

Federal Court



Cour fédérale

**Date: 20230303**

**Docket: IMM-3672-20**

**Citation: 2023 FC 304**

**Ottawa, Ontario, March 3, 2023**

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

**BETWEEN:**

**JIE BAI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The Applicant, Jie Bai, seeks judicial review of a decision of the Refugee Appeal Division (“RAD”) dated July 27, 2020, upholding the finding of the Refugee Protection Division (“RPD”) that the Applicant is neither a Convention refugee nor a person in need of protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“IRPA”). The RAD found the determinative issue to be the Applicant’s credibility.

[2] The Applicant submits that the RAD erred in failing to conduct an independent analysis of the claim and unreasonably relied on the RPD's analysis. The Applicant further submits that the RAD engaged in an unreasonable credibility assessment and erroneously failed to consider the Applicant's sur place claim.

[3] For the reasons that follow, I find that the RAD's decision is unreasonable. This application for judicial review is therefore granted.

## **II. Facts**

### **A. *The Applicant***

[4] The Applicant is a 59-year-old citizen of China. During the Chinese New Year of 2014, the Applicant's friend, Zhu Xiao Yun (Ms. "Yun"), was concerned about the Applicant's low mood and introduced her to Falun Gong. Ms. Yun told the Applicant that Falun Gong had helped her own low mood and lack of energy.

[5] In her Basis of Claim ("BOC") form, the Applicant states that she was initially hesitant to learn about Falun Gong, as she only knew that Falun Gong practices are banned by the Chinese government. Nonetheless, the Applicant began learning about Falun Gong exercises and knowledge from Ms. Yun, after which the Applicant practiced them almost every day. The Applicant claims that her health and mood improved after a few months.

[6] In May 2014, the Applicant joined a Falun Gong practitioners' group, at Ms. Yun's invitation. The group consisted of seven women and gathered at a different member's home every weekend to practice the exercises and learn more about Falun Gong from the group's leader ("Ms. Chen", as referred to in the BOC form). The group never met publicly.

[7] In September 2014, the Applicant learned that Ms. Chen had gone into hiding following a visit from the neighbourhood committee. The Applicant became concerned that this was due to the group's Falun Gong activities. Ms. Yun notified the Applicant that the group practice was suspended, and that she was going to relocate. The Applicant also relocated to live with her cousin, to avoid confrontation from the neighbourhood committee or the police.

[8] The Applicant claims that on October 6, 2014, two neighbour committee officers came to her home to ask about her whereabouts, without stating the reason for their search. The Applicant's son told the officers that the Applicant was away visiting relatives. The officers told her son to notify them when the Applicant returned. The Applicant claims that this visit from the neighbourhood committee made her fearful that the authorities suspected her of being a Falun Gong practitioner.

[9] The Applicant claims that she and her husband agreed that it was too risky for her to remain in China. The Applicant obtained a visitor visa to Canada through an agent. The Applicant and the agent arrived in Canada on December 27, 2014, after which the Applicant claims that the agent confiscated her Chinese passport.

[10] Since being in Canada, the Applicant has resumed Falun Gong practices. She attends a practitioners' group and continues to learn about Falun Gong.

[11] The Applicant claims that on January 5, 2015, a neighbourhood committee officer contacted her family in China and asked about her whereabouts. The Applicant's son told the officer that she had traveled to Canada for tourism, to which the officer replied that the Applicant is expected to report to the neighbourhood committee office upon her return to China. The Applicant claims that this indicates the Chinese authorities' interest in her. She fears that if she were to return to China, she would be pursued by the authorities and would no longer be able to practice Falun Gong, which has benefited her physical and spiritual health.

B. *RPD Decision*

[12] In a decision dated July 22, 2019, the RPD determined that the Applicant is neither a Convention refugee nor a person in need of protection on the basis that her claim that she is a genuine Falun Gong practitioner lacks credibility.

[13] The RPD first found that the Applicant's responses to questions about Falun Gong knowledge and practices were inconsistent with her claim that she has been a practitioner for over five years. The RPD noted the Applicant's claim that she read two books about Falun Gong several times, including the seminal text of *Zhuan Falun*. When asked about whether *Zhuan Falun* comments on coping with grief, the Applicant responded that she does not remember, in part because the passing of her parents was deeply impactful. The RPD found that this

explanation did not reasonably align with a practitioner of over five years and did not explain her inability to recall whether grief is discussed in Falun Gong teachings.

[14] The RPD also found that the Applicant's response regarding "righteous thoughts", a central tenet of Falun Gong, did not support the assertion that she is a genuine practitioner. Despite testifying that she has recited the righteous thoughts several times a day for several years, she was unable to recite them at the hearing. The RPD also did not find her explanation for failing to recite the verses to be reasonable, finding that the Applicant's testimony was clearly rehearsed and evaded the direct question. The RPD therefore drew a negative credibility finding from the Applicant's failure to respond to its inquiry about the righteous verses.

[15] Similarly, the RPD found that the Applicant's inability to respond to a question about the concept of attachments in Falun Gong teachings further undermined her credibility. When asked to define attachments, the Applicant testified that she could not remember and, when asked again, offered the definition for karma instead. The RPD noted that the concept of attachments is central to Falun Gong teachings and it is therefore reasonable to expect that the Applicant would be able to explain what it entails. The RPD made the same finding with respect to the Applicant's lack of knowledge regarding the meaning of "white substance", which refers to virtue and is another key concept in Falun Gong knowledge.

[16] At the RPD hearing, the Applicant was asked whether she was aware of the Falun Dafa Association, who they were, and whether there was such a group in Canada ("FDAC"). The Applicant responded that she knew of the group, that they were people who suffered and were

tortured, and that there was a FDAC. The Applicant further testified that she is not a member because the FDAC have a limit on members; a majority of them are students; she knows she cannot become a member because she does not have enough experience; and has not tried to become a member because there is a lot about Falun Gong that she does not remember. She later stated that she attended FDAC events and the parade. The RPD referenced National Documentation Package (“NDP”) evidence regarding the FDAC, noting that it is the only association to represent Falun Gong practitioners nationally. The RPD found that the Applicant’s failure to explain her lack of effort to join the FDAC or inquire about her eligibility to become a member did not align with her claim that she has been a genuine Falun Gong practitioner for more than five years.

[17] The RPD found that the Applicant’s documentary evidence was insufficient to compensate for the multiple credibility concerns. The RPD noted that letters from China from partisan sources with an interest in the claim’s outcome and photographs of events or practice groups did not substantiate the Applicant’s claim that she is a genuine Falun Gong practitioner.

[18] The RPD noted the Applicant’s assertion that the passing of her parents has resulted in memory loss, to which she attributed her failure to recall certain aspects of Falun Gong teachings during the hearing. Assessing the Applicant’s varying testimony and evidence regarding her memory loss and other potential medical issues, the RPD found that the Applicant had ample opportunity to inform her counsel about such concerns and failed to do so. The RPD found that this undermined the Applicant’s claim that she had reported issues with memory and depression to her doctor. The RPD further determined that the Applicant’s memory loss appeared to be

highly selective and only arose in the second sitting of the RPD hearing, when the panel began asking questions about Falun Gong. The RPD noted that the doctor's note provided by the Applicant was not from the same doctor she referenced during the hearing, thereby granting it little weight. The RPD found that the Applicant's diagnoses of severe mood disorder and depression do not qualify her as a designated vulnerable person or sufficiently compensate for the multiple credibility concerns in the Applicant's claim.

[19] For these reasons, the RPD found that the Applicant is not a sincere and genuine Falun Gong practitioner and that she is neither a Convention refugee nor a person in need of protection as per sections 96 and 97 of the *IRPA*.

### C. *Decision under Review*

[20] In a decision dated July 27, 2020, the RAD dismissed the Applicant's appeal and upheld the RPD's finding that the claim lacked credibility.

[21] On appeal, the Applicant disputed the RPD's assessment of the Applicant's responses to questions regarding Falun Gong teachings and practices. She submitted that the RPD ignored her husband's letter proffered in support of her claim, and engaged in a microscopic and overzealous assessment of her responses to questioning. Considering the recording of the RPD hearing and the evidentiary record, the RAD found that the RPD had posed reasonable questions regarding central tenets of Falun Gong and the Applicant's answers demonstrated her lack of knowledge about Falun Gong teachings, which is inconsistent with her claim. The RAD also

noted that the RPD explicitly referred to the Applicant's husband's letter as an exhibit when weighing her documentation.

[22] Regarding the Applicant's submission that the RPD unreasonably dismissed her allegation regarding her depression and her corroborative doctor's note, the RAD found that the RPD admitted this evidence, considered it in its analysis, reasonably accorded it little weight, and provided cogent reasoning for this assessment.

[23] For these reasons, the RAD upheld the RPD's credibility assessment and found that the Applicant failed to establish her genuine adherence to Falun Gong.

### **III. Issue and Standard of Review**

[24] The issue in this application is whether the RAD's decision is reasonable.

[25] The standard of review is not disputed. The parties agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) (“*Vavilov*”). I agree. This is consistent with this Court's reviews of RAD determinations regarding the genuineness of religious belief: *Wang v Canada (Citizenship and Immigration)*, 2022 FC 546 at paragraph 15; *Gao v Canada (Citizenship and Immigration)*, 2021 FC 490 at paragraph 14; *Liu v Canada (Citizenship and Immigration)*, 2019 FC 1541 at paragraph 24.



[26] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13; 75; 85). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A decision that is reasonable as a whole is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[27] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

#### **IV. Analysis**

[28] The Applicant submits that the RAD erred in failing to carry out an independent analysis of her claim, thereby depriving the Applicant of her right to an appeal, and engaged in an unreasonable assessment of the Applicant’s credibility. I agree that the RAD erred in failing to conduct an independent assessment of the Applicant’s claim, which is sufficient to render its decision unreasonable.

[29] The Applicant contends that the RAD's reasons reveal nothing more than a recapitulation of and agreement with the RPD's analysis. The Applicant notes that the RAD's analysis consists of only two paragraphs, focusing mainly on the RPD's findings, and the lack of detailed analysis of the claim's merits in the RAD's decision amounts to a failure to assess the Applicant's claim and evidence as required. The Applicant relies on *Ajaj v Canada (Citizenship and Immigration)*, 2015 FC 928 ("*Ajaj*"), where this Court found that the RAD's decision was unreasonable because "the RAD did not undertake an independent assessment of the evidence" and "relied heavily on the RPD's findings, consistently using the language of reasonableness and deference" (paras 41-42). The Applicant submits that the same reasoning applies here, warranting this Court's intervention.

[30] The Respondent maintains that the RAD reasonably upheld the RPD's decision. The Respondent submits that the RAD conducted an independent assessment of the Applicant's claim and it is open to the RAD to both adopt the RPD's comprehensive treatment of the record and to agree with the RPD's findings. The Respondent submits that the RAD's review of the audio recording of the hearing, its reference to the evidence, and its explicit agreement with the analysis and conclusion of the RPD, are indicative of the RAD's independent assessment.

[31] I agree with the Applicant that the RAD's reasons exhibit a failure to conduct an independent assessment of the Applicant's claim. The role of the RAD on appeal is not only to review any alleged errors made by the RPD and to agree or disagree with the RPD's final determination. Its role is also to carry out an independent analysis of the claim, which in this case required the RAD to review and consider the Applicant's evidence proffered to support her

claim that she is a genuine Falun Gong practitioner. While I note that the brevity of the RAD's reasons is not tantamount to a failure to conduct an independent assessment, the reviewable error is in the content of its reasons. Despite stating that it reviewed the RPD's decision on a correctness standard and assessed the Applicant's testimony before the RPD, the RAD's reasons and the lack of a clear chain of analysis underlying the decision show otherwise (*Vavilov* at para 85). In my view, the RAD's reasons are little more than a regurgitation of the RPD's assessment and an overall reliance on the RPD's analysis of the evidence, which renders its decision to refuse the Applicant's claim unjustified and lacking transparency.

[32] In *Ajaj*, this Court reviewed the RAD's decision to refuse a claim for refugee protection on the basis that the applicant had failed to establish his genuine conversion to Christianity. My colleague Justice Gascon found the RAD's decision to be unreasonable because it failed to conduct its own independent analysis of the credibility of the applicant's claim, stating at paragraphs 41 and 42:

[41] I instead agree with Mr. Ajaj that the RAD did not undertake an independent assessment of the evidence and is therefore not saved by the Court's jurisprudence on pure credibility findings. Because the RAD is a specialized tribunal which must conduct a "full fact-based appeal", it can only owe deference to the RPD when a witness' credibility is critical or determinative or when the RPD enjoys a particular advantage, and if the RAD does its own analysis. This is not what happened in this case.

[42] It is apparent throughout its decision that the RAD relied heavily on the RPD's findings, consistently using the language of reasonableness and deference cited above. There is no evidence that, in the present case, the RAD conducted any independent assessment of its own. Furthermore, I agree with Mr. Ajaj that the RPD did not solely rely on his own observations of Mr. Ajaj or of his demeanor. The RPD's findings of credibility were not strictly dependent on Mr. Ajaj's testimony. The RPD's conclusions were

rather based on plausibility findings that Mr. Ajaj was not a genuine convert in light of his limited knowledge of Christianity and his absence at church at Christmas. The RAD was equally well-placed to determine plausibility in those circumstances. The RPD did not enjoy a measurable advantage over the RAD in assessing credibility, and no deference was owed to the RPD in such circumstances, as the Court similarly found in *Bahta* and *Hossain*.

[Emphasis added]

[33] In my view, the same reasoning applies to the RAD's decision here. Similar to its decision in *Ajaj*, the RAD's language in its reasons in the Applicant's case exhibit a high degree of deference to and reliance on the RPD's assessment. For instance, when addressing the Applicant's answers to questions about certain Falun Gong teachings, the RAD references the paragraphs in the RPD's decision that contain this analysis, states that it listened to the recording of the hearing, and concurs with the RPD's final credibility findings. In regards to the Applicant's doctor's note, the RAD simply states that the RPD "gave detailed consideration to this evidence in paragraphs [30] and [31] of its decision," which exhibits a review of the RPD's reasons on the standard of review of reasonableness. The RAD was "well-placed to determine the plausibility" of the Applicant's claim that she is a genuine practitioner, and the reasons lack evidence that the RAD made its own credibility findings prior to agreeing with the RPD's determination (*Ajaj* at para 42). I find that this failure to conduct an independent assessment of the Applicant's claim is sufficient to render the RAD's decision unreasonable.

[34] I further note that that the Respondent relies on this Court's decision in *Rehman v Canada (Citizenship and Immigration)*, 2022 FC 783 ("*Rehman*") for the proposition that the RAD's agreement with the RPD's analysis and findings does not establish its failure to conduct

an independent assessment (at para 64). However, the Applicant rightly notes that in *Rehman*, this Court found that “given the detailed reasons set out by the RPD, the RAD did not err in adopting specified portions of them as its own” (at para 65). In the case at hand, the RAD ventured beyond adopting specific portions of the RPD’s analysis and, rather, appeared to exclusively rely on the RPD’s analysis in making its decision. This amounts to a failure to conduct an independent assessment of the Applicant’s claim, as required.

**V. Conclusion**

[35] This application for judicial review is granted. The RAD’s decision is unreasonable on the basis that it failed to conduct its own independent assessment of the Applicant’s claim. No questions for certification were raised, and I agree that none arise.

**JUDGMENT in IMM-3672-20**

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

1. This application for judicial review is granted. The decision under review is set aside and the matter remitted back for redetermination by a differently constituted panel.
2. There is no question to certify.

“Shirzad A.”

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Judge

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

**DOCKET:** IMM-3672-20

**STYLE OF CAUSE:** JIE BAI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** BY VIDEOCONFERENCE

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**APPEARANCES:**

Vakkas Bilsin FOR THE APPLICANT

Amina Riaz 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