

Federal Court



Cour fédérale

**Date: 20240201**

**Docket: IMM-1136-23**

**Citation: 2024 FC 165**

**Ottawa, Ontario, February 1, 2024**

**PRESENT: The Honourable Madam Justice Kane**

**BETWEEN:**

**THI KIM THUY NGUYEN**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant, Thi Kim Thuy Nguyen [Ms. Nguyen], seeks judicial review of the decision of the Refugee Appeal Division of the Immigration and Refugee Board [RAD] dated January 9, 2023, which upheld the decision of the Refugee Protection Division [RPD].

Ms. Nguyen claimed to be a Hoa Hao Buddhist and to fear persecution and detention by the police in Vietnam due to her religion. The RPD had found Ms. Nguyen not to be credible and

concluded that she was not a Convention refugee or a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

[2] For the reasons that follow, the Application is dismissed. The RAD addressed all of the grounds raised by Ms. Nguyen on appeal, which she now raises on Judicial Review. The RAD conducted an independent assessment and reasonably confirmed the RPD's conclusion. The RAD decision is transparent and intelligible and the outcome is justified by the facts and the law.

I. Background

A. *Ms. Nguyen's account*

[3] Ms. Nguyen, a citizen of Vietnam, arrived in Canada in 2017 on a student visa. She alleges that in 2018, she sent a message with photos *via* Viber to a friend in Vietnam, who is also a follower of Hoa Hao Buddhism. She alleges that authorities found these photos and her friend was arrested and imprisoned. Ms. Nguyen recounts that her uncle endeavoured to intervene to resolve the matter with the police, but he was not successful. Ms. Nguyen recounts that her mother claims that her friend remains detained and that the police continue to look for Ms. Nguyen. Ms. Nguyen claims that if she returns, she will be arrested and imprisoned.

[4] Ms. Nguyen subsequently made a refugee claim based on her fear of persecution in Vietnam due to her religious identity as a Hoa Hao Buddhist.

B. *The RPD decision*

[5] The RPD denied Ms. Nguyen's refugee claim, finding that she was not credible and had not established that she was a Hoa Hao Buddhist.

[6] At the RPD hearing, Ms. Nguyen was questioned about her knowledge of Hoa Hao Buddhism. She was only able to correctly identify one of three important religious dates in the calendar year. The RPD asked Ms. Nguyen whether she had any evidence to support her claims that the other dates she mentioned are acknowledged by her religion. She responded that she was only recently informed by her lawyer of the RPD hearing and did not have time to prepare properly. The RPD was not persuaded by her response, noting that she had been sent the "Notice to Appear" several months in advance of her hearing date and had made her refugee claim two years earlier.

[7] The RPD found Ms. Nguyen's overall testimony unpersuasive and lacking in credibility and drew negative inferences from her responses including:

- How and why she was drawn to Hoa Hao Buddhism;
- The core beliefs and the four gratitudes of Hoa Hao Buddhism;
- Corroborative evidence that she practices Hoa Hao Buddhism, such as the name of the temple where she met the person who provided a supporting letter alleging to know her through the Toronto Hoa Hao Association; and
- Her inability to provide a full name for the friend who allegedly introduced her to the religion.

[8] The RPD also attributed little probative value and no weight to generic photos Ms. Nguyen provided to establish her religious identity.

[9] Due to the RPD's credibility concerns, Ms. Nguyen was asked to provide evidence to corroborate that she sent a message and photos to her friend that led to her being wanted by police, which was the key basis of her claim for refugee protection. Ms. Nguyen stated that she sent the photos through the Viber app that she no longer uses, and had made no attempt to reactivate her account to retrieve the message. The RPD found that, on a balance of probabilities, Ms. Nguyen did not establish that she sent photos to her friend in Vietnam that led her to being wanted by the police.

[10] The RPD also inquired why Ms. Nguyen did not provide letters from her mother or uncle, who she claimed could have corroborated her claim that she is wanted by the police. Ms. Nguyen responded with several excuses, including being too busy to prepare evidence, not having enough time, and that she did not know what to do. The RPD found her responses unsatisfactory, given that she was represented by experienced counsel and she had two years from the date she submitted her application to the date of her hearing to gather supporting documents.

[11] The RPD concluded that Ms. Nguyen failed to establish, on a balance of probabilities, a serious possibility of persecution on a Convention ground or that she would be subjected to death, cruel or unusual treatment or punishment, or danger of torture upon return to Vietnam.

II. The RAD Decision under Review

[12] The RAD dismissed Ms. Nguyen's appeal and confirmed the RPD's decision finding that she was not a Convention refugee or a person in need of protection.

[13] The RAD decision is comprehensive and addresses all the grounds raised by Ms. Nguyen. Although the RAD took issue with a few of the RPD's findings, the RAD found these concerns to have no impact on the RPD's overall conclusion that Ms. Nguyen had not established that she was a Hoa Hao Buddhist. The RAD added that, even if she were, Ms. Nguyen had not established that she would face a serious risk of persecution upon her return.

[14] At the RAD, Ms. Nguyen argued that the RPD erred in its analysis and conclusion by not specifying how much religious knowledge was expected of her and by expecting her to provide corroborating evidence. She also argued that the RPD had applied the wrong legal test to assess her risk of persecution and had failed to state the standard of proof applied to her section 97 claim.

[15] The RAD reviewed the RPD decision on the correctness standard (in accordance with *Huruglica v Canada (Citizenship and Immigration)*, 2016 FCA 93; *Rozas Del Solar v Canada (Citizenship and Immigration)*, 2018 FC 1145). The RAD conducted an independent assessment of the evidence and agreed with the RPD's finding that Ms. Nguyen did not establish that the police in Vietnam are looking for her because of a message and photo she sent to her friend over Viber.

[16] The RAD found the RPD correctly stated and applied the legal test of a “serious possibility” of persecution. The RAD also disagreed with Ms. Nguyen’s submission that the RPD had failed to state or apply the correct test for assessing her section 97 claim or had failed to state the burden of proof.

[17] The RAD noted several minor errors in the RPD’s decision, but did not find that any were serious enough to change the outcome.

[18] The RAD agreed with the RPD’s finding that Ms. Nguyen’s testimony was vague regarding how and why she practices Hoa Hao Buddhism. The RAD found that the RPD correctly concluded that a person, who allegedly has been practicing for six years and prays nightly, should have been able to display commensurate religious knowledge.

[19] The RAD also agreed with the RPD that a negative inference could be drawn from Ms. Nguyen’s inability to name the temple where she claims to practice. The RAD found that the letter from a fellow practitioner contradicted Ms. Nguyen’s oral testimony about her method of prayer and how frequently she prays. The RAD also agreed with the RPD’s assessment that the generic photos provided by Ms. Nguyen of the temple and a gathering should be given little weight.

[20] The RAD also confirmed the RPD’s finding that it was reasonable to expect Ms. Nguyen to make an effort to retrieve the Viber message that she claimed was the precipitating incident, and to obtain corroborative evidence that the police are looking for her because of that incident.

[21] The RAD acknowledged the letters submitted after the RPD hearing by Ms. Nguyen from her mother and her uncle's wife (stating that the uncle had died). The RAD found that the RPD erred in not considering the letters, but based on its independent assessment of the letters, concluded that the letters did not establish that Ms. Nguyen would face persecution upon return to Vietnam due to her religious identity or political opinions. The RAD found that the letters stated only that the police in Vietnam are looking for her, but fail to establish that they are looking for her to persecute her due to her religion or political opinions, or that on a balance of probabilities, she will be subjected to a section 97 harm.

[22] The RAD found that, given the totality of the evidence, Ms. Nguyen had not established her religious identity as a Hoa Hao practitioner since 2016, and that even if she were, she had not established that she would face a serious possibility of persecution in Vietnam. The RAD considered the National Documentation Package [NDP], which suggests harassment of the Hoa Hao depends on whether they are a state-recognized sect or an independent group. The RAD noted that Ms. Nguyen had not indicated to which group she belongs. The RAD also noted that Hoa Hao Buddhism is the fourth-largest religion in Vietnam, and the authorities are primarily concerned about people making associations or organizing into a political party or calling for demonstrations. The RAD also noted evidence suggesting that very few people have been detained or imprisoned for adhering to the religion.

[23] The RAD found that Ms. Nguyen had not established her religious practice had political undercurrents, or that she was a member of the sect that might face persecution. The RAD concluded that she failed to establish a serious possibility of persecution if she returns to Vietnam.

### III. The Standard of Review

[24] The presumptive standard of review for administrative decisions is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 25 [Vavilov]).

[25] A reasonable decision 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” (*Vavilov* at para 85), and where the reasons for the decision are justifiable, intelligible, and transparent (*Vavilov* at para 95). Reviewing courts must refrain from reweighing and reassessing the evidence before the decision-maker (*Vavilov* at para 125, citing *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 55).

### IV. The Applicant’s Submissions

[26] Ms. Nguyen submits that the RAD failed to explain what standard of knowledge she should have demonstrated in her testimony. She argues that she was required to have “encyclopedic” knowledge, which is unreasonable (*Wu v Canada (Citizenship and Immigration)*, 2009 FC 929; *Xu v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1383).

[27] Ms. Nguyen further submits that the RAD erred in not giving any weight to the letters from her mother and her aunt, which she submits corroborate her testimony about the persecution she faces. She also argues that the RAD’s comments on the letter from the member of the Toronto Hoa Hao Association amount to an implausibility finding.



[28] Ms. Nguyen also argues that the RAD applied the wrong legal test for analyzing her risk of persecution on a Convention ground. She submits the test is “more than a mere possibility”, a lesser threshold than a “serious possibility” (*Li v Canada (Minister of Citizenship and Immigration) (FCA)*, 2005 FCA 1 at paras 10-12 [*Li*]). She argues that the RAD erred by failing to state the standard of proof it applied for its section 97 analysis.

V. The Respondent’s Submissions

[29] The Respondent disputes that the RAD misstated or misapplied the legal test for section 96 or section 97 claims or erred in identifying the burden of proof.

[30] The Respondent submits that the RAD’s findings regarding whether Ms. Nguyen is a Hoa Hao Buddhist are reasonable given the vagueness of her testimony and the overall lack of knowledge she displayed, including incorrect answers that were not consistent with her claim that she had practiced the religion for six years (*Tien Do v Canada (Citizenship and Immigration)*, 2023 FC 1568 at paras 11-12 [*Tien Do*]; *Liang v Canada (Citizenship and Immigration)*, 2022 FC 115 at paras 30-33 [*Liang*]; *Siline v Canada (Citizenship and Immigration)*, 2022 FC 490 at para 9 [*Siline*]).

[31] The Respondent submits that it was open to the RAD to find that Ms. Nguyen’s testimony was not credible based on her inability to name important religious dates and provide details about the religion beyond the four basic gratitudes. It was also reasonable for the RAD to draw a negative inference based on Ms. Nguyen’s lack of effort to obtain documents to

corroborate her claim (*Imaniraguha v Canada (Citizenship and Immigration)*, 2014 FC 349 at para 31).

[32] The Respondent submits that the RAD's credibility concerns regarding the documents were reasonable, and that the RAD is entitled to give no weight to documents when it finds them to be lacking credibility (*Liang* at para 28).

[33] The Respondent notes that the information provided in the letter of support from the member of the Toronto Hoa Hao Association, which was offered as corroborative evidence, in fact contradicted Ms. Nguyen's account; in particular, that the letter claimed that she had participated in group meetings and online discussions, when she had made no mention of this in her testimony. The Respondent notes that at the RPD hearing Ms. Nguyen stated that she did not even have time to pray twice a week because of her work schedule.

[34] The Respondent adds that the letters from Ms. Nguyen's mother and aunt did not establish that she feared persecution and detention by the police due to her religious identity.

[35] The Respondent also submits that, as found by the RAD, Ms. Nguyen does not fit the profile of someone who would be targeted by the government or police in Vietnam (i.e., she was not a member of a political party, involved in calling for demonstrations, or a member of a persecuted sect).

VI. The Decision is Reasonable

[36] Ms. Nguyen makes the same arguments to the Court that she made in her appeal to the RAD.

[37] The RAD conducted an independent assessment of the evidence, as it was required to do, and confirmed the same outcome reached by the RPD; Ms. Nguyen had not credibly established that she was a Hoa Hao Buddhist or that if she were, she would face a serious possibility of persecution or risk of cruel and unusual treatment or punishment upon her return to Vietnam. The RAD did not err in its application of the applicable legal tests or its consideration of the relevant evidence.

A. *The RAD applied the correct legal tests*

[38] The RAD applied the correct legal test with respect to the section 96 claim, being whether Ms. Nguyen faced a “serious possibility” of persecution on a Convention ground (*Fashola v Canada (Citizenship and Immigration)*, 2023 FC 1671 paras 27-28; *Li* at para 12; *Adjei v Canada (Minister of Employment and Immigration)*, 1989 CanLII 9466 at 683). The RAD specifically stated that the standard of proof (i.e., on a balance of probabilities) was applied to determine Ms. Nguyen’s section 97 claim.

[39] Ms. Nguyen’s argument suggests that she did not read the RAD’s detailed decision and that she misread the passage in *Li* that she relies on, as well as the subsequent jurisprudence.

B. *The RAD reasonably concluded that Ms. Nguyen's is not a Hoa Hao Buddhist*

[40] There is extensive jurisprudence from this Court on the issue of how a claimant's knowledge of their religion, upon which they allege they will be persecuted, should be assessed.

[41] In *Tien Do*, Justice Fuhrer noted and applied the established principles in assessing the reasonableness of a RAD decision regarding an applicant's claim of persecution as a Hoa Hao Buddhist in Vietnam.

[42] The jurisprudence confirms that the RPD and RAD are the finders of fact, particularly when it comes to determining whether an applicant is or is not a follower of a religion; and, that an applicant must demonstrate a basic knowledge or understanding of the religion commensurate with the time they have been practicing (*Tien Do* at paras 11-12; *Siline* at para 9).

[43] While decision makers can ask objective questions about religion to gauge the genuineness of an applicant's faith, they must refrain from "adopt[ing] an unrealistically high standard or engag[ing] in a microscopic analysis": *Gao v Canada (Citizenship and Immigration)*, 2021 FC 490 at para 20.

[44] In the present case, Ms. Nguyen appears to ask the Court to reach a different conclusion based on her testimony before the RPD, which was independently assessed by the RAD. However, it is not the role of the Court to reweigh the evidence.

[45] The RPD and RAD are the decision makers and have the expertise to assess credibility and to assess claims of religious identity and persecution. The RAD reasonably found that Ms. Nguyen failed to demonstrate the basic knowledge that would be expected of a person who claimed to practice Hoa Hao Buddhism for six years. The RAD's decision thoroughly addressed the vague and evasive answers provided by Ms. Nguyen. The RAD's finding that Ms. Nguyen has not demonstrated that she practices Hoa Hao Buddhism is reasonable. Ms. Nguyen incorrectly identified the date for a key celebration and could not identify other dates; she avoided answering other questions with non-responsive answers; she could not name the temple she allegedly attends or the person who introduced her to the temple; she provided a letter from another member of her temple that was inconsistent with her own account of her religious practices; and, she had ample time to brush up on her religious knowledge prior to the RPD hearing, yet still displayed a lack of basic knowledge.

[46] The RAD also reasonably found that the letters from Ms. Nguyen's mother and aunt in Vietnam only state that the police are looking for her and say nothing about whether she is a Hoa Hao Buddhist or fears persecution on that basis.

*C. The RAD reasonably concluded that Ms. Nguyen would not be at risk if she returned to Vietnam*

[47] The RAD reasonably concluded that even if Ms. Nguyen were a Hoa Hao Buddhist, she does not face a serious possibility of persecution upon return to Vietnam. The RAD found that Ms. Nguyen had not claimed to be part of an independent Hoa Hao group as opposed to a state recognized Hoa Hao Buddhist group. The RAD noted that although there was some information about harassment of independent groups, Hoa Hao Buddhism is the fourth largest religion in

Vietnam and is not banned in its entirety. The RAD also found that there was no evidence that Ms. Nguyen engaged in any of the activities that would cause concern for the Vietnamese authorities. The Applicant alleges that she shared a photo of a yellow flag with three red stripes (the flag of former South Vietnam) with her friend, and did not know that sharing the photo was sensitive or would cause trouble. However, given the Applicant's unwillingness to reactivate her Viber account to provide proof, the RAD's determination that the Applicant did not establish that there was a serious possibility that she would be persecuted or harmed upon her return to Vietnam is reasonable.

[48] In conclusion, the Application is dismissed. The decision of the RAD displays all the hallmarks of a reasonable decision.

**JUDGMENT in IMM-1136-23**

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

1. The Application is dismissed
2. There is no question for certification.

"Catherine M. Kane"

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Judge

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

**DOCKET:** IMM-1136-23

**STYLE OF CAUSE:** THI KIM THUY NGUYEN v MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

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**DATED:** FEBRUARY 1, 2024

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