

Federal Court



Cour fédérale

Date: 20220707

Docket: IMM-3804-20

Citation: 2022 FC 1003

Ottawa, Ontario, July 7, 2022

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

MIN LIU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is a refugee claimant from China who seeks protection on the basis of political persecution. Under review is a second decision of the Refugee Appeal Decision (2nd RAD).

[2] A previous RAD (1st RAD) decision, made December 8, 2014, overturned a prior RPD (1st RPD) decision and awarded the Applicant a new RPD (2nd RPD) hearing. New evidence was accepted at the ensuing 2nd RPD hearing. The entire 1st RAD record, which contained the new evidence it accepted, was also before the 2nd RPD hearing.

[3] This is an application for judicial review of the negative decision made on July 31, 2020 (the Decision) in which the 2nd RAD upheld a decision by the RPD (2nd RPD) that the Applicant is not a Convention refugee or a person in need of protection.

[4] At the conclusion of the 2nd RPD hearing, on June 3, 2019, the panel member delivered an oral negative decision. It was transcribed on July 8, 2019. The transcript was received by the Applicant on July 12, 2019. It forms part of the underlying record in this application. The record of the 1st RAD hearing, which includes all the evidence from the 1st RPD hearing, is also part of the underlying record in this application.

[5] It is accepted that the 2nd RPD transcript contains the decision and reasons for the 2nd RPD decision which the 2nd RAD upheld.

II. **Background facts**

[6] The 2nd RPD determined, on a balance of probabilities, that the Applicant is wanted by the Public Security Bureau (PSB) for an unlawful act rather than for holding a particular political opinion. The 2nd RPD found that constitutes prosecution for breaking a law of general application, but not persecution as enumerated by the Convention grounds.

[7] The 2nd RPD also found there was no persuasive evidence that the Applicant and others involved have a nexus to a Convention ground based on the expropriation of property.

[8] The Applicant alleges the PSB seeks her arrest in China for participation in an illegal protest against the expropriation of a pig farm she and her husband leased.

[9] When an appraisal of the pig farm was obtained by the Applicant she realized the government offer was far below the actual value of the land.

[10] Together with other members of the community who were in the same situation, protests took place. The protests involved blocking the road to their village on September 8, 2013.

[11] On September 9, 2013 trucks and bulldozers arrived to level the houses but they left after a three hour standoff. The next day the trucks and bulldozers returned with armed policemen.

[12] Following the protests, the Applicant's husband and three other villagers were arrested.

[13] The Applicant then went into hiding at her aunt's home. While she was there the PSB left a *chuanpiao* with her daughter. When the PSB could not find the Applicant, they returned to her house looking for her. As a result, the Applicant hired a smuggler and left China.

III. **The Decision**

[14] The 2nd RAD acknowledged that its role is to look at all of the evidence and decide if the RPD made the correct decision.

[15] The 2nd RAD confirmed that it had conducted an independent review of the evidence by listening to the audio recording and reviewing the written evidence. The RAD concluded the 2nd RPD was correct in its overall credibility determination. Rather than address all the arguments made by the Applicant, the RAD indicated it would address the Applicant's credibility, her exit from China and the supporting documentation.

[16] No new evidence was submitted to the 2nd RAD and no oral hearing was requested.

[17] The 2nd RAD noted that new evidence had already been provided in the 1st RAD hearing but it had not been tested in an oral hearing to establish the credibility of the evidence. The 2nd RAD noted though that the evidence was before the 2nd RPD.

[18] The 2nd RAD identified that their role was to look at all the evidence and decide if the 2nd RPD made the correct decision. The 2nd RAD identified seven reasons the 2nd RPD found showing that the Applicant failed to establish her credibility.

[19] Before the 2nd RAD, the Applicant challenged the 2nd RPD's credibility findings on the grounds that it:

1. failed to consider critical documentary evidence going to the core allegations;
2. failed to correctly apprehend the Appellant's evidence regarding prosecution versus persecution;
3. incorrectly relied on the *Jurisprudential Guide* and case law after it was revoked;
and
4. failed to properly assess the evidence.

[20] After conducting an independent review of the evidence, the 2nd RAD concluded that the 2nd RPD was correct in its overall credibility determination. The 2nd RAD found that it was not necessary to address all of the credibility finding arguments made by the Applicant as there were three determinative reasons to dismiss the appeal.

[21] Those determinative reasons are discussed in the Analysis section of these reasons.

IV. **Issue**

[22] The only issue is whether the Decision is reasonable.

[23] The Applicant says that the “nub” of the problem with the Decision is that neither the 2nd RAD nor the 2nd RPD considered the new evidence or the additional evidence which the Applicant had submitted at, respectively, the 1st RAD hearing and the 2nd RPD hearing.

[24] The Applicant submits that such evidence was critical for the assessment of the prior evidence submitted by the Applicant in the 1st RPD hearing and the Applicant’s general credibility.

[25] Citing *Aguebor v Canada (Minister of Employment and Immigration)* (1993) NT 315 (FCA) the Respondent says as long as the reasons provided are reasonable, they are not open to judicial review as the Board is in the best position to gauge credibility and to draw the necessary inferences.

V. **Standard of Review**

[26] The Supreme Court of Canada has established that when conducting judicial review of the merits of an administrative decision, other than a review related to a breach of natural justice and/or the duty of procedural fairness, the presumptive standard of review is reasonableness:

Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65 (*Vavilov*) at para 23.

While this presumption is rebuttable, none of the exceptions to the presumption are present here.

[27] The role of the RAD is to intervene when the RPD is wrong in law, in fact, or in fact and law. The RAD is required to review the decision of the RPD by applying the correctness standard: *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 78.

[28] The focus of reasonableness review must be on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome. The role of courts in these circumstances is to review, and they are, at least as a general rule, to refrain from deciding the issue themselves: *Vavilov*, at para 83.

[29] The burden is on the party challenging the decision to show that it is unreasonable. To set a decision aside, a 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. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision: *Vavilov* at para 100.

[30] The Applicant argued that the 2nd RAD ignored the new evidence submitted in her favour.

[31] For reasons that follow, I do not agree with the Applicant that the RAD failed to consider all the evidence.

VI. Analysis

[32] The Applicant states that the transcript of the reasons given by the 2nd RPD demonstrate the panel did not mention any of the five documents it accepted as new evidence.

[33] In this application, the same allegation of not considering all the documents is made against the 2nd RAD.

[34] The documents allegedly overlooked are:

1. A letter from the Applicant's daughter enclosing the Criminal Sentence Verdict document.
2. The Criminal Sentence Verdict itself.
3. A letter from the Applicant's husband warning the Applicant not to return to China, referring to the arrest of another person and to a PSB visit on May 1, 2019 as well as a threat from the PSB to the husband that he should "turn in" the Applicant.
4. A reporting card requiring the husband to report every 3 months on the 5th of each month and whenever he is called and also referring to "anti-government activities".
5. A detention notice for Wang, Can who is the other person referred to in the Criminal Sentence Verdict as being "at large" and which also makes reference to "anti-government activities".

[35] The Applicant submits that this is highly probative information which, if properly considered, would have had a direct impact on the assessment of the evidence and in particular, on the issues of the authenticity of the summons and the distinction between prosecution and persecution.

[36] The Applicant says the Criminal Sentence Verdict of the husband confirms a number of matters involving him, those being: his identity, the charges against him, his detention, that he, together with the Applicant and others, organized meetings, his penalty of a four year sentence from September 2013 to September 2017 and the verdict date of September 12, 2014. This document also referred to the Applicant and another person as being “at large”, confirms the Applicant was accused of “gathering the people to have meetings for their own purpose to spread the news and rumors slandering the government officers . . .”, and confirms the Applicant escaped.

A. *Credibility findings*

[37] The 2nd RAD confirmed the following concerns identified by the 1st RPD:

1. the Applicant’s evolving testimony;
2. her struggles to remember visits by the PSB;
3. her ability to exit China using her genuine passport, which is not consistent with being wanted by the PSB;
4. the issuing of a *chuanpiao*, which is a witness summons and is inconsistent with an ongoing pursuit by the PSB;
5. the Applicant’s claim to be a “leader” of anti-government activities but she was not subsequently issued an arrest summons; and
6. that no arrest warrant was issued despite return visits by the PSB.

[38] The Applicant's profile as a leader was found not to be supported by her evasive testimony about whether the Applicant or her husband went to the town government to negotiate for more compensation.

[39] The 2nd RAD addressed the Applicant's arguments concerning her exit from China and noted her inconsistent evidence on the role of the smuggler and that there were two different versions of whether the smuggler or the Applicant held the passport when leaving China.

[40] The 2nd RAD found, after a review of the record, that it was open to the 2nd RPD to conclude that as the Applicant had alleged there was an ongoing search for her as a leader, an arrest warrant would have followed when she failed to appear in response to the summons she received. The 2nd RAD observed that while procedures vary from locality to locality, "overall the report indicates that a lack of checks and balances results in the PSB engaging in vigorous, extra-judicial pursuits of individuals, which is not reflected by the evidence provided by the [Applicant] on the PSB pursuit of her."

[41] According to the footnotes in the Decision, the report referred to above is the NDP for China, March 14, 2014 Item 9.3, RIR CHN103401.E "Implementation of the Criminal Procedure Law of the People's Republic of China in regard to arrest warrants and summonses, particularly in Guangdong, Fujian and Liaoning."

[42] Based on the evidence, the 2nd RPD determined that on a balance of probabilities, the Applicant is wanted by the PSB for an unlawful act rather than for holding a particular political

opinion. The 2nd RPD found that constitutes prosecution for breaking a law of general application, but not persecution as enumerated by the Convention grounds.

[43] The 2nd RAD found that the objective evidence supported a finding that individuals who were protesting land expropriation issues were “unlikely to be seen by the Chinese authorities as having engaged in a political act.”

[44] The credibility findings by the 2nd RAD were based on the objective documentary evidence, and the new and additional evidence when compared to the deficiencies in the oral evidence given by the Applicant, in particular her inconsistent profile evidence as leader.

[45] As I find below, the 2nd RAD and the 2nd RPD each considered the new and the additional evidence. The conclusions by the 2nd RAD and the 2nd RPD that the Applicant’s activities warranted prosecution for an unlawful act, but not persecution, were reasonable. The relevant evidence was considered.

B. *The summons and the Applicant’s profile*

[46] The 2nd RAD found that the Applicant was not credible around her profile, the summons and the PSB pursuit.

[47] It noted that a review of the record indicated the Applicant said she fled from the blockade altercation on September 12, 2013 when she saw her husband and others being arrested, as she was in the back. The Applicant went into hiding with a family member and the next day the summons was left with her daughter, at their home.

[48] Relying on the objective country condition evidence about arrest warrants and summonses, the 2nd RAD determined that a summons gives the person a certain period of time to appear, and it is followed by an arrest warrant after the PSB investigate and find that a crime has been committed.

[49] The 2nd RAD noted that the reliability of the summons was intricately tied to the successful establishment of the Applicant's profile. For simplicity, I will discuss both the summons and the Applicant's profile here.

[50] The Applicant submits that because there is no mention of the Criminal Sentence Verdict, this is an indication that the 2nd RAD erred by dismissing all the supporting documents on the basis that the summons was fraudulent. This is said to be because consideration of the supporting documents had to be undertaken before the authenticity finding.

[51] I disagree with both those propositions.

[52] Regarding the argument that there was no mention of the Criminal Sentence Verdict, it is well known that reasons for a decision may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred. That does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16.

[53] The same argument of ignoring documents was made to the 2nd RAD about the 2nd RPD decision. The 2nd RAD began its analysis by stating it conducted “an independent review of the evidence” which it was required to do. Later, the 2nd RAD refers to “my review of the additional supporting documents”. Those documents include the Criminal Sentence Verdict.

[54] The 2nd RAD confirmed that their role was “to look at all of the evidence and decide if the RPD made the correct decision.” They found the RPD made the correct decision “after a review of the record”.

[55] Even if the 2nd RAD had not specifically acknowledged it had reviewed the record, an administrative decision maker is presumed to have weighed and considered all of the evidence presented to it, unless the contrary is established: *Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 at para 36. It is only when an administrative tribunal overlooks evidence which clearly contradicts its conclusions that a Court can intervene and infer that the tribunal did not examine the contradictory evidence to reach its conclusion of fact: *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) at paras 16–17.

[56] The Applicant has made the bald assertion that the 2nd RAD did not consider documents because it did not specifically refer to them. Specific reference was made in the Decision to the information about the recent PSB visit that is mentioned in the supporting letter from the Applicant’s husband and her failure to refer to that event in her testimony. To make that reference, the RAD would had to have reviewed the supporting documents.

[57] I pause to note that the Applicant submits that referring to that PSB visit as “recent” and misstating elsewhere that the 1st RAD appeal was in 2016, not 2014, shows that the 2nd RAD was confused as to timelines, proving that it failed to take into consideration the new and additional evidence.

[58] I find to the contrary.

[59] The misstating of the date of the 1st RAD hearing is clearly just that - either a misstatement or a typo. The 2nd RAD noted the 1st RPD decision was made August 12, 2014 and that it was appealed to the RAD. That was referenced as footnote 2 which in turn specifically refers to the Record of the 1st RPD at page 118. To do so, the 2nd RAD would have consulted page 118 at which is found the decision of the 1st RAD, dated December 8, 2014. I am not persuaded that the 2nd RAD was unaware of the actual date of the 1st RAD decision or the evidence that was actually before the 2nd RPD or that it shows the evidence was not considered.

[60] More importantly, the reference to a recent visit by the PSB is found in a letter from the Applicant’s husband, that was submitted to the 2nd RPD, dated May 6, 2019. The letter advised that the PSB had visited the house on May 1, 2019. The 2nd RAD referenced footnote 22 when mentioning the Applicant’s failure to mention the husband’s reference to the PSB visit. Footnote 22 references page 363 of the RPD record and that page contains the May 6, 2019 letter from the husband to the Applicant. Clearly, the 2nd RAD considered this evidence.

[61] The translator delivered that letter, together with a reporting card and detention notice, on May 22, 2019. The 2nd RPD hearing was held June 3, 2019 which was the thirteenth day after the

Applicant received her husband's letter. I find the 2nd RAD reasonably expected the Applicant to remember her husband reporting such a recent visit by the PSB. I also find the reference shows that the 2nd RAD did consider the additional evidence.

[62] The 2nd RPD decision discussed the Applicant's inability to recall how many times the PSB visited her home (which she was not occupying while in hiding) pointing out that the Applicant's narrative said the PSB returned once but her testimony was that neighbours told her they went to her house a number of times. The Applicant then confirmed that she did not know whether the PSB left an arrest warrant after she did not obey the *chuanpiao*.

[63] Noting that the Applicant's daughter had told the Applicant about her husband's situation and sent her a document, the 2nd RPD found it was reasonable to expect that if the PSB left a warrant for the Applicant's arrest, her daughter would have informed her. The footnote supporting this reasoning by the 2nd RPD cites the Letter and Criminal Sentence Verdict submitted to the 2nd RPD. This specific reference shows the 2nd RPD did not ignore critical evidence.

[64] The 2nd RAD found that overall the Applicant offered vague and internally inconsistent evidence about the pursuit by the PSB. It found that the Applicant struggled to spontaneously remember visits by the PSB and she did not specifically mention a recent visit by them on May 1, 2019.

[65] In terms the Applicant's profile as a leader, the 2nd RAD preferred her spontaneous testimony identifying her husband as a leader over her own amended testimony given at the

2nd RPD hearing. The 2nd RAD found there was insufficient evidence to support that the Applicant would be viewed as a leader. It concluded that the Applicant was embellishing her profile in order to elevate her risk.

[66] I am satisfied from my review of the Decision and the underlying record that the 2nd RAD did review all the evidence. To support statements in the Decision the footnotes refer to specific pages in the 1st RPD record. The 1st RPD record is found in the 2nd RPD record. There are also precise time stamps to the audio recording of the 2nd RPD hearing. A number of NDP articles are pinpointed and six cases are cited in support of various statements.

[67] Other than bare assertions that the 2nd RAD did not consider the supporting documents, the Applicant has put forward no persuasive argument to support that theory.

[68] The Applicant's submission that the 2nd RAD failed to consider the new evidence submitted to the 1st RAD and the 2nd RPD is not supported by the evidence. The 2nd RAD conducted its own independent analysis to correct errors in the 2nd RPD decision. For example, the 2nd RAD expressly made a finding on the authenticity of the *chuanpiao* and provided thorough reasons as to why other supporting documents were given no weight.

[69] The 2nd RAD noted that the 2nd RPD did not make a clear finding about the subpoena, saying that it "may be fraudulent" which the 2nd RAD acknowledged was not definitive so the 2nd RAD undertook its own analysis of the subpoena.

[70] The Applicant argues that the 2nd RAD engaged in circular reasoning to conclude that the summons is fraudulent without considering the new evidence.

[71] As already noted, I have not been convinced that the 2nd RAD failed to consider the new evidence.

[72] I find that the 2nd RAD's conclusion that the summons was fraudulent to be reasonable. It provided a chain of analysis that linked the subpoena to the authenticity finding by noting the absence of a follow-up coercive summons. In addition, the 2nd RAD reasoned the Applicant's ability to leave China using her own passport, the issue of whether the Applicant or the smuggler carried the passport, the evidence of repeated PSB visits and continued interest in the Appellant without a follow-up coercive summons and the inconsistencies in the Applicant's testimony which led to the Appellant's failure to establish her identity as an anti-government leader all supported the finding that the summons is fraudulent.

[73] In turn, that finding undermined the reliability of the supporting documents provided by the husband and daughter, which were premised on the Applicant's profile and the genuineness of the summons.

[74] In any event, as set out in the previous section, I find the Criminal Sentence Verdict and the supporting documents were in fact considered.

[75] It is trite law that the decision maker may assess and evaluate the evidence before it and, absent exceptional circumstances, a reviewing court will not interfere with its factual findings.

The reviewing court must refrain from reweighing and reassessing the evidence considered by the decision maker: *Vavilov* at para 125.

[76] Even though they may be insufficient when taken individually or in isolation, an accumulation of contradictions, inconsistencies and omissions regarding crucial elements of a refugee claim can support a negative conclusion about an applicant's credibility: *Lawani v Canada (Minister of Citizenship and Immigration)*, 2018 FC 924 at para 22.

VII. Conclusion

[77] The Applicant has not persuaded me that the 2nd RAD erred in dismissing the appeal and confirming the decision of the 2nd RPD that the Applicant is neither a Convention refugee nor a person in need of protection.

[78] A decision's reasons need not be perfect. As long as the reasons allow the reviewing court to understand why the decision-maker made its decision and determine whether the conclusion falls within the range of acceptable outcomes, the decision will normally be reasonable: *Beddows v Canada (Attorney General)*, 2020 FCA 166 at para 25, citing *Vavilov* at para 91.

[79] A reasonableness review is not to be a "line-by-line treasure hunt for error," the reviewing court must be able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic, and it must be satisfied that "there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived": *Vavilov* at para 102.

[80] The internal rationality of a decision may be called into question if the reasons exhibit clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations or an absurd premise. This is not an invitation to hold administrative decision makers to the formalistic constraints and standards of academic logicians. However, a reviewing court must ultimately be satisfied that the decision maker's reasoning "adds up": *Vavilov* at para 104.

[81] I have found the 2nd RAD did not engage in circular reasoning and I am satisfied the Decision "adds up".

[82] For all the foregoing reasons, this application is dismissed.

[83] The parties posed no serious question of general importance for certification.

JUDGMENT in IMM-3804-20

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. There is no serious question of general importance for certification.

"E. Susan Elliott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3804-20

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PLACE OF HEARING: HELD BY WAY OF VIDEO CONFERENCE

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