Federal Court  Cour fédérale

Date: 20240321

Docket: IMM-12134-22

Citation: 2024 FC 448

Halifax, Nova Scotia, March 21, 2024

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

WEIHAO YAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS FOR JUDGMENT

I. Overview

[1] This judicial review application arises out of a decision of a Senior Immigration Officer [Officer] denying the Applicant's Pre-Removal Risk Assessment [PRRA] application pursuant to section 112 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. In his 2022 PRRA application, the Applicant claimed that, as an evangelical Christian, he would be at risk of harm under sections 96 and 97 of the *IRPA* if he returned to China.

[2] I am dismissing the application. Based on the evidentiary record before them, the Officer reasonably concluded that the Applicant failed to demonstrate he was at risk of persecution under section 96 or would face a personalized risk under section 97 based on his religion.

II. Analysis

[3] The Applicant challenges the Officer's assessment of the objective country condition evidence, as well as their application of the legal tests required to establish risk under sections 96 and 97 of the *IRPA.* There is no dispute that reasonableness is the applicable standard of review.

[4] Reasonableness is a robust but deferential standard of review: *Canada (Minister of Citizenship and Immigration) v Vavilov,* 2019 SCC 65 at paras 12-13 [*Vavilov*]. 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 that constrain the decision maker": *Vavilov* at para 85; *Mason v Canada (Citizenship and Immigration),* 2023 SCC 21 at para 8 [*Mason*]. A decision should only be set aside if there are "sufficiently serious shortcomings" such that it does not exhibit the requisite attributes of "justification, intelligibility and transparency": *Vavilov* at para 100; *Mason* at paras 59-61.

A. *The Officer's decision is reasonable*

[5] The Applicant's primary argument is that the Officer's decision – that the Applicant would not be at risk in China as a Christian – was based on outdated evidence and a selective analysis of the evidence. After thoroughly reviewing the evidentiary record, I disagree with the Applicant. For

the reasons set out below, I am satisfied that the Officer's ultimate conclusion falls within "the range of possible, acceptable outcomes which are defensible in respect of the facts and the law": *Vavilov* at para 86.

[6] At the outset of their discussion of the country condition evidence concerning the treatment of Christians in China, the Officer noted that there has been a "sinicization of religion" in China since 2018. As described in the documentary evidence, China's policy of sinicization requires religions "to adapt religious practices and doctrines to conform to traditional Chinese culture and values": UK Home Office Report, "Country Policy and Information Note – China: Christians," November 2019 at para 2.4.6 [UK Home Office Report].

[7] The Officer specifically acknowledged that "religious freedom is unquestionably restricted in China" and that "the conditions for Christians are not ideal in China": Pre-Removal Risk Assessment Notes to File dated August 31, 2022 at pp 7-8 [Officer's Decision]. However, based on a review of the objective country condition evidence, the Officer concluded that not all Christians in China face mistreatment that amounts to a risk of persecution or harm under sections 96 and 97 of the *IRPA*.

[8] Furthermore, the Officer found that the Applicant failed to adduce sufficient evidence that he would be at risk in China based on his faith. More specifically, the Officer determined that the Applicant had not established that he was either a Church leader or that he fit the profile of a Christian who required protection under the *IRPA*. While the Officer accepted that the Applicant was baptized as a Christian, they noted the paucity of evidence about the Mainland Chinese

Christian Church [MCCC] to which the Applicant belongs. In addition, the Officer assigned little weight to the letters from the Applicant's church friends describing his volunteer work and active participation in worship services at the MCCC in Canada. Notably, the Applicant does not take issue with these evidentiary findings.

(1) The Officer did not rely on outdated evidence

[9] The Applicant argues that notwithstanding the Officer's recognition of sinicization, the Officer principally relied on outdated, pre-sinicization evidence in rejecting the Applicant's PRRA application. More particularly, the Applicant alleges that two main errors render the decision unreasonable.

[10] First, he submits that the Officer relied on findings that are erroneously referred to as being drawn from a 2021 Immigration and Refugee Board [IRB] report entitled "China: Treatment of members of house churches" [2021 report] when they are actually statements from a 2014 IRB report entitled "Treatment of 'ordinary' Christian house church members by the Public Security Bureau" [2014 report]. Second, the Applicant asserts that the Officer failed to mention that findings quoted in the decision as being drawn from the 2019 UK Home Office Report entitled "Country Policy and Information Note – China: Christians" are also based on pre-sinicization evidence.

[11] As the Applicant's counsel demonstrated, there is no question that the following passage in the Officer's decision is based on statements, many taken verbatim, from the IRB's 2014 report rather than the 2021 report:

> The IRB report "China: Treatment of members of house churches" states that there are many Christian groups in China, including some with beliefs that diverge from orthodox teachings. There is a variation in the treatment of unregistered religious groups by local authorities. Sources indicate that a majority of unregistered churches are tolerated by the government. Sources indicate that house churches may face sporadic harassment by the police and that this "usually does not extend beyond fines, brief detention, and orders to disband". Sources indicate that several factors influence the treatment of house churches and its members, including the profile of the individual church, the province or locality of the house church, the size of the congregation, the political involvement of the congregation, foreign contact and involvement. Documentary evidence also indicates that church leaders are subjected to harsher treatment than regular members.
>
> Officer's Decision at p 8.

[12] However, this oversight, in and of itself, does not vitiate the Officer's decision. I agree with the Respondent that statements similar to those in the passage above are echoed in the 2021 IRB report. For example, the 2021 report similarly refers to the existence of different Christian groups in China, the variation in treatment of unregistered churches, the harassment of house churches, factors affecting the treatment of unregistered churches, and the fact that leaders are treated more harshly than church members. In that vein, the statements referred to by the Officer cannot be said to be outdated as they are reflected in the more recent 2021 report.

[13] The only statement from the passage above that does not appear to be expressed in the 2021 report is that "a majority of unregistered churches are tolerated by the government". However, this statement is reflected in other country condition evidence in the record, namely the 2019 UK Home Office Report, as addressed below.

[14] The Applicant asserts that the Officer further erred in relying on the following six findings from the 2019 UK Home Office Report because they are based on pre-sinicization evidence:

> - "'In general, the risk of persecution for Christians expressing and living their faith in China is very low, indeed statistically virtually negligible…There has been a rapid growth in numbers of Christians in China, both in the three state-registered churches and the unregistered or 'house' churches. Individuals move freely between State-registered churches and the unregistered churches, according to their preferences as to worship.' (para 137 (1 and 2))"
>
> - "'In general, the evidence is that the many millions of Christians worshipping within unregistered churches are able to meet and express their faith as they wish to do.' (para 137 (4i))"
>
> - "'The evidence does not support a finding that there is a consistent pattern of persecution, serious harm, or other breach of fundamental human rights for unregistered churches or their worshippers.' (para 137 (4ii)).
>
> - '…in general, any adverse treatment of Christian communities by the Chinese authorities is confined to closing down church buildings where planning permission has not been obtained for use as a church, and/or preventing or interrupting unauthorised public worship or demonstrations'(para 137 (4iii)).
>
> - "There may be a risk of persecution, serious harm, or ill-treatment engaging international protection for certain individual Christians who choose to worship in unregistered churches and who conduct themselves in such a way as to attract the local authorities' attention to them or their political, social or cultural views (paragraph 137 of the determination). " [*sic*]
>
> - "dissident bishops or certain individual Christians who worship in unregistered churches and who conduct themselves in such a way as to attract the local authorities' attention to them or their political, social or cultural views may face an increased risk of adverse state interest, including harassment and detention. Public worship or expressions of a person's faith are more vulnerable to adverse treatment than private worship (including in small groups). Religious practice that the government perceives as being in conflict with its broader

> ethnic, political or security policies is at high risk of adverse official attention."
>
> Officer's Decision at p 9.

[15] The Applicant is correct in that these statements, which are cited in the 2019 UK Home Office Report, are taken from the UK's Upper Tribunal – Immigration and Asylum Chamber's 2014 decision of *QH (Christians - risk) China CG v The Secretary of State for the Home Department*, [2014] UKUT 00086 (IAC). However, I do not agree with the Applicant that these findings are outdated. Indeed, the same 2019 report specifically concludes that the Upper Tribunal's 2014 findings remain relevant, even after the government adopted the 2018 sinicization policy and the consequent crackdowns:

> The government of China has continued to impose restrictions on Christians, and these have intensified since QH was heard in 2013. <u>However, the situation for most Christians has not changed significantly, with the risk of treatment amounting to persecution for expressing and living their faith still being very low. There are not 'very strong grounds supported by cogent evidence' to justify a departure from QH.</u>
>
> [Emphasis added]
>
> UK Home Office Report at para 2.4.12.

[16] A close reading of the UK Home Office Report thus reveals that the Officer did not rely on outdated findings in that report. The six findings cited in paragraph 14 above support the Officer's overall assessment of the objective country condition evidence that not all Christians face mistreatment in China under sections 96 or 97 of the *IRPA*:

> Overall, the reports submitted by the applicant and from my own independent research indicate that residents of China are highly restricted in their religious freedom. Individuals can attend government-sanctioned religious institutions; however,

> participation in unregistered religious groups can lead to harassment and detention. While some Christians who participate in unregistered house churches can face serious mistreatment in China, I note that there is insufficient evidence of probative value to indicate that the applicant is a church leader or that he fits the profile of a Christian who may attract the attention of the government. Documentary evidence demonstrates that ordinary Christians can practice Christianity without harassment. I find that if the applicant returns to China he could continue practicing his religion without facing mistreatment from the authorities.
>
> In summary, documentary evidence demonstrates that religious freedom continues to be curtailed by the Chinese authorities. However, independent publically accessible sources indicate that while some Christians who participate in unregistered house churches can face serious mistreatment in China, not all individuals who are members of such house churches face mistreatment which amounts to treatment described in sections 96 and 97 of the IRPA. Moreover, I find that the applicant adduces insufficient evidence to demonstrate that he would face personalized risk upon return to China. I find the applicant is not a person in need of protection as defined in sections 96 or 97 of the IRPA.
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> [Emphasis added]
>
> Officer's Decision at pp 9-10.

[17] Based on my review of the record as set out above, I do not agree with the Applicant that the Officer relied on outdated evidence. Any pre-2018 evidence relied upon was either consistent with more recent reports (either the 2021 IRB report or the 2019 UK Home Office Report) or had already been specifically assessed against China's sinicization policy (UK Home Office Report). In that respect, this case can be distinguished from *Zhao v Canada (Citizenship and Immigration)*, 2020 FC 929 at para 36.

(2) The Officer did not conduct a selective review of the evidence

[18] I further find no merit to the Applicant's argument that the Officer selectively reviewed the evidence and ignored other evidence that supported the Applicant's position. The jurisprudence is clear that officers are presumed to have considered all evidence before them. An officer need not mention or address every single piece of documentary evidence relied upon by a party but must address material contradictory evidence: *Zarinejad v Canada (Citizenship and Immigration)*, 2023 FC 177 at para 20; *Singh v Canada (Citizenship and Immigration)*, 2022 FC 616 at para 21; *Jama v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1459 at para 17.

[19] In support of his argument that the Officer overlooked relevant documentary evidence in favour of outdated evidence, the Applicant refers to excerpts from three articles or reports: Applicant's Memorandum of Fact and Law at para 33. A contextual review of the statements relied upon does not, however, support the Applicant's assertions.

[20] For example, one of the articles addresses the removal of crosses, closure of house churches, and repurposing of religious buildings. This is consistent with the evidence relied upon by the Officer from the 2019 UK Home Office Report. Another article refers to the tightening of restrictions, which is consistent with the Officer's finding that Chinese residents are "highly restricted in their religious freedom": Officer's Decision at p 8. Finally, an excerpt from the third report was explicitly referenced in the Officer's decision.

[21] In light of the above, I do not accept that the Officer engaged in a selective analysis of the documentary evidence and ignored relevant evidence that contradicted their conclusion. The

Officer's assessment of evidence is owed deference; it is not for a reviewing court to reassess and reweigh the evidence: *Vavilov* at para 125.

(3) The Officer applied the proper legal test in assessing the Applicant's risk

[22] While the Applicant did not raise this issue in oral argument, his written submissions assert that there is "no indication" the Officer applied the proper legal test under sections 96 and 97 of the *IRPA*: Applicant's Memorandum of Fact and Law at paras 37-38. I am satisfied that the Officer was alert to the standard of proof required to establish risk under sections 96 and 97.

[23] Indeed, at the outset of the decision, the Officer properly stated that section 96 required the Applicant to demonstrate that he faces "more than a mere possibility of persecution" or, in other words, a serious possibility of persecution, and that section 97 required him to demonstrate risk on a balance of probabilities: Officer's Decision at p 4. The Officer also correctly articulated the applicable test in their conclusion:

> For the reasons stated above, I find that the applicant has not established he faces a reasonable possibility of persecution on any Convention ground, as per Section 96 of IRPA. I also find that he has not established he faces a personalized risk to his life or of cruel and unusual treatment or punishment, or of a danger of torture, as per Subsections 97(1)(a) or (b) of IRPA.
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> Officer's Decision at p 10.

[24] Reading the decision as a whole, the Officer applied the correct legal tests: *Sierra v Canada (Citizenship and Immigration)*, 2023 FC 881 at para 63; *Aslan v Canada (Citizenship and Immigration)*, 2021 FC 1165 at para 24; *Gebremedhin v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 497 at para 29. Ultimately, after assessing the objective evidence, the

Officer determined that the Applicant failed to discharge his burden of proof under either section 96 or 97 of the *IRPA* due to insufficient evidence that he fit the profile of a Christian who would be at risk in China.

III. Conclusion

[25] The Officer's determination that not all Christians face risk of harm in China within the meaning of sections 96 and 97 of the *IRPA* was open to the Officer based on the objective country condition evidence in the record. Furthermore, the Officer reasonably found that the Applicant had failed to adduce sufficient, probative evidence to establish that he was either a church leader or that he fit the profile of a Christian who would be subject to a risk of harm under the *IRPA* if he returned to China.

[26] The parties did not propose a question for certification and I agree that none arises in this case.

JUDGMENT in IMM-12134-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question is certified for appeal.

"Anne M. Turley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Gavin MacLean	FOR THE APPLICANT
Suzanne Bruce	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Gavin MacLean Immigration Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT