applicant's eyebrows. The Applicant disagrees that the photographs look different and notes that neither counsel nor the RPD are experts in facial recognition based on pictures. The Applicant submits that in order for such a finding to be determinative, it must be backed by an expert opinion or proper facial recognition technology.

[36] Contrary to the Applicant's submissions, the RPD has the power to make a determination that a claimant is or is not the person in a photograph, and it is not required to rely on expert evidence to do so (see *Olaya Yauce v Canada (Minister of Citizenship and Immigration)*, 2018 FC 784 at para 9). Moreover, while Applicant is accurate in stating that the only explicit feature

identified were the Applicant's eyebrows, this must be read in the context of its overall finding at paragraph 41 that the persons in the photographs are different:

The remaining official identity documents in the name of Dindup Tsering are the Tibetan Refugee Welfare Office documents. Apart from the concerns outlined above with respect to the information provided by the claimant's parents and the manner in which they were able to obtain them, the panel has examined the photographs on both documents. It appears that similar photographs appear on the Tibetan Green Book and two Tibetan Refugee Welfare Office documents. The panel had an opportunity to view the originals of the two latter documents. Upon carefully reviewing them at the hearing and comparing them to the claimant's other photographs (in his U.S. documents, U.S. visa and photographs), the panel sees no resemblance between the image of the person on the Tibetan documents and the images of the person in the U.S. documents. The U.S. documents and photographs appear to belong to the claimant. However, the panel finds that the Tibetan documents, on a balance of probabilities, do not carry the image of the claimant. This is particularly evident from an examination of the eyebrows and other features. If the photographs were taken in 2013 or even earlier, the panel does not see how the image can be that of the claimant.

[emphasis added]

[37] While the RPD mentioned the eyebrows as a specific example, it is clear from these reasons that the RPD did not see any resemblance to the Applicant.

[38] The RPD also considered the Tibetan Green Book that was offered to establish identity. Contrary to the requirement of section 42 of the *Refugee Protection Division Rules*, SOR/2012-256, the Applicant had only provided a copy. No explanation was offered for why the original could not have been obtained from the American authorities, or whether any attempt had been made. The RPD further noted that it was unclear how the Applicant's identity was established in

order for the Tibetan Green Book to be issued. The RDP therefore reasonably refused to give this document significant weight.

[39] The RPD also considered letters from Gyalpo and the General Secretary of the Namdroling Monastery in India. The RPD noted that the authors were not witnesses in the hearing and neither letter identified how the author obtained the information to which they were attesting. The RPD gave little weight to the letters. I agree with the Applicant that the authors' failure to testify is irrelevant when assessing weight; however, the fact that neither identified how the author obtained the information to which they were attesting is very relevant. The RPD made no error in this regard in discounting these letters.

[40] The RPD noted that the Applicant had provided oral testimony regarding his childhood and spoke through a Tibetan interpreter at the hearing. The RPD noted that despite issues with identity documents, sworn evidence remains un-assailed “[e]xcept in cases of a clear and substantiated finding of fraud that casts a shadow over the entirety of an applicant’s evidence” (citing *Tran v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1080). The RPD found that given the evidence that the Applicant had used a false identity in the USA on an ongoing basis, the Applicant’s testimony regarding his childhood was “insufficient to overcome the concerns raised.” In my view, the issues identified above by the RPD did cast a large shadow over the entirety of the Applicant’s evidence as to his identity in terms of his name, date of birth, place of birth, country of birth, and country of citizenship.

[41] In short, I find that the RPD considered all of the identity evidence, made a reasonable assessments of it, and drew reasonable conclusions from it. For these reasons, this application must be dismissed.

[42] No question was posed for certification.

**JUDGMENT IN IMM-3999-17**

**THIS COURT'S JUDGMENT is that** this application is dismissed and no question is certified.

"Russel W. Zinn"

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Judge

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

**DOCKET:** IMM-3999-17

**STYLE OF CAUSE:** DINDUP TSERING v THE MINISTER OF  
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**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** JANUARY 12, 2022

**JUDGMENT AND REASONS:** ZINN J.

**DATED:** MARCH 1, 2022

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**SOLICITORS OF RECORD:**

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