

Federal Court



Cour fédérale

**Date: 20221114**

**Docket: IMM-9601-21**

**Citation: 2022 FC 1547**

**Toronto, Ontario, November 14, 2022**

**PRESENT: Mr. Justice Diner**

**BETWEEN:**

**XIAOPENG CHI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant seeks judicial review of a Refugee Appeal Division [RAD] decision that upheld an earlier decision of the Refugee Protection Division [RPD], finding the Applicant neither to be a refugee nor a person in need of protection. The claim was rejected at both tribunals due to credibility concerns.

[2] I provided my decision upholding the RAD's decision from the bench, and promised reasons to follow. These are my Reasons.

## II. Background

[3] The Applicant is a citizen of China who alleges he will face persecution because he is a practising Christian. He alleges the following narrative.

[4] A friend introduced him to Christianity in October 2017, where after he began attending a house church with this friend. On Easter Sunday, 2018, the house church was raided. The Public Security Bureau [PSB] recorded the information of the worshipers, confiscated their Bibles, and ordered the Applicant to attend a re-education program. The leader of the house church was detained following the raid. The Applicant visited the leader after his release. After this visit, the PSB returned to the Applicant's home and reiterated they would arrest him if found to be participating in illegal or anti-government activities.

[5] The Applicant decided to leave China, and paid a snakehead to assist him in getting a Canadian visa. He continued to practice Christianity in Canada, after locating a church and attending services.

## III. Decision under Review

[6] The RAD found that the RPD had been correct in various negative credibility findings. These included a discrepancy in the Applicant's testimony as to the composition of people who

raided the house church. The Applicant testified before the RPD that village committee members who he knew were part of the raid, but his Basis of Claim form indicated that only PSB officers were involved in the raid. The RAD found this discrepancy was not reasonably explained, but that the concern was minor, as the RPD accepted the raid occurred.

[7] The RAD also upheld the RPD's finding that the Applicant was not a practising Christian in Canada. The RPD had found the Applicant failed to provide any meaningful testimony about his practice of Christianity in Canada. Specifically, the Applicant could not explain how he joined the church, his activities at the church, his meetings with the Pastor, or the significance of his baptism.

[8] The Applicant, when questioned, was also unable to answer questions about very basic aspects of the faith, such as important events in Jesus Christ's life, any of the Ten Commandments, and most notably, any content or details about services he attended, including one that took place two days before the RPD hearing. The RPD found his testimony lacked meaningful detail, a conclusion the RAD upheld.

[9] The RAD rejected the Applicant's argument that the RPD's analysis was microscopic and overzealous. It noted that the religious questions asked of the Applicant were basic, general, and open-ended. The RPD found that he displayed insufficient knowledge to suggest he was continuing his practice of Christianity in Canada as alleged.

[10] The RAD also considered impact of the Applicant's education and lack of experience in communication on his testimony. The RAD held the Applicant's answers need not have been perfect, and he could have expressed things in his own way. However, he gave almost no answers to the knowledge related questions. The RAD held the Applicant's lack of education did not adequately explain his inability to provide any meaningful details about his Christian faith and his practice in Canada.

[11] The RAD found no error in the RPD's treatment of the letter from Livingstone Assembly Church. The RAD agreed the letter should have no weight, as it contradicted the Applicant's testimony. Further, the RAD held the letter and the baptism certificate were insufficient to establish the Applicant was a genuine practicing Christian in Canada. The RAD found that neither of these items can attest to the genuineness of his Christian belief, and thus that the Applicant was baptized for reasons other than having a genuine belief in the faith.

[12] The RAD held the RPD did not err in its assessment of the Applicant's *sur place* claim. The RPD concluded the Applicant was not attending church in Canada or presently an adherent of Christianity, so there was no on-going church related activities the Chinese authorities could be monitoring.

[13] Regarding the departure from China, while the RAD found the RPD erred in finding the Applicant's departure from China on his own passport suggested he was not wanted in China, it noted that the issue of his exit from China was not determinative. Nonetheless, the RAD found the Applicant was not wanted in China; there was no evidence the PSB had been looking for the

Applicant since he left and nothing to suggest the Applicant would continue practicing Christianity if he returned to China.

IV. Issues and Standard of Review

[14] The Applicant challenges the RAD's findings on (i) credibility, (ii) his status vis-à-vis the police in China, and (iii) his *sur place* claim. The standard of review for each of these three issues is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65).

V. Analysis

A. *Credibility findings vis-à-vis Christianity were reasonable*

[15] The Applicant argues the RAD erred in failing to consider his personal circumstances when assessing the genuineness of his religious practice in Canada. In particular, the Applicant alleges the RAD failed to take into account his education and lack of sophistication in pointing out inconsistencies in his evidence, and lack of knowledge of the religion.

[16] The Applicant also submits the RAD's failure to provide sufficient reasons as to why the Applicant's personal circumstances did not overcome the negative credibility findings and failure to properly consider the issue of personal circumstances constitutes a reviewable error, relying on *Huang v Canada (Citizenship and Immigration)*, 2012 FC 1002 at para 15, *Zhang v Canada (Citizenship and Immigration)*, 2012 FC 503 at para 12, *Gao v Canada (Citizenship and Immigration)*, 2015 FC 1139, and *Ullah v Canada (Minister of Citizenship and Immigration)*,

2000 FCJ No 1918 at para 11, for the principle that it is unreasonable for the decision-maker to expect an applicant's answers to religious questions to match the decision-maker's level of knowledge.

[17] While this accurately summarizes the law, I disagree with the basic premise of the Applicant's argument that the RAD failed to take his personal circumstances into account. The RAD acknowledged the same point was raised on appeal, and as a result, reviewed the oral testimony. The questions posed were open-ended and the RAD states the Applicant could have answered the religious questions in his own way. Further, the RAD considered the Applicant was able to provide testimony and answer questions about all other aspects of his claim without issue, despite his education and personal circumstances. It was only on the religious aspect of the claim that the Applicant could not provide basic explanations or answers to the RPD member's questions, leading to the implausibility and credibility findings.

[18] The Applicant also argues the RAD engaged in a selective analysis of the documentary evidence relating to his religion, submitting that it provided no explanation as to why either the letter from the church or the baptism certificate were insufficient to establish his practice of Christianity in Canada. The Applicant relies on *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) at paras 14–17 and its progeny, arguing that the tribunal improperly ignored contradictory evidence without reasonable explanation.

[19] The Applicant further cites *Nur v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 1444 at para 32 for the proposition that a decision which lumps evidence together and treats

it as an undifferentiated mass is unreasonable and not justifiable, having failed to engage in an independent analysis of these two documents.

[20] But this was not the case. The RAD clearly addressed both documents, at numerous places throughout the decision, concluding at para 53 as follows:

I find that the letter alone and the baptism certificate are insufficient to establish that the Appellant is a genuine practicing Christian in Canada. As indicated above, the letter contradicts the Appellant's own testimony regarding his level of participation in the church, and while the baptism certificate illustrates that he was baptized in Canada, I find that neither of these items can attest to the genuineness of his Christian belief, and he was baptized for reasons other than having a genuine belief in the faith.

[21] It was open to the Board to find that such evidence does not prove faith (*Hu v Canada (Citizenship and Immigration)*, 2022 FC 828 at para 34; *Su v Canada (Citizenship and Immigration)*, 2013 FC 518 at para 17). The burden of establishing the sincerity of his beliefs rested with the applicant, as Justice Gleason explained in *Li v Canada (Citizenship and Immigration)*, 2012 FC 998. The two documents in question were reasonably found not to surmount the various inconsistencies and inadequacies of his verbal testimony. In short, given the inconsistencies, implausibilities, and insufficient evidence that both tribunals described, the RAD's finding vis-à-vis Christianity was reasonable.

[22] Finally, on this first issue of his faith, the Applicant asserts the RAD failed to provide him the benefit of the presumption of truthfulness (*Maldonado v Canada (Minister of Citizenship and Immigration)*, [1980] 2 FC 302 (FCA) at 305). The Applicant submits Canadian courts have interpreted religious freedom broadly and a prohibition on worship constitutes religious

persecution (*Fosu v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 1813 at para 5).

[23] I disagree. The RAD thoroughly considered the Applicant's testimony and found the Applicant failed to establish he was practicing Christianity in Canada. The Applicant is improperly asking the Court to reweigh his testimony and find the Applicant was practicing in Canada, which weighting rests squarely in the domain of the tribunal. In this case, the Decision suffered from no defects.

B. *Findings vis-à-vis status in China were also reasonable*

[24] The Applicant submits the RAD erred in finding he was not wanted in China, given the RPD accepted the raid on the house church occurred and the RAD found the RPD erred in finding the Applicant's exit was determinative of the issue of persecution. The Applicant submits that country evidence, the Applicant's testimony, and supporting documentation demonstrate it was unreasonable for the RAD to conclude there was no forward-facing risk to the Applicant. In addition, by considering evidence not on the record – the lack of police summons, warrants, or contact with his family – as opposed to the evidence that was, the tribunal erred.

[25] The RAD summarized the arguments regarding the Applicant's status with law enforcement authorities in China. It summarized, in detail, the Applicant's submissions as to why the RPD had erred in its assessment of his exit from China, and indeed, it agreed that the RPD erred regarding his exit from China.



[26] However, the RAD also found that the issue of the Applicant's exit was not determinative. On the other aspect of the alleged interest in the Applicant by law enforcement authorities, the RAD agreed that there was insufficient evidence to demonstrate that he is wanted in China, given the lack of evidence of any summons, warrant, or interest by the PSB or village committee members before his departure, or since. It thus agreed with the RPD's conclusion on this issue.

[27] Once again, the tribunal's was a reasonable assessment, and it is not the role of this Court to reconsider the evidence, or lack of supporting evidence, that was before the decision-maker (*Doyle v Canada (Attorney General)*, 2021 FCA 237 at para 3). I once again decline the Applicant's invitation to reweigh the evidence on this issue.

C. *The Board did not err on the sur place analysis*

[28] The Applicant submits the RAD erred in the *sur place* assessment by considering only activities in Canada, and not those the Applicant would engage in upon his return to China. The Applicant submits it is an error for the RAD to import negative credibility findings into a *sur place* claim as whatever the conclusion on the sincerity of belief, that is not a relevant factor, relying on *Ejtehadian v Canada (Citizenship and Immigration)*, 2007 FC 158 at para 11. After all, he asserts that documentary evidence of religious activity in Canada must be considered, regardless of issues of credibility (*Mohajery c Canada (Minister of Citizenship and Immigration)*, 2007 FC 185 at para 37).

[29] However, this Court has routinely held since the cases that the Applicant relies on, that it may import negative credibility findings into the assessment of a *sur place* claim (see, as one example, *Zheng v Canada (Citizenship and Immigration)*, 2019 FC 904 at paras 23-28). I have already shown that the RAD considered the scant documentation provided, finding it insufficient to support the *sur place* assertions, concluding on the point that there is “nothing to suggest that he will go home and continue to practice Christianity as he has not been practicing in Canada”.

[30] Finally, I note that the Applicant relies on the National Document Package for the proposition that Falun Gong practitioners abroad are monitored by Chinese authorities and submits the same applies to Chinese Christians in Canada. However, the Applicant has not pointed to that evidence.

[31] I note that counsel who argued this judicial review, after different counsel before each of the RPD and RAD, certainly did all he could to represent the interests of his client and highlight what he felt were weaknesses in the decision. Although I cannot support his position, he engaged in admirable advocacy. I would be remiss if I did not also acknowledge Ms. Song for the strong case she put forward on behalf of her client.

## VI. Conclusion

[32] For the forgoing reasons, I dismiss this application for judicial review. The parties have not proposed a certified question and none arises.

**JUDGMENT in IMM-9601-21**

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

1. The application is dismissed.
2. No questions for certification were argued and I agree none arise.
3. There is no award as to costs.

"Alan S. Diner"

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Judge

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

**DOCKET:** IMM-9601-21

**STYLE OF CAUSE:** XIAOPENG CHI v THE MINISTER OF CITIZENSHIP  
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**APPEARANCES:**

Gokhan Toy FOR THE APPLICANT

Alethea Song FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Lewis & Associates FOR THE APPLICANT  
Barristers and Solicitors  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario