

Federal Court



Cour fédérale

Date: 20230209

Docket: IMM-1183-22

Citation: 2023 FC 193

Toronto, Ontario, February 09, 2023

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

BINGCAI SU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, a 42-year-old citizen of China, fears persecution at the hands of the Chinese authorities for escaping from police custody after he was arrested for protesting against the expropriation of his land. He seeks judicial review of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada dated January 14, 2022, which found that the Applicant is neither a Convention refugee nor a person in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, C 27 [IRPA]. The RPD identified that the determinative issue was credibility.

[2] The Applicant has raised a number of grounds for reviewing the RPD's decision. However, I am satisfied that the RPD's consideration of the summons (referred to interchangeably in the RPD' decision as a subpoena) is determinative. I find that the RPD's determination that the summons was fraudulent is unreasonable and that this assessment tainted the related findings.

[3] By way of background, the Applicant states that he first received notification from his local government of the forced expropriation and demolition of his home, as well as other homes in his local village, in approximately February of 2012. From February to June 2012, residents engaged the local government in negotiations in order to prevent the expropriation or alternatively, receive fair compensation. This resulted in a blockade and protest from June 27 to 28, 2012.

[4] The Applicant states that he was taken into custody on June 28, 2012, where he was interrogated, beaten and tortured. The Applicant claims that on June 30, 2012, he escaped from police custody through a window. The Applicant thereafter reached out to a smuggler for assistance. The Applicant states that on July 1, 2012, Public Security Bureau [PSB] officers left a summons with his wife at her parents' home. The summons accused the Applicant of leading anti-government action, slandering government officials and escaping from detention.

[5] The Applicant left China on July 5, 2012 with the assistance of the smuggler. The Applicant states that the PSB has since gone to his parents' home and his in-law's home in China looking for the Applicant. The Applicant further states that a "wanted" circular for his arrest has been posted in bus and train stations.

[6] The RPD held that the presumption of truthfulness afforded to the Applicant was rebutted for three reasons, only one of which I need to address. The RPD found that a summons produced by the Applicant was fraudulent. The document states that it was issued by the People's Court of Baiyun District, Guangzhou City and is titled a "Chuanpiao". It directs that the Applicant report to the criminal division of the court on July 2, 2012.

[7] The RPD held that the summons matched the sample Chuanpiao provided to the RPD, which is described in the National Document Package [NDP] as a "People's Court summons" or "court-issued subpoena". However, the RPD went on to note that Article 182 of the "Criminal Procedure Law of the People's Republic of China" states that at least ten days prior to a hearing for public prosecutions of criminal offences being commenced, the defendant must be served with a copy of an indictment, and that the defendant is to then be served with a summons no later than three days prior to the hearing. As the Applicant had not produced an indictment and had not provided an adequate explanation for the absence an indictment, the RPD concluded that the summons must be fraudulent.

[8] In reaching this determination, the RPD noted that it had considered the objective evidence of "wide-spread non-compliance with the criminal procedure rules" but that this, in its view, did not account for the irregularity that the summons was issued by the People's Court and not the PSB. The RPD also states that it did not find credible that the Chinese state "would go through the trouble of commencing court proceedings in an irregularly short period of time" given that the "PSB ha[s] a wide variety of coercive powers".

[9] On the basis of the cumulative concerns raised by the three issues, the RPD concluded that, on a balance of probabilities, the Applicant was not a credible witness, he had not established his family home was expropriated and demolished in June of 2012 and he had not established that he had faced any consequences stemming from his attempt to prevent the alleged expropriation.

[10] In assessing whether the RPD's decision is reasonable, the Court will assess whether the decision is appropriately justified, transparent and intelligible. To meet these requirements, the decision must reflect "an internally coherent and rational chain of analysis" and be "justified in relation to the facts and law that constrain the decision maker". Both the outcome and the reasoning process must be reasonable [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 83, 85 and 99].

[11] I find that the RPD's determination that the summons is fraudulent lacks justification and is based on improper speculation. Having found that the summons matched the sample document (such that the RPD had no questions or doubts about the features or content of the summons), the RPD nonetheless found the document to be fraudulent based on its assumption and speculation as to how the Chinese authorities would rationally behave – that is, that the Chinese authorities would have complied with the proper procedural requirements and issued an indictment prior to the summons. This Court has repeatedly warned against making such assumptions regarding the Chinese authorities [see, for example, *Huang v Canada (Citizenship and Immigration)*, 2019 FC 94 at para 21; *Jia v Canada (Citizenship and Immigration)*, 2016 FC 33]. Moreover, the RPD's assumption and speculation is particularly difficult to reconcile with the RPD's acknowledgement of the NDP evidence of the Chinese authorities' widespread non-compliance with procedural rules.

[12] I am satisfied that this flawed assessment of the summons tainted the RPD's credibility assessment (upon which its decision turns), such that the RPD's decision must be set aside and the matter remitted for re-determination by a differently-constituted panel.

[13] The parties propose no question for certification and I agree that none arises.

JUDGMENT in IMM-1183-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted and the matter is remitted to a differently-constituted panel of the Refugee Protection Division for redetermination.
2. The parties proposed no question for certification and none arises.

“Mandy Ayles”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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