

Federal Court



Cour fédérale

Date: 20220607

Docket: IMM-1287-20

Citation: 2022 FC 828

Ottawa, Ontario, June 7, 2022

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

XIAFEI HU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is a review of the September 18, 2019, decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada affirming the determination of the Refugee Protection Division [RPD] that the Applicant is not a Convention refugee nor a person in need of protection.

[2] For the reasons that follow, I find that the decision under review is reasonable, and this application will be dismissed.

Background

[3] The Applicant is a citizen of China. He fled the country in September 2016, fearing persecution by the Chinese authorities because of his participation in an underground Christian church.

[4] The Applicant began attending the church in November 2015 after the sudden death of a childhood friend earlier that year, which affected him profoundly.

[5] Another friend of the Applicant then introduced him to the basic precepts of Christianity and taught him to pray. His friend gave him a Bible. They read and prayed together at the Applicant's home. The Applicant found comfort in Christianity and decided to adopt it. He began to attend church services, which were held once a week. The Applicant was baptized and received Communion on March 27, 2016.

[6] On the evening of June 3, 2016, the Applicant received a phone call from his friend who recounted that the church service that evening, which the Applicant had not attended, might have been reported to the Public Security Bureau [PSB]. His friend said that he would be going into hiding.

[7] The Applicant told his wife what had happened and subsequently went into hiding at another friend's home. He learned from his wife the following day that the church had indeed been raided by the PSB and that several attendees had been arrested. The Applicant's friend connected him to a smuggler, who obtained a Canadian visa for him and accompanied him to Canada on September 19, 2016.

[8] On October 2, 2016, the Applicant learned from his wife that the PSB had searched his friend's home and arrested him several days prior. On October 6, 2016, two PSB officers searched the Applicant's home in China, questioned his family, and demanded to know his whereabouts.

[9] The Applicant filed for refugee protection several days later. He has joined a church in Canada and has continued to attend services and events.

The RPD Decision

[10] The determinative issue, in the view of the RPD, was the Applicant's credibility. It found the Applicant's testimony at the hearing to be vague, evasive, inconsistent, and non-responsive, particularly with respect to questions requiring elaboration beyond the narrative included with the Applicant's Basis of Claim [BOC]. The RPD considered much of the Applicant's testimony to be a rote recitation of his BOC.

[11] For instance, the RPD noted that the Applicant had responded inconsistently to questions about when his friend had first introduced him to Christianity, stating initially that it had been in September 2015 and later saying that it had in fact been earlier. The RPD found the Applicant's testimony in response to questions about what his friend had taught him to be non-responsive and lacking in detail.

[12] The RPD also noted that the Applicant's account of the frequency of his attendance at the underground church was inconsistent and changing.

[13] The RPD questioned the Applicant about the lack of corroborative evidence in his application; the RPD noted that the Applicant could have asked his wife to provide a letter and could have submitted proof of his childhood friend's death. The RPD found the Applicant's answers to these queries to be non-responsive and not credible. The RPD rejected as implausible the Applicant's explanation that he did not know corroborative evidence was necessary, because his lawyer had told him that his testimony alone would be sufficient. The RPD further dismissed as nonsensical the Applicant's statement that he had wanted to ask his Canadian pastor to testify at the hearing but simply failed to do so.

[14] The RPD also probed the Applicant's connection to and knowledge of Christianity. The RPD found that the Applicant was unable to cogently articulate a personal connection to his faith and answered questions regarding basic concepts in Christianity—such as the gospel, baptism, and Communion—in a rote manner. The RPD found the Applicant's answers to other questions, such as what Christians believe about Jesus, to be evasive and lacking in detail.

[15] The RPD examined a brief letter from a senior minister at the Toronto Christian Alliance Church, which confirmed that the Applicant had been attending services and evangelistic activities since October 2016. The RPD noted that the letter lacked detail regarding the minister's personal connection to the Applicant or knowledge of the Applicant's faith. The RPD also considered a photograph of participants, including the Applicant, at an event organized by the church. The RPD determined that these documents were of insufficient probative value to overcome its concerns about the Applicant's credibility.

[16] Consequently, the RPD was not convinced of the core allegation in the Applicant's refugee claim—that he was a genuine Christian—and therefore concluded that the Applicant was neither a Convention refugee nor a person in need of protection.

The RAD Decision

[17] On appeal, the Applicant argued that the RPD had unfairly tested his knowledge of Christianity by way of trivia and that his testimony and documentary evidence established his Christian faith.

[18] The RAD found that the RPD had crossed into testing of trivia on two occasions—concerning the denomination of Christianity that the Applicant practised (given the interpreter's difficulty translating "Pentecostal") and the version of the Bible the Applicant read—but that these instances were not determinative of the appeal, as they were trivial and did not factor into the RPD's decision.

[19] The RAD agreed with the RPD that the Applicant's testimony about Christian teachings appeared to be recited from memory from the BOC. The RAD agreed that the Applicant could not spontaneously answer questions that strayed from the BOC, including questions about basic concepts such as the Ten Commandments and the gospel. Like the RPD, the RAD found that this pattern extended to the Applicant's testimony about his personal connection to his faith and the events underlying his claim.

[20] The RAD further found the Applicant's testimony about his religious practice to be inconsistent and lacking in detail. For instance, the RAD noted the Applicant's statement that he could not remember whether he was baptized in China.

[21] The RAD agreed that a negative inference should be drawn from the Applicant's failure to adduce corroborative evidence of the events that took place in China and from his inability to offer a reasonable explanation for that failure. The RAD also affirmed the RPD's finding that the letter and photo from the Applicant's church were of insufficient probative value to overcome concerns about the Applicant's credibility.

[22] Finally, though it had not been pleaded nor addressed by the RPD, the RAD assessed whether the Applicant could make out a *sur place* claim. The RAD determined that he could not. The RAD noted that there was no indication that the Applicant's religious activities would have come to the attention of the Chinese authorities. Moreover, the RAD doubted the genuineness of the Applicant's faith, due to the negative credibility findings with respect to his testimony and the minimal probative value of his corroborative documents.

[23] The RAD therefore concluded that the Applicant had failed to establish the genuineness of his Christian faith and dismissed the appeal.

Issues

[24] The Applicant addressed two issues: (1) the RAD's findings regarding his identity as a Christian, and (2) the RAD's findings regarding his *sur place* claim. Ultimately, the issue is whether the RAD's decision on these issues and the appeal as a whole is reasonable.

Analysis

[25] I first observe that the RAD decision is detailed and footnotes 69 factual and legal references. The RAD did not blindly parrot the RPD.

[26] The Applicant submits that the RAD unreasonably doubted his Christian identity and unreasonably determined that the RPD had not tested him on religious trivia. In fact, as noted above, the RAD did agree that at least two of the RPD's questions on identity were trivial.

[27] The Applicant submits that his responses to questions about Christian beliefs, about Jesus, and about the meaning of Communion were consistent with Christian teachings and demonstrate that he was able to elaborate beyond rote recitation. I find that this submission is simply a disagreement with the findings of the RAD. The Applicant has not articulated why the RAD's analysis was unreasonable nor explained why the RPD's questions regarding Christian

teachings, Jesus, and Communion amounted to trivia. He merely argues that the evidence could have supported a different conclusion about his religious identity. That is not a valid ground for judicial review. It is not for the Court to reweigh the evidence and substitute its views for those of the decision-maker.

[28] The RPD may probe a refugee claimant's religious knowledge in order to assess the sincerity of their religious convictions, provided it does not hold the claimant to an unreasonably high standard (see *Gao v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1139 at paras 22–26; *Jin v Canada (Minister of Citizenship and Immigration)*, 2012 FC 595 at para 15). This has been found to be a legitimate means of examining the credibility of a refugee claimant.

[29] In this case, I see no reason to disturb the RAD's findings that the lack of detail and spontaneity in the Applicant's responses to open-ended questions about the basic teachings of Christianity undermined his credibility and gave reason to doubt the genuineness of his faith.

[30] The Applicant further submits that although the RAD made several negative credibility findings, it came to no definitive conclusion as to his religious identity, which he argues is an error. The Applicant relies on *Huang v Canada (Minister of Citizenship and Immigration)*, 2008 FC 132, in which Justice O'Reilly found that the Board had omitted to make a definitive finding that the applicant was not a genuine Christian and had therefore failed to consider whether the applicant might face persecution if returned to China.

[31] The Applicant's submissions on this point are without merit. The RAD plainly found that the Applicant was not a genuine Christian. To cite just one example, the RAD concluded at paragraph 48 of its reasons that "the RPD was correct in its determination that the [Applicant] was not a credible witness, and that he failed to establish the genuineness of his Christian faith." The RAD's decision here leaves no doubt as to its finding that the Applicant is not a genuine Christian and therefore would not face persecution if he were to return to China.

[32] Finally, the Applicant submits that the RAD's assessment of his *sur place* claim was unreasonable. The Applicant argues that the RAD offered no cogent reasons why the letter from the minister was not probative of the Applicant's religious identity and that the RAD failed to explain what else the minister might have said. The Applicant further submits that the errors allegedly made in the main claim—regarding the testing of his faith and religious knowledge and the failure to make a definitive finding about his religious identity—also render the *sur place* analysis unreasonable.

[33] I find nothing unreasonable in the RAD's reasoning on the *sur place* claim—an issue it raised.

[34] The RAD correctly noted that the letter merely confirms the Applicant's attendance at church and other religious activities. While the RAD did state, at the end of paragraph 41 of its reasons, that the letter was not probative of the Applicant's religious identity, I view this statement as being analogous to the sentence that follows, regarding the photograph: "The RPD was correct in its finding that the photo has insufficient probative value in establishing that the

[Applicant's] church activities in Canada flow from a genuine commitment to his faith." I do not consider it unreasonable for the RAD to have found these documents inadequate to demonstrate the genuineness of the Applicant's religious convictions. They are probative of his religious identity to some degree, in that attendance at church services and events lends some credence to the Applicant's assertion that he is Christian. However, his testimony led the RAD to doubt the genuineness of his faith, as explained above. The RAD is entitled to import concerns about an applicant's credibility and genuineness into the evaluation of a *sur place* claim (see *Jiang v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1067 at paras 27–28). It was open to the RAD to find the letter insufficiently probative of a genuine commitment to Christianity to overcome the negative credibility findings, which caused the *sur place* claim to fail.

[35] No question was posed for certification.

JUDGMENT in IMM-1287-20

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

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1287-20

STYLE OF CAUSE: XIAFEI HU v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

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