

Federal Court



Cour fédérale

Date: 20240207

Docket: IMM-9367-22

Citation: 2024 FC 200

Ottawa, Ontario, February 7, 2024

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

HAI WANG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision (the “Decision”) by the Refugee Appeal Division (the “RAD”). The Decision affirmed the Refugee Protection Division’s (the “RPD”) finding that the Applicant is neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the “Act”).

[2] For the reasons that follow, I grant the application.

II. Background

[3] Mr. Hai Wang (the “Applicant”) is a citizen of China. He is 24 years old.

[4] The Applicant alleges that he is a Pentecostal Christian. He became a Christian in August 2016, when he was 17 years old, after his friend died by suicide.

[5] The Applicant and two fellow practitioners distributed leaflets for their church. The Applicant says that he and the other practitioners were apprehended, interrogated, assaulted, and accused of illegal religious activities by China’s Public Security Bureau (the “PSB”).

[6] The Applicant left China, purportedly through a smuggler, and entered Canada in June 2017. He says he joined a local church in Scarborough, Ontario, and that he was baptized in December 2017.

[7] The Applicant claimed refugee protection in Canada in early 2018. His evidence included an Administrative Punishment Decision (the “APD”) and a receipt for a fine (the “Fine Receipt”).

[8] The RPD found, among other things that:

1. The APD and the Fine Receipt were inauthentic;
2. The Applicant was not wanted by the PSB;

3. The Applicant would not have been able to leave China as described;
4. The Applicant was not a genuine adherent to Pentecostal Christianity; and
5. The Applicant would be able to practice Christianity if he returned to China.

[9] The RPD's conclusion was upheld on an appeal to the RAD. However, on judicial review, this Court remitted the matter to the RAD for redetermination by a different panel.

[10] The RAD provided its second decision in September 2022. It is this second RAD decision that is under review.

III. The Decision

A. *Admissibility of New Evidence*

[11] The Applicant submitted the following documents as new evidence to the second RAD panel, all of which were dated after the RPD hearing:

1. A letter from the Applicant's reverend in Canada (the "Reverend's Letter"), attesting to the Applicant's years-long participation in church, commenting on the circumstances faced by Christians in China, and asking the RAD to grant the Applicant's claim;
2. A letter from the Applicant's mother, stating that the PSB visited their home in China and delivered a summons for the Applicant and that she spoke with a fellow

practitioner (whom the RAD referred to as “XXS”) from the Applicant’s church in China about his detention (the “Mother’s Letter”);

3. A summons from the PSB to the Applicant (the “PSB Summons”); and
4. A release certificate for XXS, showing that XXS was detained for several weeks in late 2021 (the “Release Certificate”).

[12] The RAD refused to admit any of the above documents, except for a portion of the Reverend’s Letter attesting to the Applicant’s participation in his church in Canada. The RAD found the remainder of the letter to be opinion and advocacy, not evidence.

[13] As for the PSB Summons, the RAD compared that document to a sample PSB summons in the National Documentation Package for China. The RAD observed that the sample’s verbiage is distinct from that of the PSB Summons. The RAD concluded that the PSB Summons was not credible.

[14] Regarding the Release Certificate, the RAD reviewed the text of the document, which stated that (1) XXS was held “for interrogation and investigation” as a result of being “[u]nrepentant” and because of his involvement in “illegal religious activities [sic] again”, and that (2) XXS was released because the “case” is complete.

[15] The RAD compared the substance of the document with Articles 9, 27, and 40 of China’s Public Security Administration Punishment Law (the “PSAPL”). The RAD found that the Release Certificate does not accord with those provisions and concluded it was not credible.

[16] The RAD declined to admit the Mother's Letter as evidence because it focused on the PSB Summons and the Release Certificate.

B. *Whether to Hold an Oral Hearing*

[17] Despite its findings with respect to the new evidence, the RAD did not hold an oral hearing to assess credibility. It took the view that there were no credibility issues with respect to the new evidence that was admitted. The RAD's reasoning suggests that the negative credibility findings at the admissibility stage would not trigger an obligation to hold an oral hearing.

C. *Errors in the RPD's Findings*

[18] The RAD agreed with the Applicant that the RPD's decision contained errors. It observed that some of the RPD's conclusions were inconsistent, and that a number of them were based on personal assumptions and speculations, not on the evidence before the panel. That said, the RAD concluded that the RPD's errors were not determinative, and that the RPD arrived at the correct result despite its errors.

(1) *Authenticity of the APD and the Fine Receipt*

[19] The RAD found that the RPD relied on personal assumptions and speculations when it found that the APD and the Fine Receipt were inauthentic.

[20] The RAD assessed the APD and the Fine Receipt independently. It compared the APD with a sample from the National Documentation Package for China. The RAD observed that there were inconsistencies in the verbiage. It also noted that the relevant provisions in the PSAPL do not include “surveillance” as a potential repercussion, contrary to what was in the APD. The RAD held that the APD was indeed inauthentic. For similar reasons, it concluded that the Fine Receipt was also inauthentic.

[21] From this, the RAD also drew a negative inference regarding the Applicant’s general credibility.

(2) The Genuineness of the Applicant’s Religious Belief

[22] The RAD found that the RPD relied on personal assumptions and speculation when it judged the genuineness of the Applicant’s religious belief. After assessing the issue independently, the RAD concluded that the Applicant’s belief in Pentecostal Christianity was not genuine.

[23] The RAD’s conclusion was based on the following findings: (1) because the APD and the Fine Receipt were held to be inauthentic, the Applicant lacked credibility generally; (2) the Applicant’s answers before the RPD were “vague” and the Applicant himself was “unresponsive”.

[24] The RAD cited the following excerpts from the RPD hearing transcript:

RPD: Why are praying for the sick and giving gifts encouraged?

Appellant: Yes, by praying when you have a disease you will receive a blessing and be safe.

RPD: What does water in baptism signify?

Appellant: Water is to wash away the original sin that we have.

RPD: What is the significance of the Bible as a Pentecostal Christian?

Appellant: We believe in the holy spirit [sic].

[...]

Counsel: Do you consider your religious faith to be important to you?

Appellant: Yes.

Counsel: Why?

Appellant: So the feeling of being a Christian, when you pray or read the Bible, feel very comforted and relaxed.

Counsel: Why? That kind of environment in the Church?

Appellant: Yes.

Counsel: What about when you are not in Church?

Appellant: After my friend died, I had a very serious depression.

Counsel: Do you have an understanding as to why your faith helps you?

Appellant: Yes, I know.

Counsel: What is it?

Appellant: Because the Holy Spirit will come to me.

Counsel: Which means?

Appellant: It is something I cannot express with words. I feel comfort, I feel release.

Counsel: Do you find that your faith has changed your life, as in how you interact with others?

Appellant: Yes.

Counsel: How?

Appellant: Before I became a Christian, I felt depression and anxiety. But after I became a Christian, after going to church regularly, all those feeling of depression are gone.

Counsel: Anything else?

Appellant: So after I became a Christian, I will live worry free.

[25] The RAD took note of the Reverend's Letter attesting to the Applicant's regular participation in his church in Canada since 2018. The RAD also took note of a baptismal certificate that was before the RPD. However, it found that neither document was sufficient "to credibly establish [the Applicant's] identity as a genuine Pentecostal Christian in Canada" because the Applicant's answers during the hearing were "very basic" and "vague" and because the Applicant was not credible generally.

[26] The Applicant says that the RAD erred by (1) refusing to admit the Release Certificate, (2) refusing to admit the PSB Summons, (3) refusing to admit the Mother's Letter, (4) finding the APD to be inauthentic, (5) finding the Fine Receipt to be inauthentic, and (6) assessing the genuineness of the Applicant's beliefs unreasonably.

IV. Issue

[27] Was the RAD unreasonable in finding portions of the new evidence inadmissible, in concluding that the APD and the Fine Receipt are inauthentic, and/or in concluding that the Applicant's belief is not genuine?

V. Analysis

[28] The standard of review with respect to the RAD's substantive findings is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 25).

A. *The Release Certificate*

[29] The Applicant argues that the RAD was unreasonable to find that the Release Certificate lacked credibility. The Applicant notes that the RAD cited Articles 9, 27, and 40 of the PSAPL, which it understood to say, respectively, that:

1. Administrative punishments may be in the form of warnings, fines, and detention, not investigation and interrogation;
2. The punishment for a disturbance of the "social order" in the name of religion includes detention and/or a fine of no more than 1,000 yuans; and
3. Administrative punishments can only be given once an administrative body ascertains the facts clearly, absent which that body may not give an administrative punishment.

[30] The Applicant says that the provisions relied on by the RAD do not, in fact, state the above. The Respondent says in reply that the RAD did rely on the correct provisions but simply cited an outdated version of the PSAPL in its reasons.

[31] It is not necessary for me to determine the content of the PSAPL or whether the RAD cited the correct provisions. In my view, even if one presumes the RAD's summary of the PSAPL is correct, its decision to reject the Release Certificate is nevertheless unreasonable. The Release Certificate does not say that XXS was detained for the purpose of punishment, but that he was held "for interrogation and investigation". This is not contrary to the legal framework as summarized by the RAD, but in accordance with it. The RAD itself summarized the substance of one provision as follows:

I note that Article 40 of the Public Security Administration Punishment Law (PSAPL) indicates that administrative punishments can only be given once the administrative body ascertains the facts [...].

[Emphasis added]

[32] It was contradictory for the RAD to then fault the Release Certificate for its emphasis on "interrogation and investigation":

[...] Article 9 of the PSAPL defines the punishments that can be administered including warnings, fines, and detention; however, investigation and interrogation are not listed as possible punishments. [...]

[Emphasis added]

[33] On the one hand, the RAD is saying that the Release Certificate is not credible because, under the PSAPL, one would expect an administrative body to ascertain the facts – that is, to investigate. On the other hand, it also says that the Release Certificate is not credible because it references an investigation and interrogation, which is not listed as a punishment in the PSAPL. This is unintelligible and unreasonable.

[34] The RAD did not provide any other reason to refuse to admit the Release Certificate. Its decision to refuse that evidence was unreasonable.

B. *The PSB Summons*

[35] The Applicant further argues that the RAD was unreasonable to assess the credibility of the PSB Summons by comparison to a sample. The Applicant says that this assumes that all summons in China appear the same. The Respondent says in reply that it is open for the RAD to make such an assessment from the evidence before it. The Respondent cites *Mao v Canada (Citizenship and Immigration)*, 2020 FC 542 at paragraphs 34-35, in which the Court found that:

[34] There is plenty of case law establishing that the Board is entitled to compare documents to sample government documents to determine authenticity. In *Liu v Canada (Citizenship and Immigration)*, 2011 FC 262 at para 8, Justice Rennie found that it was reasonable for the Board to “expect that the applicant’s summons should bear some resemblance to one of these three types of summons” when the board had access to similar Chinese sample documents. In *Chen v Canada (Citizenship and Immigration)*, 2011 FC 187 at para 10, Justice Zinn approved of the RAD finding that a Chinese summons was inauthentic because it lacked certain features that they expected to be present. In *Zhuo v Canada (Citizenship and Immigration)*, 2012 FC 790 at paras 6-9, Justice Mactavish found that inconsistencies in documents, combined with knowledge that fraudulent documents are prevalent in China, supported the Board reasonably finding that a Chinese document was inauthentic.

[36] I agree with the Respondent that the RAD may assess evidence by reference to samples within the National Documentation Package. That said, the inferences it draws from that comparison must also be reasonable.

[37] Here, the PSB Summons in question contained all of the elements present in the sample, including (1) the name of the issuing authority, (2) a title identifying the document as a summons, (3) a statement requiring the individual to appear, (4) the legal basis behind the summons, (5) arrival and departure information, (6) a signature line, and (7) a statement that copies of the document will be produced for the individual.

[38] The only missing element from the PSB Summons when compared to the sample was a warning that evading the summons may carry repercussions. However, as the Applicant noted in his oral submissions, there were other samples in the evidence of summons that did not have such a warning.

[39] In light of this level of consistency between the PSB Summons and the samples in evidence, the RAD's inference that the PSB Summons is not credible is unreasonable.

[40] It is possible to understand the RAD's comments to be in reference to the different wording used by the PSB Summons and the sample for each of the above elements. However, the RAD's comparison was relying on English translations made by two separate translators. Even if the RAD's conclusions are to be understood in this light, they would still be unreasonable.

C. *The Mother's Letter*

[41] The only reason that the Mother's Letter was not admitted was that the letter "describes events related to the summons and the certificate". In light of my findings above, this conclusion is unreasonable.

D. *The APD*

[42] As with the PSB Summons, the RAD found that the APD was inauthentic after comparing it with a sample available through the National Documentation Package. Again, it was open for the RAD to assess a document's authenticity by reference to an existing sample. However, the RAD's conclusions from the comparison must be reasonable.

[43] Here, the APD included most, but not all, of the elements identified in the sample. Those were (1) the name of the issuer, (2) the name of the offender, (3) the facts and evidence pertaining to the violation, (4) the type and extent of penalty, (5) the means of enforcement, (6) recourse to appeal, and (7) the availability of copies for the individual. The only elements missing were the offence and the PSAPL provision it is based on, as well as the amount of the fine.

[44] The RAD identified several issues in the text of the APD itself. First, it observed that the name of the Applicant is spelled incorrectly in the text of the APD. The RAD also noted that the PSAPL is referred to by the wrong name. Finally, the RAD noted that "surveillance" was among the punishments levied against the Applicant, but the relevant provisions of the PSAPL do not include surveillance as a possible punishment.

[45] As with the PSB Summons, the RAD's analysis were microscopic. The RAD disregards the consistency of the elements present in the APD and the fact that such documents often vary from time to time and that there is no "absolute" in their form and content. It also ignores the correct spelling of the Applicant's name at the top of the document.

[46] The RAD's microscopic observations with the respect to the APD were unreasonable, resulting in the RAD's unreasonable conclusion that the APD was inauthentic and inadmissible.

E. *The Fine Receipt*

[47] The Applicant argues that the RAD's conclusion that the Fine Receipt was inauthentic was also unreasonable. The Applicant says that the RAD's finding cited the maximum fine limit imposed by the applicable PSAPL provisions, which was lower than the amount noted on the Fine Receipt.

[48] The Applicant alleges that the excessive fine is attributable to local authorities acting beyond their legal authority out of animus towards Christians. The Respondent says that the RAD's conclusion is also based on other discrepancies in the document itself, chief among which are the following:

1. it did not indicate that a payment was made;
2. it did not identify the Applicant as the subject of the penalty;
3. it did not contain the signature of the person subject to the penalty; and
4. it was stamped, but the seal was not that of a law enforcement agency.

[49] It is not necessary for me to determine whether local authorities in China acted beyond their legal authority to persecute or harass Christians, as it is evident from the RAD's examination of the document's text that it misapprehended its content. The RAD says that the Fine Receipt

does not show that a payment was actually made; however, the title of the document is “receipt”. It uses words such as “paid by” and “fine”, and cites a monetary amount. The RAD also found that the Applicant was not identified as the subject of the penalty, and the reason behind the fine was not clear from the document. However, the document states that the payment was “Paid by: Wang, Hai” because of “Attend[ence of] illegal underground church activities”. Finally, the document indicates that the stamp was issued by the “Public Security Bureau of XiaMen”, not a generic public authority.

[50] While it is true that the amount paid by the Applicant exceeds the legal limit imposed by the PSAPL, the RAD’s overall analysis shows that it misapprehended the evidence. The RAD’s conclusions were simply not grounded in the document before it. Those conclusions are unreasonable.

F. *The Applicant’s Genuine Belief*

[51] The Applicant argues that the RAD’s assessment of the genuineness of the Applicant’s religious practice was unreasonable. The Applicant points to the RAD’s finding that the Applicant was “vague”, “unresponsive”, and lacking in religious knowledge. The Respondent says in reply that the RAD is entitled to deference.

[52] I agree with the Applicant that the RAD’s conclusion was unreasonable. First, there was no evidence to suggest that the Applicant was “unresponsive” or “vague”. Each question cited by the RAD was followed with an answer. Where the Applicant struggled to find the words, he stated bluntly that “[i]t is something I cannot express in words”. Second, the RAD admitted the

Reverend's Letter in part, after finding that it was sufficiently credible. Yet, the RAD's analysis placed no weight on the Reverend's Letter, stating that the Applicant is generally non-credible. These findings are contradictory. Crucially, the Reverend's Letter confirmed that the Applicant has been attending his church regularly since 2017, that he attends Bible classes, and that he has been baptized. Third, despite the fact that the Applicant identified common concepts from the Christian faith, such as the importance of prayer, baptism, original sin, and the Holy Spirit, the RAD concluded that he lacked religious knowledge. Yet, the RAD did not identify any concept which the Applicant should have known or identified in the course of his hearing.

[53] The RAD's conclusion with respect to the genuineness of the Applicant's religious belief is not reasonably grounded in the evidence.

VI. Conclusion

[54] The RAD refused to admit the majority of the new evidence submitted by the Applicant. It held that the Fine Receipt was inauthentic. It also concluded that the Applicant was not genuine in his religious belief. These findings are unreasonable. Because they were determinative of the Applicant's claim, the Decision itself is also unreasonable.

JUDGMENT in IMM-9367-22

THIS COURT'S JUDGMENT is that:

1. The application is granted and the Decision is remitted for redetermination by a different panel.
2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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